



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

FOURTH SECTION

CASE OF BARBARA WIŚNIEWSKA v. POLAND

(Application no. 9072/02)

JUDGMENT

STRASBOURG

29 November 2011

FINAL

29/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Barbara Wiśniewska v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

David Thór Björgvinsson, *President*,

Lech Garlicki,

George Nicolaou,

Päivi Hirvelä,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 November 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9072/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Ms Barbara Wiśniewska (“the applicant”), on 1 February 2002.

2. The applicant was represented by Ms A. Zemke-Górecka, a lawyer practising in Białystok. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that a requisition order and the expropriation of her land had been in breach of her right to the peaceful enjoyment of her possessions.

4. On 12 June 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. In 1996 the Gdańsk Municipal Office issued an initial approval for a development project on land owned by the applicant (*decyzja o warunkach zabudowy i zagospodarowania terenu*) providing, on the basis of a local land development plan adopted in 1993, for the improvement and

resurfacing of Słowacki Street and the construction of a roadway. On 18 December 1997 the Gdańsk Municipal Council adopted a local land development plan for the construction of a road junction in the vicinity of the applicant's land, indicating that there was a pressing need to improve and widen a road leading from the city centre to the airport. On 21 December 1999 the Gdańsk Municipal Office (*Urząd Miejski*) issued another approval for the construction of the roadway, based on the provisions of the local land development plan adopted on 18 December 1997.

6. On 29 March 2000 the Pomorze Governor approved a construction project for the roadway.

A. Expropriation proceedings

7. The applicant owned forty-three plots of a total surface of 4.77 hectares. In September 1999 an estimate of the value of seven plots, covering 6,656 square metres, was prepared by expert R.Ż. with a view to their expropriation. That expert assessed the market value of the land at 479,919 Polish zlotys (PLN).

8. On 21 October 1999 a negotiation meeting was held at the Gdańsk Municipal Office. The town offered PLN 479,912 as compensation for plots nos. 47/30, 47/32, 47/34, 47/36, 55/7, 60/1 and 61, at PLN 70.08 per square metre, calculated on the basis of the September 1999 estimate. The applicant refused to accept this price and argued that the market value of a square metre of similar land in the town was approximately PLN 600.

9. In February 2000 another expert, J.K., estimated the value of the applicant's properties at PLN 63.70 per square metre, based on the agricultural character of the land. On 2 March 2000, referring to that report, the Gdańsk Municipal Office, acting on behalf of the Mayor of Gdańsk, fixed a two-month time-limit for the applicant to conclude a contract for the sale of her land for the sum of PLN 479,912. It informed her that if further negotiations failed, expropriation proceedings would be instituted and the land would be expropriated against payment of compensation in the amount of PLN 423,987.

10. On 26 April 2000 another negotiation meeting was held. The Municipal Office proposed conditions identical to those proposed in October 1999. The applicant reiterated her position as to the price and submitted that she would accept replacement property within the limits of the municipality as compensation.

11. On 8 May 2000 expropriation proceedings were instituted.

12. On 29 May 2000 an administrative hearing was held in the Gdańsk Municipal Office. The applicant proposed that the City should give her PLN 300 per square metre for her land, but her offer was rejected. The applicant again suggested that she should be given other plots in exchange

for her land, but that solution was rejected on the ground that the City did not have any suitable plots at its disposal.

13. In June 2000 expert J.K. updated the estimate, having regard to the passage of time and the increase in market prices. She assessed the price of the applicant's land at PLN 439,296. In the same month, an expert commissioned by the applicant assessed the price of the land at PLN 2,374,749.

14. On 27 June 2000 the Mayor of Gdańsk gave a decision by which the seven plots referred to in paragraph 7 above were expropriated. The amount of compensation for the land and the fence constructed on it was fixed at PLN 465,537. It was to be paid within 14 days from the date on which the expropriation decision became final. He observed that the amount of the compensation had been fixed on the basis of an estimate prepared by an expert, with reference to prices of similar plots on the local real estate market in June 2000.

15. The applicant appealed. She argued that the decision was in breach of sections 128, 130 and 134 of the Land Administration Act 1997. She submitted that it was based on the estimate drawn up in September 1999, which no longer reflected current prices of land. She referred to the case-law of the Supreme Administrative Court according to which compensation for expropriated land should take into consideration current local market prices for similar types of land and, also, prices of such land sold by the municipality by way of tender. She referred to a privately commissioned estimate prepared by a certified expert (see paragraph 13 above), according to which the price of 1 square metre of comparable land in Gdańsk at that time was PLN 356.

16. On 25 January 2001 the Pomorze Regional Office, acting on behalf of the Pomorze Governor, upheld the expropriation decision, noting that it had been given in order to have the local land development plan implemented. The expropriation was therefore in the public interest. The negotiations between the parties had failed. Two estimates drawn up for the purpose of the negotiations were consistent and indicated, in the light of prices paid for properties of a similar character and location, that the market value of the property concerned was PLN 60-70 for 1 square metre. In the circumstances, the decision was lawful.

17. The applicant appealed to the Supreme Administrative Court. She argued that the price the municipality had offered during the negotiations bore no reasonable relation to the market value of her land. The municipality had refused to offer her replacement property, despite the fact that at the time it had been selling numerous properties to private buyers by way of tender.

At a hearing held on 23 May 2001 the applicant applied for a stay of the enforcement of the expropriation decision. The court refused, noting that the enforcement of the decision had been stayed *ex lege* because of the

authorities' failure to submit their reply to the applicant's appeal within the time-limit.

18. By a judgment of 25 July 2001 the Supreme Administrative Court quashed the Governor's decision. The court observed that the modernisation of Słowacki Street was in the public interest as it was a part of the No. 7 trunk road. It further noted that in the light of the documents in the case file it had not been shown beyond doubt that the expropriation of all of the applicant's designated plots had been necessary in order to implement the road construction project. In their decisions the authorities had failed to refer to the maps and plans prepared in connection with the local land development plan and road construction projects to show that the plots concerned were indeed covered by those projects.

19. The court further addressed the question of the compensation fixed by the contested decision. It noted that the authorities, when holding the administrative hearing on 29 May 2000, had failed to respect the relevant procedural provisions. Under the provisions of Article 89 of the Code of Administrative Procedure the purpose of an administrative hearing was to ensure, in a situation where there was a discrepancy between expert opinions as to compensation, that the experts were questioned and the discrepancy elucidated. Furthermore, the parties should have been given an opportunity to put questions to the experts and to make oral statements before the administrative authority. No such measures had been taken. The court noted that the hearing had been held prior to the date on which the last expert opinion concerning the compensation had been prepared. There was no proof in the case file that this last opinion had ever been served on the applicant.

20. The judgment with its written reasons was served on the applicant's lawyer on 9 August 2001.

21. The expropriation and compensation proceedings before the appellate authority were later conducted again. The Pomorze Regional Office informed the parties that the administrative hearing would be held again and requested the Gdańsk Municipal Office to submit further evidence as to the prices of similar properties. Ultimately two hearings were held, on 3 September 2001 and 22 January 2002. Three experts were questioned. The parties were invited to consult the case file.

22. On 25 February 2002 the Pomorze Governor upheld the first-instance decision in its part concerning the expropriation. He fixed the amount of compensation to be paid to the applicant at PLN 554,898. He referred to the expert opinions prepared for the purposes of the proceedings and explained which evidence and conclusions had been considered credible. He reiterated that the land concerned was of an agricultural nature.

23. Compensation was paid to the applicant on 27 February 2002. She accepted it, but observed that the amount was unsatisfactory. She subsequently appealed, submitting that the method by which the

compensation had been fixed was to her detriment, that the second-instance authority had failed to respect the guidance contained in the judgment of the Supreme Administrative Court and that the amount of compensation did not reasonably correspond to the value of the land.

24. On 31 May 2005 the Supreme Administrative Court quashed the contested decision, finding that the method used to establish the value of the expropriated land was not in compliance with the applicable legal regulations. In particular, the expert opinion prepared by J.F., heavily relied on by the first-instance authority, was based on prices applicable in June 2000. The proceedings were subsequently conducted again. The Governor invited the parties to submit new evidence and to consult the case file. Another expert was appointed and submitted his evaluation report, assessing the value of the applicant's property at PLN 725,231.

On 28 April 2006 another administrative hearing was held before the second-instance authority. A time-limit was fixed for the parties to submit new evidence. Both the applicant and the Gdańsk Municipal Office availed themselves of that right.

25. On 4 July 2006 the Governor issued a new decision. It upheld the first-instance expropriation decision and increased the amount of compensation to PLN 725,232, with reference to the new expert report.

26. On 2 August 2006 the applicant, represented by a lawyer, appealed, submitting arguments similar to those on which she had relied in her previous appeal.

27. On 3 August 2006 the applicant revoked the power of attorney given to her lawyer.

28. On 29 September 2006 the Gdańsk Administrative Court rejected her appeal, noting that the applicant had failed to pay court fees. This decision was served on the applicant's new lawyer on 18 October 2006.

On 22 October 2006 the applicant requested the court to grant her retrospective leave to appeal out of time. She submitted that she had dismissed one lawyer and retained another one during the appellate proceedings. She had not been aware that the court fee should have been paid.

29. On 29 December 2006 the Gdańsk Administrative Court refused to grant the applicant retrospective leave to appeal out of time, considering that she had failed to inform the court about the alleged changes in her legal representation and to demonstrate that she had not been at fault in failing to pay the court fee. The applicant's new lawyer appealed against that decision.

30. On 2 March 2007 the Supreme Administrative Court upheld the refusal to grant the applicant leave to appeal out of time. It observed that the applicant had failed to show that she had not been at fault in neglecting to pay the court fee. She had informed the first-instance court of her decision to revoke her first lawyer's power to act on her behalf on 24 October 2004.

Under the applicable procedural provisions, that was the date on which the revocation had taken effect.

31. As a result, the first-instance decision on expropriation and compensation became final. On 27 April 2007 the Gdańsk Municipality paid the applicant the outstanding amount of PLN 170,333.

32. On 20 September 2006 the Gdansk District Court rejected the applicant's claim by which she sought compensation for the fact that from September 2000 onwards the municipality had been using her land without a valid expropriation decision. The court considered that the applicant's claim could not be examined before a civil court and had to be dealt with in administrative proceedings.

B. Proceedings to have the enforcement of the expropriation decision suspended

33. By a decision of 16 May 2001 the Pomorze Regional Office, acting *ex officio*, stayed the enforcement of the expropriation decision given on 25 January 2001 (see paragraph 14 above), having regard to the fact that the applicant had lodged an appeal against it. It referred to section 9 of the Land Administration Act.

34. The Gdańsk Road Management Office (*Zarząd Dróg i Zieleni*) appealed against that decision. It argued that the mere fact that the applicant had contested the first-instance expropriation and compensation decision could not justify the staying of its enforcement. The construction of the road, which was by then well advanced, should not be delayed as this would entail serious financial loss. They further referred to concrete technical difficulties in the road construction and its logistics, caused by the fact that work which had already started could not be continued on the applicant's land, such as the impossibility of using that land for transport purposes.

35. On 29 June 2001 the President of the National Housing and Local Land Development Office quashed the contested decision on formal grounds and ordered that the enforcement issue be re-examined.

36. On 10 August 2001 the Pomorze Regional Office, acting *ex officio*, resumed the enforcement of the expropriation decision, having regard to the judgment of the Supreme Administrative Court of 25 July 2001 dismissing the applicant's appeal against the requisition order (see paragraph 43 below). It observed that following that judgment, the Office had a legal right to take possession of the land concerned, which was needed for the construction project.

C. Proceedings concerning the requisition order in respect of the applicant's land

37. After the first-instance expropriation decision had been given on 27 June 2000 (see paragraph 14 above) and when the applicant's appeal against it was pending, on 7 August 2000 the Mayor of Gdańsk issued a requisition order allowing the Gdansk Road Management Office, on the basis of Article 122 of the Land Administration Act, to take possession of the applicant's property with a view to starting construction work. He stated that it was necessary in order to proceed with the implementation of the already well-advanced road construction project and to prevent serious social and financial costs that further delay in the realisation of that project would cause.

38. The applicant appealed against that decision, emphasising that it was unlawful. She argued that no final expropriation decision in respect of her property had been given. The grounds invoked by the Mayor in the requisition order were drafted in very broad terms. The Mayor had failed to indicate, with reference to the concrete circumstances of the case, why it was necessary in the applicant's case to impose such a serious restriction on the exercise of her still valid ownership rights. No relevant and sufficient reasons for the occupation of her land had been advanced. In particular, the mere fact that expropriation proceedings had been instituted and construction work was about to start did not warrant the conclusion that such a serious restriction of her ownership rights was justified.

39. In September 2000 road construction work commenced on the neighbouring plots. No work had yet been carried out on the applicant's land. On 5 September 2000 the applicant applied to the Gdańsk Regional Building Works Inspector for the work on her land to be stopped. On 6 October 2000 the Inspector informed the applicant that no work had yet been conducted on her land. On 20 October 2000 on-the-spot inspection, in the presence of the applicant, confirmed that fact.

40. On 5 December 2000 the Governor of Pomorze dismissed the applicant's appeal against the requisition order of 7 August 2000, fully endorsing the arguments relied on by the first-instance authority.

The applicant appealed against that decision before the Supreme Administrative Court, asking the court to stay the enforcement of the requisition order.

41. On 23 May 2001 the court refused the applicant's request for a stay of the enforcement of the requisition order, holding that to allow her request would defeat the very purpose of the requisition order.

42. On 15 June 2001 the Pomorze Regional Office requested the Supreme Administrative Court to give priority to the examination of the applicant's appeal against the requisition order, referring to the fact that the construction work had been seriously delayed because no work could be

done on the applicant's land. The significant investment of public funds, the advanced stage of realisation of the project and the serious disturbance to traffic caused by the construction work called for priority to be given to the case.

43. By a judgment of 25 July 2001 the Supreme Administrative Court dismissed the applicant's appeal. It observed that the expropriation proceedings had been conducted with a view to modernising the town's road network, facilitating access to the local airport and reducing the number of road accidents on Słowacki Street. This was clearly in the public interest. The fact that the municipality had no final legal title to occupy the applicant's property was the only remaining obstacle to starting the construction work on that property. It also hindered progress of the construction work carried out on the neighbouring properties. The Court referred to Article 122 of the Land Administration Act, which expressly provided for requisition orders in the absence of final expropriation decisions if a delay would make the implementation of a public-interest project impossible.

D. Proceedings concerning the road construction building permit

44. On 13 December 2000 the company commissioned by the municipality to carry out the work – the above-mentioned Gdansk Road Management Office – applied to the Gdańsk Municipal Office for a building permit for road construction work to be carried out on the applicant's land. In April 2001 the applicant applied for the proceedings to be stayed, arguing that in the absence of the final decision on expropriation the Office had no legal right to take possession of her land. On 13 April 2001 the Road Management Office requested the Municipal Office to take steps to resolve the difficulties concerning the legal status of the applicant's land, arguing that construction work on that stretch of road had advanced, with the exception of the 300 metres planned on the applicant's land.

45. The proceedings concerning the application for the building permit were subsequently stayed, the authorities having regard to the fact that in the absence of the expropriation decision the construction company had no right to take possession of the land, and that under the applicable building regulations such a right was an essential prerequisite for requesting a building permit.

