



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

SECOND SECTION

CASE OF ROSIŃSKI v. POLAND

(Application no. 17373/02)

JUDGMENT

STRASBOURG

17 July 2007

FINAL

17/10/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rosiński v. Poland,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr L. GARLICKI,

Mrs D. JOČIENĚ, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 26 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 17373/02) 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, Mr Jerzy Rosiński (“the applicant”), on 15 April 2002. The applicant was represented by Mr Piotr Kładoczny of the Helsinki Foundation of Human Rights.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to the peaceful enjoyment of his property had been breached since the land which he owned had been designated for expropriation at some undetermined future date. Under domestic legislation he was not entitled to any compensation for the interference with his ownership resulting from the future expropriation.

4. On 24 October 2006 the Court decided to give notice of the application. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in Warsaw.

6. The applicant owns a plot of land with a surface area of 2,183 square metres, located in the municipality of Milanówek, near Warsaw. It is listed in the local land register under entry No. 29735.

7. On 20 March 1993 the applicant and his neighbours lodged their objections to a proposed new land development plan to be adopted by the municipality.

8. On 30 March 1993 the municipal council of Milanówek adopted the local land development plan. The applicant's objections were not taken into consideration. Under the plan, the applicant's land was designated for agricultural purposes. A road and a hospital were to be constructed on his land after expropriation.

9. The applicant and his neighbours complained of this decision to the Mazowsze Governor, arguing *inter alia* that the plan breached their right to the peaceful enjoyment of their possessions. They submitted that the local land development plan had been prepared in a manner which failed to take properly into consideration and reconcile the various interests of the municipality and the local owners. As a result, the plan was unreasonable and did not comply with the standards of good land administration.

10. They transferred the complaint to the Supreme Administrative Court, after being informed that it alone was competent to examine the matter.

11. By a judgment of 25 September 1995, the Supreme Administrative Court dismissed the complaint, considering that there were no indications that the municipal authorities had failed to take into consideration and properly weigh the various competing interests involved in the preparation of the local land development plan. It noted that the restrictions on ownership imposed by land development measures were not *per se* incompatible with the nature of ownership guaranteed by the Civil Code.

12. In 1997 the applicant and 36 other inhabitants of Milanówek requested the Mayor to amend the 1993 plan in order to avoid the loss of various investments they had made in their land after the implementation of the plan's projects. This request apparently remained unanswered.

13. In a letter of 4 April 2000 the Municipal Office, in reply to a query submitted by the applicant and other persons, stated that the municipal authorities were under no obligation to provide any compensation for owners whose property was to be expropriated in the future. They were also informed that the validity of the 1993 plan had been prolonged for a further two years under the amendment to the Local Planning Act 1994 adopted in 1999.

14. On 7 July 2001 the Mayor of Milanówek refused the applicant's request for an initial approval of a development project on his land (*decyzja o warunkach zabudowy*), considering that the project would be incompatible with the local land development plan. The applicant wished to have a house built on his land while, under the plan, it was designated for the construction of a road and a hospital.

15. The applicant appealed against this decision to the Mazowiecki Governor. In a reply of 19 July 2001, he was informed that the appeal should be lodged with the Local Government Board of Appeal and that the construction of the road in Milanówek would not be budgeted before 2010 at the earliest. The applicant addressed the Appeal Board.

16. On 21 November 2001 the Local Government Board of Appeal dismissed the applicant's appeal on the ground that his construction project was incompatible with the land development plan. It was further reiterated that, under the Local Planning Act 1994, he had no right to compensation for the fact that his land had been "frozen" or for the restrictions on its use.

17. On 1 October 2001 the Municipal Office informed the applicant that the plan had been amended in that the construction of the hospital was no longer foreseen. However, the project to build a road remained valid, but no timeframe was specified.

18. On 11 March 2002 the applicant requested the Municipality to acquire his property. The Municipal Office refused to do so by a letter of 9 May 2002.

19. On 17 June 2002 the applicant complained to the Municipal Office that the decisions it had given in respect of the land development in his neighbourhood were incompatible with the land development plan adopted in 1993.

20. By a letter of 2 July 2002, the Office informed the applicant that, under domestic law, the owners of property to be expropriated in the future had no right to compensation for the fact that their land could not be developed. They would be entitled to compensation only after the final expropriation decisions in respect of their property had been taken.

21. On the same day the Supreme Administrative Court dismissed his appeal against the decision of 19 December 2000. The court observed that its jurisdiction was limited to the examination of the lawfulness of the impugned decision. It found that the decision was lawful as it was common ground between the parties that the applicant's construction project was incompatible with the local land development plan.

It further noted that the applicant had complained that his situation could not be seen as being compatible with the Constitution, given that owners affected by plans adopted prior to the Constitution's entry into force could not benefit from compensation claims provided for by section 36 of the Local Planning Act 1994. The court referred to the judgment of the Constitutional Court given in 1995 (see paragraph 36 below), which had examined the compatibility with the Constitution of section 68 § 1 of the 1994 Act. That provision had excluded the application of the owners' right to compensation under section 36 to land development plans adopted before 31 December 1994. It had found the provision to be compatible with the Constitution.

The Supreme Administrative Court observed that it was not its task to amend or criticise existing laws and that it was bound by this provision. Otherwise, there were no grounds on which to consider that the decision challenged by the applicant had been unlawful.

22. In the meantime, in January 2002 the applicant petitioned the Ombudsman.

23. On 20 February 2002 the Ombudsman informed him that the legal framework for “frozen land” was governed by the Local Planning Act 1994. Under section 36 of this Act, owners of such plots were entitled to various forms of compensation, but only insofar as their plots were affected by land development plans adopted after 1 January 1995.

24. On 31 December 2002 the validity of the 1993 land development plan expired.

25. On 25 August 2003 the applicant was granted an initial planning permit (*decyzja o warunkach zabudowy*) in respect of his land.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Changes in land development legislation during the period concerned

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

27. On 7 July 1994 a new Local Planning Act was enacted. It entered into force on 1 January 1995.

28. On 21 December 2001 Parliament passed a law amending the Local Planning Act 1994.

29. On 27 March 2003 a new Local Planning Act was enacted which repealed the 1994 Act.

30. Under the Local Planning Act of 12 July 1984 owners of properties to be expropriated in the future were not entitled to any form of compensation for damage resulting from restrictions on the use of their property or the reduction in its value originating in expropriations to be carried out at an undetermined future date.

31. Section 36 of the Local Planning Act enacted in 1994 created for local authorities a number of obligations towards owners whose properties were designated for expropriation at an undetermined future date under land development plans adopted by the competent municipal authorities. The municipalities were obliged to buy such property, replace it with other land within six months of an owner's request, or provide compensation for the damage caused by the designation.

32. However, pursuant to Section 68 § 1 of the Act, these obligations and the corresponding claims of the owners applied only to plans adopted after the Act had entered into force, i.e. to plans adopted by local municipalities after 1 January 1995.

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

34. In 1999 an amendment to the 1994 Act was adopted under which the validity of such plans was extended for a further two years until 31 December 2001. Again, on 21 December 2001, Parliament passed a law amending the Local Planning Act 1994 which extended until the end of 2002 the validity of the land development plans adopted before 1 January 1995.

35. Under section 87 of the 2003 Act (see paragraph 29 above), all local plans adopted before 1 January 1995 remained valid, but not beyond 31 December 2003.

36. Compensation entitlements for owners, provided for by the 1994 Act (see paragraph 29 above), were in essence maintained by the 2003 Act. Pursuant to Section 36 of that Act, when, following the adoption of a new local land development plan, the use of property in the manner provided for by a previous plan has become impossible or has been restricted, it is open to the owner to claim compensation from the municipality, or to request the municipality to buy the plot. Any litigation which may arise in this respect between municipalities and owners can be pursued before the civil courts. It would appear that the operation of Section 36 is not retroactive, thus limiting the scope of any such claims to the period after the adoption of the 2003 Act.

37. Other relevant legislative provisions are extensively set out in the Court's judgment of 14 November 2006 in the case of *Skibiński v. Poland* (no. 52589/99, §§ 28-53).

B. Judgment of the Constitutional Court

38. In its judgment of 5 December 1995 (K 6/95), the Constitutional Court examined the request submitted to it by the Ombudsman to determine the compatibility with the Constitution of section 68 § 1 of the Land Planning Act 1994 insofar as it excluded the application of section 36 of that Act to land development plans adopted before 31 December 1994. The court referred to its established case-law to the effect that ownership could not be regarded as *ius infinitivum*. Consequently, its exercise was normally restrained by many legal and practical considerations, including the necessity of balancing the owners' interests against those of other persons. Local land development plans were to be regarded only as a practical expression of restraints originating in numerous statutes regulating the lawful exercise of ownership. In particular, owners of properties "frozen"

for the purpose of future expropriations as a result of the adoption of such plans could normally continue to use their properties as they had been using them prior to the adoption of such plans. This did not amount to such an interference with ownership that it could be regarded as being incompatible with the constitutional protection of ownership.

THE LAW

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

39. The applicant alleged that his right to the peaceful enjoyment of his possessions had been breached. He referred to 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.”

A. Admissibility

1. Incompatibility ratione temporis with the provisions of the Convention

40. The Government submitted that the alleged violation of the applicant's property rights had originated in the land development plan adopted in 1993. The application was therefore incompatible *ratione temporis* with the provisions of the Convention because the alleged violation had taken place before 10 October 1994, the date on which Poland had ratified Protocol No. 1 to the Convention.

41. The applicant disagreed. He argued that, in the context of a continuing violation of the right to the peaceful enjoyment of one's possessions, the events which had taken place before the date of ratification were to be taken into account as relevant background material for the assessment of the current facts of the case. Moreover, in his case many facts had occurred after 10 October 1994 which should be regarded as giving rise

to further breaches of his rights guaranteed by Article 1 of Protocol No. 1. The applicant referred to the Court's judgment in the aforementioned case of *Skibiński v. Poland* concerning similar facts, where the Court had accepted temporal jurisdiction.

42. The Court's jurisdiction *ratione temporis* covers only the period after the date of ratification of the Convention and its Protocols by the respondent State. After ratification, the State's acts must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). Accordingly, the Court is competent to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 10 October 1994, the date of the ratification of Protocol No. 1 by Poland. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a continuous situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 147-153, ECHR 2006-...).

43. The Court observes that the applicant's complaint is not directed against a single measure or decision taken before, or even after, 10 October 1994. It rather refers to continuous restrictions imposed on the exercise of his ownership and arising from various legal measures, adopted both before and after that date (see paragraphs 24-34 above).

The Government's plea of lack of jurisdiction *ratione temporis* must accordingly be rejected.

2. Incompatibility ratione materiae with the provisions of the Convention

44. The Government submitted that in 1991 the applicant had acquired agricultural land, with no construction rights. Hence, he could not be said to have had any legitimate expectation that in the future he would be allowed to build on it. Under Polish law the authorities could not be required to permit agricultural land to be designated for construction purposes. In the present case the applicant could have had no more than a mere hope that he would acquire such a right.

45. The applicant disagreed.

46. The Court notes the Government's argument that under applicable laws the applicant had no right to build on the land concerned. However, it observes that the essence of the applicant's complaint relates to a set of restrictions on the exercise of his ownership, with particular emphasis on the lack of any right to compensation for the future expropriation of his land, a state of affairs which lasted over eight years (see paragraphs 63-66

below), rather than to the mere refusal of a building permit given in 2001. It therefore rejects the Government's objection.

