



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

FOURTH SECTION

CASE OF BUGAJNY AND OTHERS v. POLAND

(Application no. 22531/05)

JUDGMENT

STRASBOURG

6 November 2007

FINAL

01/03/2010

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 Bugajny and Others v. Poland,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 22531/05) against the Republic of Poland lodged with the Court on 31 May 2005 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Polish nationals, Mr Paweł Bugajny, Mr Tadeusz Ratajczak and Mr Jarosław Słuja ("the applicants"). The applicants were represented before the Court by Mr A. Zielonacki, a lawyer practising in Poznań.

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

3. The applicants alleged that their right to the peaceful enjoyment of their possessions had been breached.

4. On 24 November 2005 the Court decided to give notice of the application to the Government. 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 first applicant was born in 1963. The second and third applicants were born in 1964. They live in Poznań.

A. Proceedings before the administrative authorities

6. The company “Trust” Ltd. in which the applicants own all of the shares owned an estate of 6 hectares situated in Poznań. In 1995 the company requested the local administration to give a decision on the division of the estate, a decision necessary to proceed with construction on the land.

7. Eventually, on 15 November 1999 the Municipal Office gave a decision by which the division of the estate was approved. Certain plots of land were designated for construction purposes and others for open space and garages. A number of plots were designated for construction of “internal estate roads”. This decision became final on 30 November 1999.

8. Subsequently, the applicant company, relying on the provisions of the Land Administration Act 1997, requested the Mayor of Poznań to determine the compensation due for the plots designated for road construction. It submitted that under the relevant provisions of that Act plots designated, by virtue of decisions on the division of properties into smaller plots, were expropriated *ex lege* on the date on which such decisions became final.

9. By a decision of 15 March 2000 the President of the Poznań City dismissed the application to have the compensation determined, holding that the roads to be built on the estate concerned had not been provided for in the local land development plan. Hence, in the November 1999 decision they had been designated as “internal roads” which would serve the inhabitants of a housing estate the construction of which the company had been planning. Not having been provided for in the local land development plan, these roads did not belong to the category of public roads. Under the provisions of the Land Administration Act 1997, as amended in January 2000, only plots designated for the construction of “public roads” were to be expropriated *ex lege*, and only in respect of such expropriated plots could compensation be sought. In the applicants' case, the plots in question were designated for internal roads; they had therefore not been expropriated and, consequently, no compensation could be determined.

10. The applicants appealed. They argued that the roads to be constructed on the housing estate were to be public, for all practical purposes. They were to be open to all roads users, including all means of public and private transport. The term “internal roads” used in the contested decision did not exist in the Land Administration Act 1997 as applicable in November 1999. This Act had been amended after this decision had been given and it was only in its amended text that it was clearly stated that compensation was due only for “public” roads (see paragraphs 30-31 below).

11. The fact that the plots concerned were referred to in the decision of November 1999 as designated for the construction of “internal” roads was an unlawful attempt to deprive them of a public character and to exempt them thereby from the operation of that Act insofar as it provided for *ex lege*

expropriation of plots designated for road construction. Most importantly, it was an attempt to evade the obligation to pay compensation for such plots.

12. The applicants further argued that the fact that these roads had not been provided for in the local land development plan was immaterial, given that the decision of 15 November 1999 had obviously been given in such a way as to be consistent with the local land development plan. Otherwise, the division of the estate could not have been approved.

13. They lastly argued that the decision complained of breached the constitutional guarantees of ownership.

14. On 31 May 2000 the Wielkopolski Governor upheld the decision. The Governor's decision referred to section 98 of the 1997 Act as applicable when the November 1999 decision had been given. It provided that plots designated for road construction under a decision on the division of property for the construction purposes were expropriated *ex lege* on the date on which such a decision became final. However, the essential purpose of the decisions on the division of property was to serve the implementation of local land development plans. In the absence of the inclusion in such a plan of roads on the land subject to the division decision given in the applicants' case in November 1999, the plots designated for road construction could not be regarded as designated for the construction of "public roads". Hence, there were no grounds on which to expropriate them and to grant compensation to the owners.

15. The applicants appealed, essentially reiterating their arguments submitted in their appeal against the first-instance decision.

16. On 16 October 2001 the Supreme Administrative Court dismissed the appeal. It referred to section 93 (1) and (3) of the Land Administration Act 1997. It noted that under these provisions a decision on the division of property into smaller plots could be given only if the division proposal was compatible with the local land development plan and if the newly created plots had access to a public road.

17. In the present case the local development plan did not provide for any public roads on the land owned by the company. Hence, the fact that certain parts of the land as divided under the November 1999 decision had been designated for construction of roads could not entail their automatic expropriation under section 98 of the same Act. These roads remained in the ownership of the company and there were therefore no grounds on which to determine compensation.

18. In so far as the applicants relied on decisions of the Supreme Administrative Court in which it had expressed the view that under section 98 of the 1997 Act all land designated for roads in the division decisions was subject to expropriation *ex lege*, the court noted that judgments given in other cases were not binding on it.

19. It further noted that the February 2000 amendment to section 98 of the Land Administration Act 1997 (see paragraph 31 below) which provided

that land designated for the construction of public roads only was subject to expropriation:

“did not so much limit the scope of roads to which that provision was applicable, but was only intended to make more precise the intentions of the lawmaker regarding [the application] of this Act”.

It concluded that that the contested decision was in conformity with the law.

2. *The civil proceedings*

20. Later on, the applicants' lodged a claim in a civil court seeking a declaration under Article 189 of the Civil Code as to who was the owner of the plot of land concerned, listed in the land register as plot No. 6/25 and covering a surface area of 5,843 square metres.

21. By a judgment of 25 June 2003 the Poznań Regional Court established that the owner of the plots was Poznań City.

22. The court considered, *inter alia*, that the plan for the division of the land as adopted in the November 1999 decision was concordant with the local land development plan. It further observed that such compliance was an essential condition for the decision on division to be given in the first place. The court further noted that the local zoning plan was of a very general character and contained practically no details as to the planning of roads, apart from major thoroughfares, and that it did not determine which roads were to be regarded as public. In these circumstances, the court was of the view, having regard to the public use of the roads on the property concerned, that they had been expropriated by the city.

23. Poznań City appealed.

24. By a judgment of 9 December 2003 the Poznań Court of Appeal dismissed the claim for a declaration. It considered that the company had no legal interest in seeking clarification of the legal situation of the plots concerned by way of a declaratory judgment under Article 189 of the Code of Civil Procedure. The legal situation of the land had already been determined by the judgment of the Supreme Administrative Court which was binding on the civil court. Pursuant to this decision, the claimant remained the owners of the plots in question.

25. The court further observed:

“Obviously, there was also another legal problem in the case. The conduct of the city in the present case had caused a situation in which the owner could not use his land freely, as provided for in Article 140 of the Civil Code. At the same time, the property serves one of the purposes [road construction] which normally should be ensured by the local municipality; what is more, it is the owner who bears the costs of achieving of this purpose.

It can be argued that a situation worse even than a so-called *de facto* expropriation obtains in the present case. This is so because under Article 1 of Protocol No. 1 to the Convention the term “expropriation” covers not only formal expropriation or

restriction of ownership carried out in proper expropriation proceedings. The case-law of the Strasbourg Court also distinguishes a category of *de facto* expropriation, namely such acts by the public authorities which lead to a practical deprivation of possessions or to restrictions on their use (*Papamichalopoulos and Others v. Greece*, 1993)."

26. The applicants lodged a cassation appeal with the Supreme Court. By a decision of 5 November 2004, served on the applicants on 1 December 2004, it refused to examine it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Relevant constitutional provisions and case-law

27. Article 21 of the Constitution provides:

"1. The Republic of Poland shall protect property and a right to inherit.

2. Expropriation is allowed only in the public interest and against payment of just compensation."

28. Article 31 of the Constitution reads:

"Freedom of the person shall be legally protected.

Everyone shall respect the freedoms and rights of others. No one shall be compelled to do anything 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."

29. Article 79 § 1 of the Constitution provides as follows:

"In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of a statute or another normative act on the basis of which a court or an administrative authority has issued a final decision on his freedoms or rights or on his obligations specified in the Constitution."

30. Under its settled case-law, the Constitutional Court has jurisdiction only to examine the compatibility of legal provisions with the Constitution and is not competent to examine the way in which courts interpreted applicable legal provisions in individual cases (e.g. SK 4/99, 19 October 1999; Ts 9/98, 6 April 1998; Ts 56/99, 21 June 1999).

31. On 8 May 1990 the Constitutional Court gave a judgment (K 1/90), following a request of the President of the Supreme Administrative Court to

examine the compatibility of certain provisions of the 1985 Land Expropriation and Administration Act with the constitutional protection of the right to the peaceful enjoyment of possessions. The court noted that the impugned provisions of the 1985 Act provided, in respect of properties of an agricultural character, for a reduction of compensation to be paid to owners who had requested that they be divided, by way of an administrative decision, into smaller plots and to have certain plots of land expropriated for road construction purposes. This reduction was based on the premise that the land to be expropriated ceased to be used for agricultural purposes and that the negative results of such a change had to be offset by the owners.

The Constitutional Court observed that the nature of expropriations carried out in this context did not differ from expropriations effected for the purposes of public use, regardless of the fact that an expropriation was effected in proceedings different from ordinary expropriation proceedings. Hence, the provisions of the Constitution as they stood at that time and insofar as they provided for the protection of the right to the peaceful enjoyment of possessions were applicable to such expropriations. The Constitution allowed for the expropriation of private properties only for the purposes of public use and only against compensation. Compensation, in order to comply with constitutional requirements, had to be just and fair. The notion of fair compensation, including for expropriation carried out at the request of the owner and in his or her interest, had to be in the amount corresponding to the value of the expropriated property. Only compensation satisfying these conditions was in compliance with the nature and purpose of the obligation of the public authorities to compensate an owner whose property was expropriated. Any restrictions on the right to a fair compensation, including by way of reductions of its amount, was in breach of constitutional principles.

2. Relevant provisions of the land expropriation legislation

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

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

34. In accordance with section 128 § 1 of the Act, expropriation can 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 shall be 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 property shall be estimated on the basis of an opinion prepared by a certified expert.

35. Section 131 provides that a replacement property can be awarded to the expropriated owner, if he or she so agrees.

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

3. Changes in the relevant provisions of the Land Administration Act 1997

37. The question of expropriation of land for the purposes of road construction is regulated in that Act. Section 93 § 1 of the Act provides that the division of an estate into smaller plots is possible only when the division proposed by the owner is compatible with the local land development plan. Under § 3 of this section, a decision on the division can not be given if the plots resulting from the division would have no access to a public road. Access to a public road is also deemed to be available if a plot has access to an internal road.

38. Until 15 February 2000 section 98 of the Act read as follows:

1. Plots of land designated for the construction of roads in an administrative decision on the division of property shall be expropriated *ex lege* on the date on which such a division decision becomes final. (...)

3. The compensation due for such plots shall be established by way of negotiation between the expropriated owner and the relevant public authority; if negotiations fail, compensation shall be determined according to the principles applicable in respect of land expropriation.

39. On 15 February 2000 amendments to this Act came in force. Following these amendments, the text of subsection (1) read as follows:

“1. Plots of land designated in a decision on the division of property for the construction of public roads, such as municipal, county, regional and national roads shall be expropriated *ex lege* on the date on which such a division decision becomes final. (...)”

40. In a legal opinion of 29 May 2003, prepared for a different case from that of the applicants', the Central Urban Development Office stated that section 78 of the Land Administration Act in its version applicable until 15 February 2000 was a legal basis for the expropriation *ex lege* of all land designated for road construction purposes under decisions on the division of properties, regardless of whether these roads were of a public character or were to be considered internal roads, on the date when such decisions became final.

THE LAW

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

41. The applicants alleged that their right to the peaceful enjoyment of their possessions had been breached. They 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

42. The Government submitted that the applicants had failed to exhaust the relevant domestic remedies because they had not availed themselves of an individual constitutional complaint under Article 79 § 1 of the Constitution. The Court had recognised that, even if the Constitutional Court was not competent to quash individual decisions because its role was to rule on the constitutionality of laws, its judgments declaring a statutory or other provision unconstitutional gave rise to a right to have the impugned proceedings re-opened in an individual case. Consequently, the Government argued that, if the applicants had considered that certain provisions relied on in their case had violated their right to the peaceful enjoyment of their possessions, they should have asked the Constitutional Court to decide, by way of a judgment, whether those provisions were compatible with the Constitution.

43. The applicants submitted that the constitutional complaint was not a relevant remedy in their case. The applicable domestic law, namely section 98 of the Land Administration Act 1997, as it had stood before the amendment of 15 February 2000, was favourable to the applicants as it provided for expropriation *ex lege* and for compensation. They had not had any legal interest in challenging it and it was also plain that this provision was compatible with the Constitution.

44. The Court reiterates that it has held that a constitutional complaint is an effective remedy for the purposes of Article 35 § 1 of the Convention only in situations where the alleged violation of the Convention resulted

from the direct application of a legal provision considered by the complainant to be unconstitutional (see *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; *Pachla v. Poland* (dec.), no 8812/02, 8 November 2005; *Wytych v. Poland* (dec.), no. 2428/05, 25 October 2005).

45. In this connection, the Court observes that the breach of the Convention complained of in the present case cannot be said to have originated from the direct application of a legal provision which the applicants deemed to be unconstitutional. Rather, it resulted from the way in which various provisions of the Land Administration Act 1997, in particular its section 98 read in conjunction with section 93, were interpreted and applied in the applicants' case. However, it follows from the case-law of the Polish Constitutional Court that it lacks jurisdiction to examine the way in which the provisions of domestic law were applied in an individual case (see paragraph 30 above). The Government did not refer to any other domestic remedy which could have been used in this case.

46. The Court further notes that the civil court, in its judgment of 9 December 2003, stated that the applicants had no legal interest in obtaining a judgment clarifying their legal situation in respect of their entitlement to compensation because the matter had already been determined by the judgment of the administrative court (see paragraph 24 above). In the light of this conclusion of the domestic court, the Court is of the view that it has not been shown that the applicants had any other avenue open to them, judicial or otherwise, by which to try to vindicate their claim for expropriation and compensation.

47. Accordingly, the Court concludes, in the light of the above considerations, that the application cannot be rejected for failure to exhaust domestic remedies. The Court thus dismisses the Government's plea to that effect. It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's submissions

48. The Government averred that the assessment of the case had hinged on whether the roads concerned were public or not. They noted that the administrative authorities had found that, under systemic rules of interpretation, section 98 of the Land Administration Act 1997 as applicable at the material time concerned public roads only. There were no grounds on which to accept that this provision concerned all roads, regardless of whether they were public or not.

This approach was later specified in the amendment of February 2000 to that Act. In addition, the Supreme Administrative Court had also held, in its

judgment of 16 October 2001 (see paragraph 17 above) that the roads on the applicants' land were not public because they had not been provided for in the local land development plan. Had that been the case, they would have been expropriated and compensation would have been paid.

The applicants' case could not be likened to the case of *Papamichalopoulos v. Greece* as in that case the applicants had lost all ability to make use of their property, to sell, bequeath, mortgage or make a gift of it. In the present case the applicants could use and dispose of the land concerned and no public authority had ever deprived them of possession of it.

49. The Government concluded that there had been no interference with the applicants' possessions as they remained the lawful owners of the land and could still use it. The mere fact that the land served public purposes in that it had been used for the construction of roads accessible to the general public and that the applicants had had to finance the construction of these roads themselves was insufficient for finding that their possessions had been interfered with.

50. In the absence of any interference, the Government stated that they would abstain from making any submissions as to the public interest, lawfulness and proportionality of the interference alleged by the applicants.

2. The applicants' submissions

51. The applicants submitted that they owned the entire estate, including the plot designated in the November 1999 decision for road construction purposes. However, this plot had to be used for such construction at the applicants' expense. Normally, under the applicable laws, the costs of the construction of local roads were to be borne by the local municipalities. By designating the plots concerned in the present case for the construction of roads, while considering that they were not to be regarded as "public", the municipality had evaded its obligation to bear these costs. Moreover, it had *de facto* imposed such an obligation on the applicants.

52. The roads subsequently built on the estate served, for all practical purposes, as public roads and ensured access to the estate for the general public. Under the applicable legal provisions, a decision on the division of the property could not have been issued, had the division plan proposed by the applicants not complied with the requirements and restrictions originating in the local land development plan. Therefore, the roads on the estate constituted part of the normal road network in Poznań. The artificial description of the roads as "internal" served the purpose of evading the obligation on the part of the municipality to expropriate the land concerned and to pay compensation to the applicants.

53. The applicants submitted that the administrative authorities, when applying the provisions of the Land Administration Act 1997 as applicable in November 1999 to their case, had resorted to a systemic and teleological

interpretation, but had entirely disregarded the plain meaning of section 98 of that Act according to which land designated for all roads was to be expropriated.

54. The applicants emphasised that they had been refused compensation by the municipality and that the administrative court had countenanced this decision. As a result of the manner in which the relevant provisions of the Land Administration Act 1997 had been applied in their case, the applicants had been *de facto* deprived of their property in a manner contrary to Article 1 of Protocol No. 1. They referred to the judgment in the *Papamichalopoulos v. Greece* case in which the Court had found that the measures complained of had entailed sufficiently serious consequences for the applicants *de facto* to have been expropriated in a manner incompatible with their right to the peaceful enjoyment of their possessions.

55. Theoretically the applicants could use the land concerned as its lawful owners, but only as roads. Therefore the possibility of their using the land was strictly limited. Nor could they, for obvious reasons, sell the roads to third parties.

3. *The Court's assessment*

56. The Court first reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of one's possessions, 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, among many other authorities, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-...).

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

57. The Court must first examine whether there was interference with the peaceful enjoyment of the applicants' possessions.

58. In order to assess the conformity of the State's conduct with the requirements of Article 1 of Protocol No. 1, the Court must have regard to the fact that the Convention is intended to guarantee rights that are practical and effective. It must go beneath appearances and look into the reality of the

situation, which requires an overall examination of the various interests in issue; this may call for an analysis not only of the compensation terms – if the situation is akin to the taking of property (see, for example, *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, pp. 50-51, §§ 120-121) – but also, as in the instant case, of the conduct of the State (*Beyeler v. Italy* [GC], no. 33202/96, § 114, ECHR 2000-I, and *Novoseltskiy v. Ukraine*, no. 47148/98, ECHR 2005-II).

59. In the present case the applicants were obliged, by the authorities' refusal to expropriate the land and pay them compensation – a course of events which they might reasonably have expected in the light of the provisions on the expropriation of land designated for the construction of roads - to build the roads, to bear the costs of their construction and maintenance, and also, importantly, to accept the public use of their property. The measures complained of significantly reduced in practice the effective exercise of their ownership (*mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, §§ 58-60; *Skibiński v. Poland*, no. 52589/99, § 79, 14 November 2006).

The Court therefore concludes that there was indeed an interference with the peaceful enjoyment of the applicants' possessions.

60. The Court further observes that the findings of the domestic courts did not in any way adversely affect the applicants' position as the legal owners of the land. There is therefore no room for the application of the second sentence of the first paragraph in the present case (see, *mutatis mutandis*, *Terazzi v. Italy*, no. 27265/95, § 61, 17 October 2002).