46. On 10 August 2001 the Pomorze Regional Office resumed the proceedings, having regard to the judgment of the Supreme Administrative Court of 25 July 2001 dismissing the applicant's appeal against the requisition order (see paragraph 18 above). It observed that that judgment had conferred on the building company the right to take possession of the applicant's land for construction purposes, even in the absence of a final expropriation decision confirmed by the administrative court.

47. On 14 August 2001 the Pomorze Regional Office issued the building permit as *per* the application, thereby authorising the construction company to start the construction work on the plots concerned. The applicant appealed against that decision, reiterating that as long as she had not been expropriated no one had the right to build on her land.

48. On 16 August 2001 the construction company took possession of the applicant's land. The construction work started shortly afterwards.

49. On 12 November 2001 the Chief Building Works Inspector dismissed the applicant's appeal and upheld the building permit. The applicant appealed, reiterating essentially that the building permit could not be given because the expropriation proceedings had not been concluded.

50. On 22 May 2002 the construction of the road was officially completed. On 23 January 2002 a decision authorising use of the road by the public was given.

51. On 27 June 2003 the Supreme Administrative Court dismissed the applicant's appeal against the building permit. It dismissed the applicant's arguments that the building company had had no legal right to take possession of her land. It noted that the first-instance expropriation decision had been given on 7 June 2000 (see paragraph 14 above). On 7 August 2000 the first-instance requisition order had been given (see paragraph 37 above). The latter order had become final and enforceable following the judgment of 25 July 2001 (see paragraph 43 above). The court held that that judgment had to be deemed to have conferred on the building company the right to possess the land within the meaning of the building regulations.

52. The court stressed that requisition orders were necessary for public-interest works to be able to go ahead where expropriation proceedings were still pending but the works should nevertheless be carried out to prevent certain negative consequences. Such a decision did not infringe the owner's rights although it did limit them temporarily.

53. A requisition order should be assessed in the context of the expropriation proceedings seen as a whole. Such an order was usually given after the first-instance expropriation decision had been issued. The applicable legal regulations expressly allowed for such orders to be given. The court referred to Article 108 of the Code of Administrative Procedure and to section 122 of the Land Administration and Expropriation Act 1997. Expropriation and requisition orders were two different legal institutions. They conferred different rights on the public authorities. A requisition order was clearly of a temporary character. It was obvious that its legal effects differed from those produced by a decision on expropriation. However, it conferred on the authorities a right to take possession of the land and to use it for public-benefit purposes. By introducing a requisition order into the Land Administration and Expropriation Act 1997 the legislature had intended to avoid situations where expropriation could be blocked as a result of appeals lodged by the affected parties.

54. In the court's opinion, if one accepted the applicant's argument that the requisition order did not confer a right to take possession of the land for building purposes, the very purpose of the requisition order would be defeated.

55. A requisition order could not *per se* be regarded as a violation of ownership. It did not replace the expropriation decision and did not deprive the owner of his or her ownership right; at most it limited it temporarily until the termination of the expropriation proceedings. This was justified under Article 64 § 3 of the Constitution (see paragraph 59 below). The court recalled that the right of property was not an absolute right.

56. The court observed that in the circumstances of the case the grant of the building permit did not infringe the law despite the exceptional character of the applicant's situation and the pending expropriation proceedings. The applicant's case demonstrated that, in practice, requisition orders were necessary. In certain cases, it would have been impossible to realise the public-benefit purposes for which expropriation proceedings had been instituted without having recourse to requisition orders.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional protection of property rights

57. Article 21 of the Constitution provides:

“1. The Republic of Poland shall protect ownership and the right of succession.

2. Expropriation shall be allowed only in the public interest and against payment of just compensation.”

58. Article 31 of the Constitution reads:

“Freedom of the person shall receive legal protection.

Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law.

Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

59. Article 64 of the Constitution provides:

“1. Everyone shall have the right to ownership, other property rights and the right of succession.

2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

The right of ownership may be limited only by means of a statute and only to the extent that it does not violate the essence of such right.”

B. Relevant provisions of the land expropriation legislation

60. On 1 January 1998 the Land Administration Act of 21 August 1997 (*Ustawa o gospodarce nieruchomościami* – “the Land Administration Act”) entered into force. Under section 112 of that Act expropriation consists in the removal, by way of an administrative decision, of ownership rights or other rights *in rem*. Expropriation can be carried out where public-interest aims cannot be achieved without restriction of those rights and where it is impossible to acquire those rights by way of a civil law contract.

61. Under section 113 an expropriation can be carried out only for the benefit of the State Treasury or the local municipality.

62. Section 122 provides that in cases defined by Article 108 of the Code of Administrative Procedure (see paragraph 68 below) the administrative authority is empowered to issue a requisition order allowing an entity carrying out works for the public benefit to enter and take possession of land in respect of which a decision on expropriation has been given, if a delay would make realisation of the public-benefit works impossible. A clause of immediate enforceability (*rygor natychmiastowej wykonalności*) may be issued in respect of such an order.