3. *Exhaustion of domestic remedies*

47. The Government argued that, if the applicant had considered that the provisions on which the domestic decisions in his case had been based were incompatible with the Constitution, it would have been open to him to challenge these provisions by lodging a constitutional complaint under Article 79 of the Constitution. Thus, the applicant could have achieved the aim of his application to the Court, namely an assessment of whether the contested regulations, as applied in his case, had infringed his Convention rights. He should have lodged a constitutional complaint against the judgment of the Supreme Administrative Court of 2 July 2002 dismissing his appeal against the refusal of the initial planning permission. It was open to the applicant to challenge, by way of such a complaint, section 68 § 1 of the Local Planning Act 1994, the operation of which was prolonged by the legislation of 22 December 1999 and 21 December 2001.

48. The Government further argued that the applicant should have lodged a claim before a civil court, claiming damages against either the State Treasury or the municipality for the interference with his right to the peaceful enjoyment of his possessions. Had a civil court found against him, he could also have lodged a constitutional complaint, challenging the provisions of the Local Planning Act 1994 which were applied to his case.

49. The applicant disagreed. He submitted that the provisions of civil law on the liability of public authorities were not applicable to his case because section 68 of the Local Planning Act 1994 expressly excluded the civil liability of public authorities for claims originating from interferences with property rights in connection with future expropriations.

50. As to the constitutional complaint, the applicant contended that, under the provisions of the Local Planning Act 1994, he had had a legitimate expectation that the restrictions on his entitlement to compensation would expire on 31 December 1999. Nevertheless, the legislator subsequently decided, on two occasions, to prolong the duration of those restrictions. As a result, they were applicable to his situation for some eight years.

51. The Court recalls that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the courts) to address the allegation of a violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court (*Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, requires the Government claiming non-exhaustion to satisfy the Court that the remedy was effective - available in theory and in practice at the relevant time. That is to say, the remedy must

be shown to have been accessible, capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (*Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V; *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

52. The Court has already dealt with the question of the effectiveness of the Polish constitutional complaint (*Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; *Pachla v. Poland* (dec.), no 8812/02, 8 November 2005; *Wypych v. Poland* (dec.), no. 2428/05, 25 October 2005). It examined its characteristics and, in particular, found that the constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention in situations where the alleged violation resulted from the direct application of a legal provision considered by the complainant to be unconstitutional.

53. However, in the instant case, the Court notes that the essence of the applicant's complaint is that, as a result of the expropriation to be carried out at a future, undetermined date,

- he was not entitled to compensation for the protracted period of uncertainty, which was twice extended by the legislator;
- he was not entitled to obtain land to replace the plot designated for expropriation;
- he was unable to oblige the municipality to acquire his property before the planned expropriation; and lastly
- he was prevented from pursuing any development projects on that property.

54. The Court notes that the provisions of the Local Planning Act 1994 were examined by the Constitutional Court in 1995. That court held that they were compatible with the obligation of the State to protect private property laid down in the Constitution of 1952 (see paragraphs 21 and 37 above). The Supreme Court relied on this constitutional case-law, when dismissing the applicant's appeal against the municipality's refusal of the applicant's request for the initial approval of his development project. Moreover, the Court observes that the municipality refused, by way of letters, the applicant's requests by which he sought to obtain compensation for the fact that his property had been "frozen" under the 1993 plan (see paragraphs 13, 16 and 20 above). Under the applicable provisions of domestic law, a constitutional complaint in administrative proceedings is only available against the final decision of an administrative court. However, in the present case the authorities did not issue binding administrative decisions and it has not been shown or argued that the applicant could oblige them to do so. Hence, the Court considers that it has not been shown that, in the circumstances, a constitutional complaint with reasonable prospects of success was available to the applicant.

