AS TO THE ADMISSIBILITY OF

Application No. 27926/95
by Lidia SZAFARCZYK
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 March 1994 by Lidia SZAFARCZYK against Poland and registered on 20 July 1995 under file No. 27926/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1940, is retired. She resides in K*pno.

The facts of the case, as submitted by the applicant, may be summarised as follows:

1. Particular circumstances of the case

In 1967 the applicant's grandmother died, having apparently bequeathed a part of the plot which she owned in Olszowa to the applicant's mother and the remainder to her other two children.

On 12 June 1973 the applicant's uncle F.S. obtained a decision of the K*pno Mayor declaring that by virtue of the Agricultural Property Regulation Act of 1971 ("the 1971 Act") he had become the owner of the plot concerned. Apparently later the applicant and her mother de facto possessed the plot.

In 1986 the applicant's mother died, having bequeathed all her property to the applicant. Subsequently the applicant obtained a court judgment, confirming that she was the sole heir of her mother.

On 8 September 1989 the K*pno District Court (S*d Rejonowy)

ordered that the applicant vacate the property concerned as it was F.S. who was the owner and she did not possess any title thereto.

On 30 October 1989 the Minister of Justice refused to file an extraordinary appeal against this judgment.

In June 1990 the applicant was evicted from the property.

On 6 June 1991 the applicant requested the Kalisz Governor (Wojewoda) to institute proceedings in order to annul the decision of 12 June 1973. She submitted that this decision had been in flagrant breach of law, given that F.S. had never de facto possessed the property. It had been first her mother and from 1986 the applicant herself who had possessed the plot.

On 9 January 1992 the Governor discontinued the proceedings. He considered that since 1 January 1992 the State Treasury Land Property Act of 19 October 1991 ("the 1991 Act") specifically prohibited the institution or continuation of proceedings in order to annul decisions on ownership of agricultural real property which had been issued in accordance with the 1971 Act.

The applicant appealed to the Minister of Agriculture against the decision to discontinue the proceedings.

On 15 February 1993 the Minister of Agriculture upheld the Governor's decision of 9 January 1992. He indicated that, in accordance with Article 63 of the 1991 Act, the general provisions of the Code of Administrative Procedure concerning amendment or annulment of final administrative decisions did not apply to decisions confirming the ownership of agricultural real property issued in accordance with the 1971 Act.

The applicant filed an appeal to the Supreme Administrative Court (Naczelny S*d Administracyjny), complaining that the decision of the Minister deprived her of her property.

On 10 June 1994 the Supreme Administrative Court dismissed the appeal. The Court considered that its only task was to examine whether administrative decisions were lawful. In the present case the Minister, in deciding that the lawfulness of the 1973 decision could not be reexamined and that the proceedings had to be discontinued, had properly applied Article 63 of the 1991 Act, which specifically excluded judicial review of such decisions.

2. Relevant domestic law and practice

Article 155 of the Code of Administrative Procedure of 1960 permits the amendment or annulment of any final administrative decision at any time where necessary in the general or individual interest if this is not prohibited by specific legal provisions. In particular, a final administrative decision can be annulled if it has been issued by an authority which had no jurisdiction or without a legal basis or contrary to the applicable law.

Article 63 of the State Treasury Land Property Act of 19 October 1991 provides that the general provisions of the Code of Administrative Procedure concerning amendment or annulment of final administrative decisions do not apply to decisions confirming the ownership of agricultural real property issued in accordance with the Agricultural Property Regulation Act of 1971.

A decision of the Supreme Court of 30 June 1992 states that Article 63 of the State Treasury Land Property Act does not confer a right to claim before a civil court that such decisions are invalid (decision III CZP 73/92).

COMPLAINTS

The applicant complains that the Supreme Administrative Court did not examine the merits of her case. She further complains that she was deprived of the property of the plot concerned. No provisions of the Convention are invoked.

THE LAW

1. The applicant complains that the Supreme Administrative Court did not examine the merits of her case. The Commission has examined this complaint under Article 6 para. 1 (Art. 6-1) of the Convention which in its relevant part reads:

> "In the determination of his civil rights and obligations (...) everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission observes that in the present case the legislation at issue, i.e. the 1991 State Treasury Land Property Act, came into force on 1 January 1992 as regards non-availability of judicial review in the cases arising out of the application of the Agricultural Property Regulation Act of 1971. It is true that the 1991 Act had procedural aspects in that it expressly excluded access to court in such cases. However, it also affected the applicant's situation in that it ultimately extinguished any possible claim to property of the land in question that the applicant might have had until 1 January 1992. This was confirmed by the Kalisz Governor's decision of 9 January 1992. Poland recognised the competence of the Commission to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". The Commission observes that the applicant ceased to have any arguable civil right at the time when the decision of the Kalisz Governor was taken.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 1 of the Protocol No. 1 (P1-1) that she was deprived of her property rights.

Article 1 of Protocol No. 1 (P1-1) to the Convention in its relevant part 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 Commission recalls that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. In accordance with the generally recognised principles of international law, the Commission is not competent to examine complaints relating to alleged violations of the Protocol by acts, decisions or events that have occurred prior to this date.

The Commission recalls that in the present case the administrative proceedings were discontinued by the Kalisz Governor on 9 January 1992. On 15 February 1993 the Minister of Agriculture upheld the Governor's decision. The Supreme Administrative Court dismissed the applicant's appeal against this decision on 10 June 1994. These acts all occurred prior to 10 October 1994, i.e. the date of the ratification by Poland of Protocol No. 1 to the Convention. Insofar

as the applicant's complaint might be understood as implying that these decisions created a continuing situation of deprivation of her property rights, the Commission recalls that deprivation of property rights is in principle an instantaneous act and does not produce a continuing situation of "deprivation of property" (No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146; No. 26078/94, Dec. 17.5.95, unpublished).

It follows that this complaint is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber