CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52589/99
by Urszula SKIBIŃSKA and Ryszard SKIBIŃSKI
against Poland

The European Court of Human Rights (Third Section), sitting on 2 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 2 March 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Urszula Skibińska and Mr Henryk Skibiński, are Polish nationals, a married couple residing in Częstochowa. The respondent Government are represented by Mr Jakub Wołąsewicz, of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants own a number of plots of land located in Częstochowa, at Wręczycka Street.

In 1979 a local land development plan was adopted under which a local heath centre was to be built on their land. However, this plan was not realised.

In 1991 the applicants requested the municipal authorities to reclassify their land so as it could be used as construction land for one-family houses. In December 1991 they were granted initial approval of the construction plans in respect of certain plots and in June 1992 a permission to divide the land into smaller plots.

In 1994 the Częstochowa Municipal Council announced that it was intending to adopt a new land development plan under which a part of the applicants' property was to be used for construction of a big roadway. On 17 October 1994 the applicants lodged their objections against the amendments. On 27 October 1994 the amendments to the local land development plan were adopted by the Council. The applicant's objections were not taken into consideration.

On 28 November 1994 the applicants requested that construction permits be granted to them in respect of certain plots.

In June 1995 the local State administration obliged the Town Hall to draw a plan of financing the local infrastructure investments, including road network, and to fix time-limits for purchase of plots necessary for realisation of these plans from their owners.

On 4 September 1995 the applicants requested the Town Hall to amend the local plan by providing that the thoroughfare would be 18 metres wide instead of 40, i.e. in such a manner as had been provided for by the 1992 decision allowing for their property to be divided into smaller construction plots.

In a letter to the Town Hall of 6 September 1994, communicated to the applicants for information, the Częstochowa Governor stated that the construction of the thoroughfare was not provided for in the financing scheme for the local land development until at least 2010. Therefore it did not serve any purpose to block the properties concerned.

Subsequently, in 1995 the local municipality informed the public that it would start proceedings in order to amend the 1979-1994 land development plan in its part concerning the thoroughfare to be constructed.

On 8 August 1996 the applicant submitted a request to obtain a construction permit concerning their plot No. 1/9 at the Wręczycka St. The proceedings were subsequently stayed, the authorities considering that no

decision should be given before the changes to the development plan were adopted.

In early 1997 the local municipality made public the proposed amendments to the plan. In April 1997 the applicants lodged their objections against the amendments.

On 23 April 1997 the applicants asked the Mayor when the Town Council would hold deliberations on new amendments to the plan.

On 16 June 1997 they were informed that the Town Council would discuss the amendments to the plan at its session to be held on 19 June 1997, but that most likely it would decline to bring any changes thereto.

On 19 June 1997 the Council decided not to make any changes to the 1979-1994 plan. It was observed that the proposed changes resulted in a number of objections being lodged by the owners of properties concerned. It was impossible to reconcile all conflicting interests. It was further acknowledged that the proposed amendments to the plan would free some of the applicants' plots. However, on the whole, having regard to the number of serious objections against the changes, amending the plan would not be feasible. In particular, it would not be feasible to construct the projected roadway if it was to be only 18 metres wide, as proposed *inter alia* by the applicants. Moreover, had the plan been amended as proposed, the municipality would have to incur substantial expenditure for purchase of the plots, which would have to be used for the construction of the road. It was further noted that the local investment plan did not provide for the beginning of construction work of the thoroughfare before 2010. Nevertheless, it would be premature to give up the construction of that roadway, since there remained a possibility that the necessary means would eventually be secured from European Union funds when they became available.

The applicants lodged a complaint against this decision with the Supreme Administrative Court. The court rejected their complaint as it was still open to them to have recourse to a remedy provided for by laws on local government by calling on the Town Council to bring their actions into conformity with the law. The applicants accordingly did so.

On 2 December 1997 the Town Council refused the applicants' request to take such action.

At an unspecified later date the applicants' request for construction permits for the plots concerned was dismissed, regard being had to the fact that these plots were in the vicinity of the road to be constructed.

The applicants lodged a complaint with the Supreme Administrative Court against the municipality's failure to adopt changes to the plan. They argued that under the existing land development plan they could not use their property. Their requests to obtain construction permits had been refused. The local investment plans did not provide for any work in connection with the construction of a roadway to be carried out at least until

2010 and it was until that time that they were prevented from making any use of their property. Therefore they had to bear the intolerable burden of the fact that the local municipality had adopted the plan to construct the roadway which would not be realised in the foreseeable future for lack of financial means.

On 23 July 1998 the Supreme Administrative Court dismissed their complaint. The court recalled the history of the local development plan, dating back to 1979. The court noted the argument of the municipality that the current budget did not allow for the construction of the roadway. The court considered that the applicable planning laws did not make it obligatory for the municipality to amend existing land development plans at every request of the public. The nature of the policy functions of the municipality in the domain of the land development was such that it did not allow for accepting that the organs of municipality had to amend the plan once it had started the proceedings with a view to amending it.

B. Relevant domestic law

From 1984 to 1 January 1995 questions of land development were governed by the Local Planning Law of 12 July 1984.