55. Having regard to the above considerations, the Court is of the view that the constitutional complaint cannot be regarded as an effective remedy in the applicant's case.

56. Insofar as the Government argued that the applicant should have claimed compensation before a civil court, the Court observes that under the provisions of the Land Planning Act 1994 the liability of public authorities for any damage which might have its origin in expropriation planned in the future was expressly excluded (paragraph 30 above). Hence, this remedy did not offer any prospects of success.

57. Consequently, the Court rejects the Government's objection concerning domestic remedies. Furthermore, it notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's submissions

58. The Government first submitted that there had been no interference with the applicant's right to the peaceful enjoyment of his possessions. The plot bought by the applicant had originally been designated for agricultural purposes. Even if there had been no public investment planned for his property, the applicant would not automatically have had the right to build on it, or to demand its designation for such purposes (*Allan Jacobsson v. Sweden*, no. 18/1987/141/195, 25 October 1989, § 60; *Matti and Marianne Hiltunen against Finland* (dec.), no. 30337/96, 28 September 1999). In 1991, when the applicant had acquired ownership of the land, the planned course of the new ring-road had already been known.

59. The Government argued that neither the provisions of Polish law nor of Protocol No. 1 imposed on the Polish authorities an obligation to change the character of the use of land by individual owners. Under Article 1 of Protocol No. 1, States had a right to enforce such laws as they deemed necessary to control the use of property in accordance with the general interest. The applicant had bought a property designated for agricultural use and should have been aware that his ownership right had not encompassed the right to build a house there. He had been entitled to use or dispose of his plot only within the limits prescribed by the law, the principles of reasonable social co-operation and the socio-economic purpose of ownership. The applicant's situation was therefore different from that in the case of *Sporrong and Lönnroth v. Sweden* (judgment of 23 September 1982, Series A no. 52, § 11) in which restrictions were imposed on property in the centre of the capital city.

60. The Government submitted that the measures complained of had pursued the legitimate aim of securing land for the implementation of the local development plan. The impugned measures had served the general interest as they had been intended to resolve the communications and environmental problems of the municipality of Milanówek. As the Court has acknowledged on many occasions, such matters correspond to the general interest of the community.

61. The procedure for the adoption of the 1993 local development plan had involved the local communities, in accordance with the 1984 Local Planning Act. All stages of the procedure had been public and the inhabitants of the municipality, including the applicant, had been able to comment on the draft plans. The objections raised by the owners concerned had been carefully examined by various competent authorities and, in the last resort, in judicial proceedings before the Supreme Administrative Court.

62. The Government were of the opinion that in the present case the individual burden imposed on the applicant had not been excessive. He had not been prevented from either selling or leasing his property. It had remained possible for him to continue using the property for agricultural purposes in the same way he had used it prior to the entry into force of the 1994 Act. Hence, the present case was different from the situation in which the Court had found a violation of Article 1 of Protocol No. 1 to the Convention in the case *Immobiliare Saffiv. Italy* ([GC], no. 22774/93, ECHR 1999-V) as the applicant could fully enjoy his ownership rights.

63. The value of the applicant's plot and the scope of its use increased significantly as a result of the expiry of the 1993 local development plan after 31 December 2002 and following the entry into force of the 2003 Act.

64. The Government concluded that, in the circumstances of the case, a fair balance had been struck between the applicant's individual rights on the one hand and the public interest and transport needs of the local community on the other.

2. *The applicant's submissions*

65. The applicant was of the view that there had been a breach of his right to the peaceful enjoyment of his possessions since the land he had owned had been designated for expropriation at some undetermined future date. Under domestic legislation, he had not been entitled to any compensation for this interference with his ownership rights.

66. It was true that he had not been formally deprived of his possessions since he had remained the lawful owner. However, as a result of the planning measures taken, his property rights had been stripped of any economic significance. The fate of his land remained uncertain from 1994 until 2003. While the 1993 local development plan had provided for the construction of a roadway through his land, the date of its actual construction remained uncertain.