61. Likewise, the measures complained of 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 (*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).

(b) Whether the interference was “in the general interest”

62. 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*, cited above, § 85, 17 October 2002; *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

63. In the present case the Court considers that the measures complained of pursued the legitimate aim of protecting the financial stability of the

municipal budget. 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. v. Spain*, (dec.), no. 50924/99, 12 December 2000; *Chapman v. the United Kingdom*, no. 27238/95, § 82, ECHR 2001-I).

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

64. The Court reiterates in this connection 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). However, 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*, judgment of 22 September 1994, Series A no. 296-A, pp. 19-20, § 42; *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 47, § 110).

65. 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 (*Jahn and Others v. Germany* [GC] nos. 46720/99, 72203/01 and 72552/01, § 86, ECHR 2005 -). It observes that the interference with the applicants' property rights was based on the provisions of the Land Administration Act 1997. It further notes that the Supreme Administrative Court, in its judgment of 2001, found that the refusal to expropriate the plots in question was in compliance with the applicable laws.

66. In the light of the Court's limited jurisdiction to review the correctness of the judicial application of the domestic law, the Court concludes that the interference complained of satisfied the requirement of lawfulness within the meaning of Article 1 of Protocol No. 1.

(d) Proportionality of the interference

67. The Court must next examine whether the interference with the applicants' right to peaceful enjoyment of their 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 them (see, among many other authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005-VI).

68. The Court reiterates 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; *Skibiński v. Poland* cited above, § 59). 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 of property (see, *mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, cited above, § 69).

69. The Court observes that the Supreme Administrative Court found, in its judgment of 16 October 2001, that the Land Administration Act, insofar as it provided for *ex lege* expropriation on the date on which the division of the property became final, was not applicable to the applicants' case. Therefore, the authorities refused to formally expropriate the plots belonging to the applicants and refused to determine the amount of compensation.

70. In this context, the Court notes that, following the division of the land owned by the applicants into smaller plots, the plots of land concerned in the present case were subsequently used for road construction purposes at the expense of the applicants. The applicants built also a housing estate on the remaining plots (see § 7 above). The Court observes that under the applicable provisions of the Land Administration Act, the division of the estate into smaller plots was possible because the division proposed by the owners was compatible with the local land development plan (see § 36 above). It further notes the applicants' argument that the roads built on the estate are connected to the network of public roads. They currently serve both the general public and the housing estate which the applicants developed and are open both to public and private transport of all kinds (see § 52 above). Given that the entire area of the housing estate covers nine hectares which were divided into as many as thirty-six plots of land designated for the construction purposes, it is reasonable to accept that a considerable number of people can be said to use these roads. It has not been shown or even argued that the access to the estate or the use of these roads is restricted or limited in any way. The situation examined in the present case must therefore be distinguished from that of "fenced" housing estates to which the public access is restricted by a decision of its inhabitants.

71. The only way in which the land in question can now be used is as roads. The applicants are also currently obliged to bear the costs of their maintenance. The Court emphasises that the burden which the applicants were made to bear is not limited in time in any way.

72. The Court observes that one of the arguments on which the authorities relied when refusing to expropriate the applicants' property was that the roads to be constructed on the estate had not been included in the local land development plan. However, it reiterates that it was not in dispute that the decision on the division could be issued only when the division plan submitted by the owners was compatible with the land development plan. The Court considers that by adopting such an approach the authorities could

effectively evade the obligation to build and maintain roads other than major thoroughfares provided for in the plans and shift this obligation onto individual owners.

73. The Court finally notes that the Poznań Regional Court expressed serious doubts as to whether the applicants' situation was compatible with the requirements of Article 1 of Protocol No. 1. This court expressly compared the applicants' position to that of the applicant in the *Papamichalopoulos v. Greece* case cited above and considered it to be "even worse". In the Court's view, the applicants' situation in the present case was less serious than the situation examined in the *Papamichalopoulos* judgment, because they were not divested of all possibility of using their property. Nonetheless, such a critical assessment on the part of the domestic court is certainly, in the Court's view, of relevance for the overall assessment of the case.