Under Article 36 of a new Local Planning Law, adopted on 7 July 1994, which entered into force on 1 January 1995, the local authorities were obliged either to buy plots designed for expropriation under local land development plans which were not being realised, or to replace those plots by other plots within six months from the date on which a relevant request was submitted by the owner, or to award compensation for damage caused by fact that the plot was designed for future expropriation.

Under Article 36 of the 1994 Act, this obligation and the corresponding claims of the owners applied only to the plans adopted after the Act entered into force.

Pursuant to the 1994 Act, the plans adopted before the date of its entry into force were to expire on 31 December 1999 at the latest.

In 1999 amendment to the 1994 Act was adopted under which the validity of such plans was prolonged for further two years, until 31 December 2001. On 21 December 2001 parliament adopted a Law on Amendments to the 1994 Local Planning Law which prolonged until the end of 2002 the validity of the land development plans adopted before 1 January 1995.

On 27 March 2003 a new Local Planning Law was adopted, which repealed the 1994 Law. Under Article 87 of that Law all local plans adopted before 1 January 1995 remained valid, but no longer than until 31 December 2003.

Pursuant to Article 36 of the 2003 Law, if, following adoption of a new local land development plan, the use of property in the manner provided

hitherto by a previous plan has become impossible or has been restricted, it is open for the owner to claim compensation from the municipality, or to request the municipality to buy the plot.

COMPLAINT

The applicants complain under Article 1 of Protocol No. 1 to the Convention that their right to peaceful enjoyment of property is breached by the fact that they have not been able to use their plot for construction purposes for the last twenty years.

The plan adopted in 1979 was not realised. The plan adopted in 1994 makes it impossible for them to put the plots to any use. All the applicants can do is to pay taxes. However, there are no grounds on which to assume that the 1994 plan would be realised in any foreseeable future. They refer in this respect to the letter of the Częstochowa Governor of 6 September 1994, in which it was stated that the construction of the roadway was not provided for in the financing scheme for the local land development plans until at least 2010. Therefore it does not serve any reasonable purpose to block the use of the properties concerned for such a long time.

THE LAW

The applicants complain about the interference with their right to the peaceful enjoyment of their possession resulting from the prolonged impossibility to use their real property. They rely on Article 1 of Protocol No. 1 to the Convention which reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government first submit that ownership cannot be regarded as *ius infinitivum*. They refer to the principle of 'fair balance' as established by the Court's case-law, which must be struck between the demands of general interest and the requirements of the protection of the individual's fundamental rights. There must be a reasonable relationship of proportionality in this connection between the means employed and the aims sought. They further refer to a wide margin of appreciation that the

Contracting States enjoy "in the area as complex and difficult as that of the development of large cities (...) in order to implement their town-planning policy" (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69).

The Government argue that in the present case the measures complained of served the general interest as they were intended to resolve the communication and environmental problems of the city of Częstochowa.

The Government acknowledge that the applicants' right to the peaceful enjoyment of their possessions has indubitably been limited by the fact that the local development plan of 1994 prevented them from constructing anything on their plots. It is true that they had previously, by decisions given in 1991 and 1992, obtained initial approval for the use of the plots for construction purposes. However, this interference with the applicants' property rights was justified by the general interest of the community, namely by the need to have a roadway constructed which would serve the local transport needs. As regards the fact that the local investment plans do not provide for financing of any major road construction work to be carried out before 2010, the Government observe that these plans are subject to change. Therefore, a possibility that after Poland's accession to the European Union certain funds would be allocated before 2010 to the road construction in the region of Częstochowa remains open.

The Government conclude that the interference complained of was lawful and in the public interest within the meaning of Article 1 of Protocol No. 1 to the Convention.

As to the proportionality of the interference, the Government admit that under the planning laws as applicable in the particular circumstances of the case, the applicants have not been entitled to request the local authority to purchase their land. However, the Government stress that the applicants have not been prevented from either selling or leasing their property. They maintain that it is possible for the applicants to use the property in such a way that would not require a building permit, i.e. for commercial or other purposes.

The Government submit that if the inability to obtain the construction permit under the legal framework created by the 1994 amendments to the 1979 land development plan was too excessive a burden for the applicants, they were free to sell their property and buy another one, situated in an area where they could easily obtain such permit.

The Government conclude that in the circumstances of the case a fair balance was struck between the applicants' individual rights on the one hand and the public interest and transport needs of the local community on the other.

The applicants challenge the Government's opinion that a fair balance was struck in their case between the general interests of the community on the one hand and their property rights on the other. They concede that they

have not been formally deprived of their possessions since they remain lawful owners of the land concerned. However, as a result of the planning measures taken in their case their property rights have been stripped of any economic significance. This is so because the fate of their land remains uncertain since 1994. While the amendments to the 1979 local development plan, adopted in that year, provide for the construction of the roadway near their plots, the date of the actual construction remains wholly uncertain ever since. As a result of the plan they cannot build anything on their property. The Government's argument that they can still sell their land entirely disregards the fact that the market price of the plot has been significantly reduced as a result of the adoption of the 1994 plan.

The applicants conclude that in the circumstances of the case the fair balance between the protection of their right to the peaceful enjoyment of possessions and the requirements of general interest has been upset.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Mark VILLIGER
Deputy Registrar

Georg RESS
President