67. As to the Government's argument that the applicant could have tried to sell his land, he averred that such an approach entirely disregarded the fact that the market value of the plot had been significantly reduced as a result of the adoption of the 1993 plan and the consequential uncertain fate of the property.

68. The applicant submitted that his request to be granted a construction permit had been refused. He acknowledged that Article 1 of Protocol No. 1 did not guarantee him the right to build. However, this provision should oblige public authorities to take measures to eliminate uncertainty surrounding the fate of property and, in addition, to take into account, in the procedure leading to the adoption of a local development plan, the interests and objections of the individual owners. It was unacceptable, in the light of this provision, to deprive owners of the peaceful and unhindered enjoyment of their possessions for such a long period.

3. The Court's assessment

(i) Whether there was interference with the peaceful enjoyment of "possessions"

69. The Court must first examine whether there was interference with the peaceful enjoyment of the applicant's possessions.

70. The Court observes that the applicant's situation was affected by the local land development plan adopted by the municipality of Milanówek in 1993 because it provided for the future expropriation of his land. The Court first notes that the applicant's objections to the plan were dismissed. The Court emphasises that the applicant's situation was negatively affected not so much by the mere prospect of expropriation, but by the fact that this future expropriation was to be carried out at an undetermined date. However, under the Local Planning Act 1994, the local authorities did not have any obligation to compensate the applicant at the material time.

In that connection, the Court further notes that before the enactment of the Local Planning Act in 1994 the local authorities did not have any obligation to compensate owners of plots to be expropriated in the future. It was only by virtue of section 36 of that Act that local authorities became obliged either to buy plots designated for future expropriation under local land development plans, or to replace those plots by other plots, or to award the owners compensation for damage caused by the fact that their plots were designated for future expropriation. However, the right to compensation applied only to plans adopted after the 1994 Act had entered into force. Consequently, they were not applicable to the applicant's situation as the plan for the municipality had been adopted in 1993.

71. The Court further notes that the applicant's request for an initial approval of a development project on his land was refused in 2001. He was

informed that, under the applicable legislation, the municipality was not obliged to acquire his property which was to be expropriated in the future and that he had no right to compensation.

72. Consequently, the measures complained of, taken as a whole, in law left intact the applicant's right to continue to use and dispose of his possessions. Nevertheless, in practice, they significantly reduced the effective exercise of that right. The applicant's property rights thus became precarious and defeasible (*mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, cited above, §§ 58-60; *Skibiński v. Poland*, cited above, § 79).

73. The Court therefore concludes that there was indeed an interference with the peaceful enjoyment of the applicant's possessions. The Court further considers that the measures complained of did not amount to expropriation. Likewise, they cannot be regarded as a control of use of property. Accordingly, the interference falls to be examined under the first sentence of Article 1 of Protocol No. 1 (cf. *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among many other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI).

(ii) *Whether the interference was “provided for by law”*

74. The Court notes that it is not in dispute between the parties that the interference with the applicant's property rights was based on the Local Planning Act 1994 and subsequent legislation (see paragraphs 24-34 above). The interference complained of was therefore “provided by law” within the meaning of Article 1 of Protocol No. 1 to the Convention (see the aforementioned *Skibiński v. Poland* judgment, § 84).

(iii) *Whether the interference was “in the general interest”*

75. Any interference with a right of property can only be justified if it serves a legitimate public (or general) 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 a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002; *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

76. In the present case the Court accepts that, already in 1994, the measures complained of pursued the legitimate aim of securing land in connection with the implementation of the local development plan. This corresponds to the general interest of the community (see, *mutatis mutandis*, *Cooperativa La Laurentina v. Italy*, no. 23529/94, § 94, 2 August 2001;

Bahia Nova S.A. (dec.), no. 50924/99, 12 December 2000; *Chapman v. the United Kingdom*, no. 27238/95, § 82, ECHR 2001-I).