63. In accordance with section 128 § 1 of the Act, expropriation is to be carried out against payment of compensation corresponding to the value of the property right concerned. Under section 130 § 1 of the Act, the amount of compensation is fixed regard being had to the status and value of the property on the day on which the expropriation decision was given. The value of the property is estimated on the basis of an opinion prepared by a certified expert.

64. Section 131 provides for the possibility of awarding the expropriated owner a replacement property if he or she so agrees.

65. Pursuant to section 132, compensation must be paid within fourteen days from the date on which the expropriation decision becomes subject to enforcement.

66. Section 134 provides for the market value of the expropriated property to serve as a basis on which the amount of compensation is fixed. The following criteria are to be taken into consideration when establishing the market value of the property: its type, location, the use to which it has been put, the existence of any technical infrastructure on the property, its overall state and current prices of properties in the municipality.

C. Immediate enforceability of non-final administrative decisions

67. In situations specified by Article 108 of the Code of Administrative Procedure, local State administration can authorise an entity charged with the implementation of a public-interest project to occupy the property concerned immediately if a delay would render the implementation of the project impossible.

68. Article 108 of the Code provides for an administrative decision to be rendered immediately enforceable, even if further appeal against it is available, when this is necessary for the protection of life or limb, or for the protection of the national economy against serious damage, or for the protection of other societal interests.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

69. The applicant complained that she had suffered a disproportionate interference with her property rights as a result of the measures taken in respect of her land. She relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“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.”

A. Admissibility

70. The Government submitted that the judgment of the Supreme Administrative Court of 25 July 2001 had been served on the applicant’s lawyer on 9 August 2001. That judgment had ultimately conferred on the authorities the right to take possession of the applicant’s plot. The subsequent decisions given in the case had only been the consequence of the fact that that right had been conferred on the authorities. The application had been lodged with the Court seven months later, on 1 March 2002. The

applicant had therefore failed to submit her application to the Court within the time-limit of six months provided for in Article 35 of the Convention.

71. The Court is of the view that dates of final decisions in the case for the purposes of Article 35 of the Convention should be established with due regard being had to the subject-matter of the case and the essential purpose which the applicant wished to achieve (see *Trzaskalska v. Poland*, no. 34469/05, §§ 36-37, 1 December 2009, *mutatis mutandis*). It observes that the applicant complained that the expropriation decision, the amount of compensation awarded to her and the cumulative effect of all the measures taken in respect of her property had been in breach of Article 1 of Protocol No. 1. By the judgment relied on by the Government the Supreme Administrative Court upheld the requisition order. However, other sets of proceedings relevant for the protection of the applicant's right to the peaceful enjoyment of her possessions were subsequently conducted until 2007. The Court considers that that judgment cannot therefore be deemed to be the date which triggered the running of the six-month period provided for by Article 35 of the Convention.

72. This preliminary objection of the Government must therefore be rejected.

73. The Government further submitted that the applicant had failed to exhaust all the domestic remedies available under Polish law.

74. In so far as the applicant complained about the expropriation decision and about the amount of compensation which she had received, the Government argued that she had failed to pay the court fee for her appeal against the Governor's decision of 4 July 2006 upholding the expropriation decision and fixing the amount of compensation at PLN 725,232. As a result, the Gdańsk Regional Administrative Court had rejected the appeal on 29 September 2006. The applicant's subsequent efforts to be granted leave to appeal out of time had been unsuccessful. The applicant had thereby lost the opportunity of challenging the expropriation decision and the amount of compensation due.

75. The Government relied also on the fact that in the context of the expropriation proceedings the applicant had failed to:

- complain about the length of the expropriation proceedings by alleging a violation of her right under the 2004 Act to have her case examined within a reasonable time in judicial proceedings;
- complain under Article 37 of the Code of Administrative Procedure about the administrative authorities' failure to give decisions within a reasonable time;
- claim compensation, in civil proceedings, for damage caused by the excessive length of the expropriation proceedings.

76. The Court reiterates at the outset that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial

organ to use first the remedies provided by the national legal system. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among many other authorities, *Aksoy v. Turkey*, 18 December 1996, §§ 51–52, *Reports of Judgments and Decisions* 1996-VI). The condition of exhaustion of domestic remedies is not satisfied if a remedy has been declared inadmissible for failure to comply with a formal requirement (see, among many other authorities, *Ben Salah Adraqui and Dhaime v. Spain* (dec.), no. 45023/98, decision of 27 April 2000, ECHR 2000-IV).

77. In so far as the Government's arguments relate to the expropriation and compensation proceedings, the Court notes that it was open to the applicant to challenge the expropriation decision and the amount of compensation determined therein by way of an appeal to the administrative courts of first, and ultimately also of second instance. The domestic authorities rejected her appeal to the administrative court as she had failed to pay the court fee. She thus failed to have recourse to a relevant remedy concerning both the expropriation and the amount of compensation which she then challenged before the Court.

78. It follows that this part of the application must be declared inadmissible for failure to exhaust relevant domestic remedies.

79. In so far as the Government argued that the applicant should have had recourse to specific remedies applicable in respect of length of proceedings, the Court observes that the applicant did not complain before the Court about an alleged breach of her right to have her case heard within a reasonable time, within the meaning of Article 6 of the Convention.