74. Having regard to the above considerations, the Court is of the view that a fair balance was not struck between the competing general and individual interests and that the applicants had to bear an excessive individual burden.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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."

77. The applicants claimed 1,019,988.50 Polish zlotys (PLN) in compensation for pecuniary damage and as reimbursement of costs and expenses. This amount was broken down as follows:

(i) PLN 946,566 in respect of the surface area of 5,843 square metres, covered by the plot of land currently being used as roads, the average price of 1 square metre of the estate being estimated on the basis of a report prepared by a certified expert submitted to the Court and dated February 2003, at PLN 152,07. The expert referred to the characteristics of the land in the area concerned and to the conditions obtaining on the local real-estate market in 2003. He noted that there was a period of stagnation on the market, linked to the general conditions in the national economy. However, the area offered attractive conditions and many transactions had been concluded, thus bringing the prices slightly above the average in the city.

(ii) PLN 73,422.50 in respect of the costs and expenses incurred in the proceedings before the civil courts during which the applicants had sought

to prevent the violation of their right to the peaceful enjoyment of their possessions.

78. In respect of pecuniary damage, the Government reiterated that there had been no interference with the applicants' right to the peaceful enjoyment of their possessions. Hence, there were no grounds on which to find that they had suffered pecuniary damage. They further observed that the applicants should have submitted to the Court documents showing that the income of their company resulting from the payment of the compensation would have been divided and paid to the shareholders. They further argued that the applicants should have tried to offset the negative financial consequences of the refusal to pay them compensation. In this connection, they could have obliged persons who had bought the houses developed on the estate to acquire shares in ownership of the land currently being used as roads.

79. They concluded that the applicants' claim should therefore be dismissed.

80. The Government did not make any submissions regarding the claim for costs and expenses.

81. The Court first observes that it has found that there has been an interference with the applicants' right to the peaceful enjoyment of their possessions (see paragraph 58 above). It further observes that the damage, in the present case, actually stems from the authorities' refusal to expropriate the land and to pay compensation determined in accordance with the domestic law.

82. The Court notes that the principles for determining the amount of compensation for expropriated land are laid down in the Land Administration Act 1997. Under sections 128 § 1 and 130 of that Act the compensation should correspond to the value of the land as assessed by a certified expert. In the present case, the applicants made detailed submissions as to the value of the land in question. The estimate makes reference to the average price of land in this area in 2003, when their civil claim, by which they tried to obtain redress for the financial setback they had suffered as a result of the refusal to expropriate their land, was dismissed. The Court further notes that this estimate has been prepared by a certified expert, who had taken into account the situation of the local market at that time and the particular characteristics of the area concerned.

The Court further notes that the Government have challenged neither the method used by the expert nor the overall amount.

The Court is therefore of the view that it has been shown that the amount claimed by the applicants is reasonably related to the value of the land concerned and to the amount of compensation which would have been paid to the applicants had their land been expropriated by the administrative authorities under the provisions of the Land Administration Act.

83. It notes that the Government have not indicated any legal basis on which the applicants could have obliged the present owners of the houses situated on the estate to buy the land currently used as roads.

84. In the circumstances of the case and having regard to the parties' submissions, the Court awards the applicants jointly EUR 247,000 under the head of pecuniary damage, plus any tax that may be chargeable on this amount.

85. In respects of the costs, according to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information and documents in its possession and the above criteria, the Court considers it reasonable to award the amount of EUR 18,725 covering the costs incurred in the civil proceedings before the Polish courts, plus any tax that may be chargeable on that amount, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement.

C. Default interest

86. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable:
 - (a) EUR 247,000 (two hundred and forty-seven thousand euros) in respect of pecuniary damage;

EUR 18,725 (eighteen thousand seven hundred and twenty-five euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President