(iv) *Proportionality of the interference*

77. The Court must next examine whether an interference with the peaceful enjoyment of possessions strikes 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 imposes a disproportionate and excessive burden on the applicant (see, among many other authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI).

78. The Court considers that, 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.*, cited above). 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 property (see, *mutatis mutandis*, *Sporrong and Lönnroth*, cited above, § 69).

79. In that connection, the Court first observes that in 1993 the municipality of Milanówek adopted a local land development plan. Under this plan, the applicant's property was designated for future expropriation with a view to the construction of a ring-road and a hospital in the vicinity of his land. However, that plan did not have any timeframe for its implementation. Further, in 2001, eight years after the plan had been adopted, the Mazowiecki Governor informed the applicant that the budget for the construction of the road would not be available before 2010.

80. As a result, the applicant was threatened with expropriation at an undetermined point in time and he did not have any effective entitlement to compensation in the meantime. This was repeatedly confirmed by the municipal authorities. The Court emphasises that this situation lasted for a long period: from 1993 when the plan was adopted until 31 December 2003, when this plan eventually expired under the provisions of the Local Planning Act 2003.

81. The Court observes that the successive amendments to the Local Planning Act 1994 had a double effect: they extended the validity of the local plan and also prolonged the period during which the applicant could not claim any compensation from the municipality.

82. In this connection, the Court notes the Government's argument that the provisions of the 1994 Act were intended to improve the situation of owners, because it introduced a right to compensation which had not previously existed. They also pointed out the temporary nature of the prolongations. However, the Court cannot overlook the fact that, although the legislature introduced compensatory provisions into the law, at the same time it excluded their application in respect of plans adopted before

1 January 1995. Moreover, this situation was prolonged three times, for an overall period of nine years. Consequently, until July 2003, the date of entry into force of the Local Planning Act 2003, the applicant could not make any claim for compensation against the municipality.

83. Lastly, the Court notes that since July 2003, when the 2003 Act entered into force, section 36 of that Act has granted a right to compensation to owners who were restricted in the use of their property as a result of the adoption of a local development plan. Such claims can be pursued before civil courts.

84. However, this provision is only applicable to situations arising after the 2003 Act had entered into force in respect of new local land development plans (see paragraph 30 above). It has not been argued or shown that the 2003 Act provides for any retroactive right to compensation for the prejudice suffered by the applicant, before its entry into force, as a result of the restrictions originating in earlier development plans. Consequently, the entry into force of the 2003 Act did not alter the applicant's situation.

85. The Court notes the Government's argument that, by adopting such provisions, the legislature had given the local authorities time to adjust land development plans to the new needs of the municipalities, without the latter being obliged to compensate individual owners for the consequences of local development plans adopted before 1989, when the transformation of the legal and economic system of the State had been undertaken.

86. The Court is aware that the problems arising from the enactment of a comprehensive legal framework in the area of urban planning constitute part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy – a process which, by the very nature of things, is fraught with difficulties. However, these difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved in such a transition do not exempt the Contracting States from the obligations stemming from the Convention or its Protocols (see *Schirmer v. Poland*, no. 68880/01, 21 September 2004, § 38).

87. Finally, the Court notes that the applicant's request for an initial approval of a development project on his land was refused in 2001 (see paragraphs 14-16 above). In the refusal the authorities essentially referred to the provisions of the development plan. However, when the applicant requested that approval, there were no good grounds on which to believe that the land development plan adopted in 1993 would be implemented promptly. As a result, the *de facto* blocking of any construction on the applicant's property did not serve any immediate or medium-term purpose in the interests of the community.

88. In the Court's view, given that it was uncertain whether the land development plan would be implemented within a reasonable timeframe,

this resulting state of affairs, seen as a whole, failed to strike the requisite fair balance between the competing general and individual interests. Consequently, the applicant was required to bear an excessive individual burden (see *Skibiński v. Poland*, cited above, § 97).

89. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

91. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage which he had sustained as a result of the distress and uncertainty occasioned by the violation complained of, and for the fact that no efforts had been made by the competent authorities to clarify and ameliorate the legal and factual position of owners threatened with expropriation in the future.

92. The Government submitted that the applicant's claim was exorbitant and should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to award a sum which would be considerably lower than the amount claimed.

93. The Court considers that the applicant has sustained some non-pecuniary damage on account of the violation of Article 1 of Protocol No. 1 to the Convention which would not be sufficiently compensated by that finding (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, §§ 70-71, ECHR 2000-VIII; *Schirmer v. Poland*, cited above). Having regard to the circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 5,000.

B. Costs and expenses

94. The applicant did not seek reimbursement of costs and expenses relating to the Convention proceedings and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

95. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Mrs Mularoni is annexed to this judgment.

F.T.
S.D.

CONCURRING OPINION OF JUDGE MULARONI

I agree with the conclusion of the majority that the application is admissible and that there has been a violation of Article 1 of Protocol No. 1.

However, as to the exception of incompatibility *ratione temporis* raised by the respondent Government, I would like to express a separate opinion, since my position is different from what emerges from the text of the judgment.

The Government submitted that the alleged violation of the applicant's property rights had originated in the land development plan adopted in 1993, that is, before 10 October 1994, the date on which Poland ratified Protocol No. 1 to the Convention. Consequently the application should have been declared incompatible *ratione temporis* with the provisions of the Convention.

I would have agreed with the Government had the interference with the applicant's rights ended on 31 December 1999, the date on which, pursuant to the 1994 Act, plans adopted before its entry into force were to expire (see paragraph 33 of the judgment).

This was not the case. In 1999 an amendment to the 1994 Act was adopted under which the validity of such plans was extended for a further two years, until 31 December 2001. Subsequently, on 21 December 2001, Parliament passed a further law amending the Local Planning Act 1994 which extended until the end of 2002 the validity of the land development plans adopted before 1 January 1995 (see paragraph 34 of the judgment). On 11 July 2003, the date of entry into force of the Local Planning Act 2003, any limitation on the applicant's property rights was removed.

I therefore consider that there has been a violation of Article 1 of Protocol No. 1, but only in respect of the period from 1 January 2000 to 11 July 2003. This was accepted by the applicant (see paragraph 25 of the applicant's observations) and I do not see any valid reason to extend the applicability *ratione temporis* of Protocol No. 1 to previous periods. Consequently, I have some difficulties with what I consider to be a kind of ambiguity in the examination of this issue.

In paragraph 43 of the judgment, my distinguished colleagues do not make any distinction between measures adopted before and after 10 October 1994 (i.e. before and after ratification), and consider the violation a continuing one.

In paragraph 46, they seem to accept that the violation covers only the period after ratification of Protocol No. 1 by Poland.

In paragraph 80, they refer to the whole period during which the applicant's property rights were limited, from 1993 (when the plan was adopted) to 31 December 2003. Here I have an additional difficulty, since any limitation on the applicant's property rights came to an end on 11 July 2003. The applicant's application for planning permission to build a house

was granted on 25 August 2003. This was accepted by both parties and I cannot understand why the Court should determine the “final” date as 31 December 2003.

I disagree with the majority's approach on this point. I consider that a clear line should have been drawn between measures within the scope of the Court's supervision and those outside it.

Furthermore, nowhere is a distinction made between what I consider the first period (from the adoption of the plan in 1993 to 31 December 1999, the date of expiry of the plan) and the second one (1 January 2000 to 11 July 2003), which I regard as the only critical period. This probably means that the majority consider that, in any event, a violation has to be found for at least some time before 1 January 2000, a conclusion with which I deeply disagree.