80. The Government further submitted that the applicant had failed to seek compensation for profits lost during the period when the authorities had occupied her property on the basis of the requisition order.

81. The Court observes that the applicant failed to seek compensation in administrative proceedings for profits lost during the period when the authorities had occupied her land on the basis of the requisition order, as indicated in the decision of the Gdańsk Regional Court of 6 December 2006. In so far as the present application can be said also to concern lost profits, it must be declared inadmissible in this part for non-exhaustion of domestic remedies. However, the scope of the present application is broader as the applicant complained about all the measures and decisions given in her case taken together and their cumulative impact on the effective exercise of her right to the peaceful enjoyment of her possessions.

82. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The Government

83. The Government submitted that the expropriation of the applicant's land had been indispensable for the realisation of a public goal – the broadening and improvement of Słowacki Street – planned under the local land development plans. That road was one of the main thoroughfares of the Gdańsk-Gdynia-Sopot agglomeration. It provided access to the city airport and connected the city with its western ring-road. Traffic congestion in Gdańsk was very serious, especially in the street concerned. The improvement of the roadway would definitely contribute to solving the communication problems in the city. This had been confirmed by the Supreme Administrative Court in the expropriation proceedings.

84. They further argued that the expropriation of the applicant's land was in accordance with law. All the decisions issued in connection with the proceedings had been based on the relevant legal provisions, notably the 1997 Land Administration Act. The proceedings had been conducted in conformity with the applicable procedural provisions. At each stage of the proceedings the applicant had had opportunities to present her position and use the available remedies. Her justified objections had been taken into account.

85. The Government submitted that the requisition order had been based on Article 122 of the 1998 Land Administration Act. Its lawfulness had been re-examined and it had been upheld by the Pomorze Governor's decision of 5 December 2000 and subsequently by the Supreme Administrative Court in its judgment of 25 July 2001 (see paragraph 43 above). The applicant's complaints about the requisition order and its consequences had not taken the *ratio legis* behind the order into account. It was necessary precisely in cases where the expropriation proceedings had not been finalised because the party had appealed against the expropriation and where the public investment works had nevertheless to go ahead. A requisition order was necessary where the need to protect an important public interest, including the national economic interest, required that immediate measures be taken and where there was a risk that delay would impede the realisation of the public-interest purpose for which the expropriation had been decided. A requisition order did not automatically infringe the owner's rights although it limited them temporarily.

86. The Government were of the view that in the present case the applicant had not suffered an excessive burden. She had owned forty-three plots, only seven of which had been affected by the measures complained of. Before the expropriation proceedings had started she had not used the

plots. They had remained undeveloped, with no technical infrastructure on them. They had in fact been wasteland, considered for tax purposes as farmland. They had not brought any income to the applicant. She remained the owner of most of her land and there were no obstacles to her using the remaining plots, access to which had been possible during the construction work. In any case, the construction work on the applicant's plots had been completed within a short period of time. Therefore any inconvenience that might have resulted from the work carried out on the plots concerned could not have been serious. In addition, the modernisation of Słowacki Street must have improved access to the remaining plots of the applicant's land.

87. The Government concluded that the interference complained of had been prescribed by law, had pursued the general interest and had not imposed an excessive burden on the applicant.

(b) The applicant

88. The applicant submitted that her right to the peaceful enjoyment of her possessions had been breached. Despite the fact that she had been the lawful owner of her land, the decisions given by the authorities had deprived her of her right to use and obtain profits from the property.

89. In particular, the authorities had given a requisition order in the absence of a final and enforceable expropriation decision. The appellate proceedings against the expropriation decision had been pending at that time. The reasoning of the requisition order had been laconic. The authorities had failed to justify it by referring to relevant and sufficient grounds to show that heavy losses would indeed be incurred by a delay in its enforcement. As a result of the non-final decision being subject to immediate enforcement, the applicant had suffered a serious breach of her right to the peaceful enjoyment of her possessions.

90. The applicant referred to the Court's judgment in the case of *AGOSI v. the United Kingdom*, 24 October 1986, Series A no. 108. She expressed the view that the procedures conducted in her case had failed to afford her a reasonable opportunity of putting her case to the responsible authorities. Her property had been occupied and the construction work had started when the expropriation proceedings were still pending and substantive questions crucial for the assessment of the lawfulness of the expropriation were under examination by the authorities. The work on her land should not have gone ahead on the basis of the requisition order – which was, by its nature, only a temporary measure – in the absence of a final and enforceable decision on expropriation and compensation.

91. The applicant argued that the measures taken in her case had been unlawful, in particular because the authorities had breached Article 122 of the 1997 Land Administration Act. That provision allowed for a requisition order to be given only if a decision on expropriation had already been given. In the applicant's case no final expropriation decision had existed at the

time when the requisition order had been given, and the work had proceeded on the basis of that order.

92. The applicant concluded, referring to the case of *Sporrong and Lönnroth v. Sweden* (23 September 1982, Series A no. 52), that in her case, having regard to its circumstances seen as a whole, a reasonable relationship of proportionality between the means employed and the aim sought to be realised by measures depriving her of her possessions had not been respected.

2. The Court's assessment

(a) The applicable principles

93. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule” (see, as a recent authority with further references, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-...).

94. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1, an interference with the right to the peaceful enjoyment of possessions must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I).

95. A taking of property under the second sentence of the first paragraph of Article 1 without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1. The provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of “public interest” may call for less than reimbursement of the full market value (see *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II, with further references).

96. The Court will generally respect the domestic authorities’ judgment as to what is in the general interest unless that judgment is manifestly

without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V). However, it cannot remain passive, in exercising the European supervision incumbent on it, where a domestic court's interpretation of a legal act appears "unreasonable, arbitrary or ... inconsistent ... with the principles underlying the Convention" (see *Pla and Puncernau v. Andorra*, no. 69498/01, § 59, ECHR 2004-VIII). The State has obligations under Article 1 of Protocol No. 1 to take measures necessary to protect the right of property and it is the Court's duty to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, and not to deal with errors of fact or law allegedly committed by a national court unless Convention rights and freedoms may have been infringed (see *Anheuser-Busch Inc. v. Portugal*, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I).

(b) Application of the foregoing principles to the circumstances of the case

(i) The nature of the interference

97. The Court notes that it has already declared the applicant's complaint concerning the expropriation proper and the amount of compensation she received inadmissible. It must now examine the remainder of the application. It observes that the gist of the applicant's complaint is that all her efforts to stop the construction work in the absence of a final expropriation decision failed.

98. The Court notes that the measures complained of did not deprive the applicant of her ownership, but subjected the use of her possessions to significant restrictions; hence, it may be regarded as a measure to control the use of property.

(ii) The lawfulness of the interference

99. The Court recalls that an essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application (see, among other authorities, *Hentrich v. France*, 22 September 1994, § 42, Series A no. 296-A, and *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102).

100. In this connection the Court reiterates that it is in the first place for the domestic authorities, notably the courts, to interpret and apply domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005 -).

101. In the present case the proceedings concerning expropriation and the amount of compensation to be paid were still pending when the authorities decided to issue the requisition order in respect of the property concerned. The Court observes that, under Article 130 of the Polish Code of Administrative Procedure, lodging an appeal against a first-instance administrative decision suspends the execution of that decision. However, the administrative authorities are empowered to order that a decision be immediately enforceable pending the appeal in the situations specified in Article 108 of the Code of Administrative Procedure, namely when it is necessary for the protection of life or limb, or to protect the national economy against serious damage. Furthermore, a specific regulation in the context of expropriation proceedings – Article 122 of the Land Administration Act – empowers the administrative authorities to allow entities commissioned to carry out public works to take possession of land in respect of which a first-instance expropriation decision has been given. So the requisition order had a legal basis in domestic law. Furthermore, in the proceedings in which the applicant contested the lawfulness of the building permits, the authorities, including the administrative courts, held that the permits in question had conferred on the building company a right to take possession of her land necessary for the building permit purposes.

102. The Court is therefore prepared to accept that the interference complained of satisfied the requirement of lawfulness within the meaning of Article 1 of Protocol No. 1.

(iii) The aim of the interference

103. Any interference with a right of property can only be justified if it serves a legitimate public interest. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, 17 October 2002, § 85, and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

104. In the present case the Court accepts that the measures contested by the applicant pursued the legitimate aim of furthering a municipal plan to improve the road situated in the vicinity of the applicant’s land.

(iv) The proportionality of the interference

105. The Court must next examine whether the interference with the applicant’s right to the peaceful enjoyment of her possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual’s

fundamental rights, or whether it imposed a disproportionate and excessive burden on the applicant (see, among many other authorities, *Jahn and Others*, cited above, § 93).

106. In the area of land development and town planning, the Contracting States should enjoy a wide margin of appreciation in order to implement their policies (see *Terazzi S.r.l.*, and *Elia S.r.l.*, both cited above, and *Skibiński v. Poland*, no. 52589/99, § 59, 14 November 2006). In particular, in the area of road construction this wide margin of appreciation is justified by the fact that excessive delays could entail serious expenditure to the public purse, over and above the planned costs and increase nuisance suffered by owners of properties adjacent to the land on which those projects are carried out.

Nevertheless, in the exercise of its power of review, the Court must determine whether the requisite balance was maintained in a manner consonant with the applicant's right to the peaceful enjoyment of her possessions (see, *mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, cited above, § 69).

107. The Court appreciates that the enforcement of a requisition order in the absence of a final and enforceable decision on the merits of the expropriation and compensation case can give rise to serious and sometimes irreparable restrictions on the exercise of the right to the peaceful enjoyment of one's possessions. However, it has to have regard to the specific circumstances of an individual case. In this connection, the Court first notes the Government's submission that only a small part of the applicant's property was affected by the measures complained of.

108. The Court next notes that the applicant's land was of an agricultural character. It has not been argued, let alone shown, that there were houses or technical infrastructure on that land or that it was developed in any other way. It further notes that the applicant did not challenge the Government's argument that before 2000, when the expropriation proceedings had started, the land had not been used for agricultural purposes and had lain fallow for an unspecified period of time. It was not in dispute between the parties that throughout the material time the applicant did not live on the land concerned. Hence, the applicant has not shown that the measures complained of interfered with any specific use, economic or otherwise, to which she had put the land.

109. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, in order to assess the proportionality of the interference the Court looks at the degree of protection from arbitrariness that is afforded by the proceedings in the case (see *Hentrich*, cited above, § 46). In particular, the Court examines whether the proceedings concerning the interference with the applicants' right to the peaceful enjoyment of their possessions were attended by the basic procedural safeguards. It has already held that an interference cannot be legitimate in the absence of adversarial

proceedings that comply with the principle of equality of arms, enabling argument to be presented on the issues relevant for the outcome of a case (see *Hentrich*, cited above, § 42, and *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV). A comprehensive view must be taken of the applicable procedures (see *AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108, p. 19, § 55; *Hentrich*, cited above, p. 21, § 49; and *Jokela*, cited above, § 45).

110. The Court has already noted that the requisition order was given when the expropriation and compensation proceedings were still pending. However, the authorities were not authorised to proceed immediately with its enforcement. Despite the fact that the purpose of the requisition order was to speed up the development of the land, it was open to the applicant to challenge that order, first by way of appeal to a higher administrative authority and, subsequently, by appealing to the administrative court. The Court further observes that it was also open to the applicant to challenge the measures taken by the authorities in respect of her property by contesting the road construction building permit. She availed herself of these opportunities. The cases were vigorously argued in two parallel sets of proceedings. There is no indication that during the proceedings the applicant, who was represented by lawyers, was unable to present her arguments to the authorities.

111. In addition, the proceedings before the administrative court were attended by full judicial procedural guarantees.

112. The Court notes that in its judgment of 25 July 2001, concerning the applicant's appeal against the requisition order, the Supreme Administrative Court observed that the fact that the municipality had no final legal title to occupy the plots concerned was the last and only remaining obstacle to starting the construction works, thus impeding the progress in the already well-advanced project and rendering ineffective expropriations effected with respect to the neighbouring properties. In its judgment of 27 June 2003, concerning the applicant's challenge to the building permit, the Supreme Administrative Court observed that a requisition order did not replace the expropriation decision and did not deprive the owner of his or her ownership rights, but at most it limited them temporarily until the completion of the expropriation proceedings. It further noted that the applicant's case demonstrated that the requisition orders were in practice necessary. In certain cases, it would have been impossible to realise the public-benefit purposes for which expropriation proceedings had been instituted without having recourse to requisition orders.

The Court is satisfied that the domestic judicial authorities carefully weighed the arguments in favour of the applicant on the one hand and, on the other, those indicating that the requisition order was, in the circumstances of the case, necessary.

113. The Court further observes that throughout the proceedings concerning the requisition order and after it was ultimately upheld by the Supreme Administrative Court on 25 July 2001, the first-instance decision on expropriation, given on 27 June 2000, remained in existence. At no point in time did a situation arise where work was conducted on the applicant's land on the basis of that order in the absence of any decision on expropriation (compare and contrast, *Kolona v. Cyprus*, no. 28025/03, § 72, 27 September 2007). Nor did a situation ever arise where the authorities allowed public construction work to be carried out on the applicant's property without valid land development plans grounding the expropriation decisions in the public interest. At no point in time, therefore, was the applicant left in a state of uncertainty as to whether her land would ultimately be subject to expropriation (compare and contrast, *Skibińscy*, cited above, §§ 79 and 90).

114. The Court further notes that the construction work on the land concerned started in August 2001. Hence, no work had commenced on the applicant's property before the lawfulness of the requisition order was examined by the Supreme Administrative Court in its judgment of 25 July 2001.

115. Furthermore, the Court notes that the fact that the requisition order was given while the expropriation and compensation proceedings were still pending had no bearing on the applicant's procedural or substantive rights arising in these parallel sets of proceedings. The authorities continued to examine the applicant's successive appeals. Neither the requisition order nor the building permit affected in any way the amount of compensation which was ultimately paid to the applicant. Hence, the fact that the authorities issued the requisition order and the building permit neither thwarted the applicant's efforts to obtain adequate compensation nor prevented her from arguing her case.

116. The Court observes that in the expropriation proceedings the applicant did not oppose the expropriation as such but, rather, challenged the amount of compensation offered. Thus, a requisition order in respect of land which in any event had not been used by the applicant for any specific purpose cannot be said to have imposed an excessive burden on her.

117. The Court further observes that the applicant obtained compensation in the amount of PLN 554,898 as early as 27 February 2002. Merely six months after construction work had started on the land concerned. Therefore, she had already obtained most of the compensation in the amount of PLN 725,232 to which she was ultimately entitled under the final expropriation and compensation decision of 4 July 2006. Hence, the applicant's case differs from cases where applicants were deprived of their ownership and subsequently had to wait a long time before compensation was fixed or paid to them (compare and contrast, *Malama v. Greece*, no. 43622/98, § 51, ECHR 2001-II). Moreover, the passage of time and the

resulting increase in land prices was taken into account by the authorities when the final compensation figure was calculated.

118. Having regard to the circumstances of the case seen as a whole, the Court concludes that a fair balance was struck between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights and that the burden on the applicant was neither disproportionate nor excessive.

119. There has therefore been no violation of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the applicant's complaint about the authorities' failure to stop the construction work in the absence of a final expropriation decision and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 29 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President