

AS TO THE ADMISSIBILITY OF

Application No. 31440/96  
by I. G.  
against Poland and Germany

The European Commission of Human Rights (Second Chamber) sitting in private on 17 January 1997, 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 1 November 1995 by I. G. against Poland and Germany and registered on 9 May 1996 under file No. 31440/96;

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

The applicant, a Polish citizen born in 1913, is a retired physician, residing in Warsaw.

In 1942 the applicant's parents were killed by the German occupation authorities which subsequently confiscated their movable property.

On 26 October 1945 a Decree on Real Estate in Warsaw was enacted by the Polish Government which transferred the ownership of all real property located within the administrative borders of Warsaw to the municipality.

In 1947 the Otwock Municipal Court (S\*d Grodzki) declared that the applicant had inherited the property of his late parents.

On 30 March 1993 the applicant apparently submitted a request to the Warsaw District Office (Urz\*d Rejonowy) for restitution of the

property located in Warsaw which had been owned by his parents.

On an unspecified date in 1993 the applicant complained to the Warsaw District Office about the lack of progress in the proceedings.

On 28 November 1994 the applicant submitted documents to prove the property rights of his late parents and his title as their legal successor.

On 3 July 1995 the applicant again complained to the District Office about the lack of progress in the proceedings concerning his restitution claim.

In a letter of 2 May 1995 the applicant applied to the German Embassy in Warsaw for compensation for his parents' property confiscated during the German occupation of Poland in 1942.

In a letter of 2 September 1995 to the German Federal Government the applicant requested compensation.

On 22 September 1995 the German Embassy in Warsaw informed the applicant that no compensation could be granted for the loss of property sustained in 1942 as in 1953 Poland had renounced any compensation claims against Germany which might have arisen out of the Second World War, and this was further confirmed in the Agreement between Poland and Germany concluded in 1970.

On 30 April 1996 the German Federal Ministry of Finance informed him that no compensation could be awarded to him as there was no legal basis for his claim.

#### COMPLAINTS

The applicant complains about the confiscation of his parents' movable property in 1942 by the German occupation authorities and that his efforts to obtain compensation have failed.

He further complains that in 1945 the real property owned by his parents was expropriated by the Decree on Real Estate in Warsaw and that he cannot obtain restitution of this property.

#### THE LAW

1. The applicant complains about the confiscation of his parents' movable property in 1942 by the German occupation authorities and that his efforts to obtain compensation from the German authorities have failed.

The Commission has examined these complaints under Article 1 of Protocol No. 1 (P1-1) to the Convention, which reads, insofar as relevant:

"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."

Insofar as the application is directed against Germany, the Commission observes that the expropriations concerned took place before the entry into force of Protocol No. 1 with respect to the Federal Republic of Germany on 13 February 1957. The Commission further observes that no right to compensation can be derived from Article 1 of Protocol No. 1 (P1-1) in cases concerning facts which occurred before the entry into force of Protocol No. 1 (P1-1) to the Convention.

It follows that this part of the application is incompatible

ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that in 1945 the real property owned by his parents was expropriated by the Decree on Real Estate in Warsaw.

a) Insofar as the applicant complains about the expropriation of the property owned by his parents by the 1945 Decree on Real Estate in Warsaw, the Commission observes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. The legislation complained of was enacted in 1945.

The Commission further recalls its established case-law according to which a deprivation of ownership or other rights in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of right" (No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146).

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

b) Insofar as the applicant's complaint against Poland concerns his efforts to obtain restitution of the property nationalised by virtue of the 1945 Decree on Real Estate in Warsaw, the Commission recalls that Article 1 of Protocol No. 1 (P1-1) to the Convention does not guarantee a right to restitution of property (cf., mutatis mutandis, No. 23131/93, Dec. 4.3.96, D.R. 85-A, p. 65, No. 25497/94, Dec. 17.5.95, D.R. 85-A, p. 126).

It follows that this part of the application must be declared inadmissible as being incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

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