



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

FOURTH SECTION

CASE OF BUCZKIEWICZ v. POLAND

(Application no. 10446/03)

JUDGMENT

STRASBOURG

26 February 2008

FINAL

26/05/2008

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 Buczkiewicz v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 10446/03) 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 two Polish nationals, Ms Wanda Buczkiewicz and Mr Antoni Buczkiewicz (“the applicants”), on 14 March 2003

2. The applicants, who had been granted legal aid, were represented by Mr P. Sendeki, a lawyer practising in Lublin. 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 since the land which they owned had been designated for expropriation at some undetermined future date. Under domestic legislation they were not entitled to any compensation for the interference with their ownership rights resulting from the future expropriation.

4. On 20 October 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was 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 applicants' legal predecessors owned a plot of land with a surface area of 3,625 sq. m. located in the municipality of Warszawa-Włochy, listed in a land register under entry no. 29552. In 1993 the applicants inherited this property as co-owners. The property was designated, by an administrative decision given on an undetermined date, apparently prior to 1993, for agricultural use.

6. By a letter of 30 October 1991 the first applicant was informed by the Warszawa-Ochota Municipal Office that the starting date for the development foreseen by the draft land development plan for the municipality had not yet been yet fixed, but that it was most likely that work would begin after 1995.

7. According to the relevant local development plan, which was adopted in 1992 and later amended in 1995, the entire property had been designated for construction of a major roadway, connecting the municipality with Warsaw, and various commercial buildings. As a result, the applicants could continue to use their property for gardening or agricultural purposes, but could not carry out any development. A number of owners lodged objections against this plan, which were ultimately dismissed by the Supreme Administrative Court.

8. In June 1992 the applicants requested the municipality to specify the use to which their property would be put under the land development plan and to indicate time-limits for the works to begin. They also requested the municipality to acquire the property from them. This offer apparently remained unanswered.

9. On 13 May 1999 the applicants made an enquiry with the municipality as to the development plans in respect of their property.

10. In a reply of 14 June 1999 they were informed that their property remained covered by the development plan adopted in 1992 under which it was designated for construction of a roadway and for various commercial buildings.

11. On 12 November 2001 the applicants renewed their request for the municipality to acquire their plot. This was refused on 21 December 2001.

12. On 27 December 2001 the applicants complained to the municipal authorities that the local land development plan had not been implemented and that no time-frame for its implementation had been foreseen, even tentatively. As a result, they could not carry out any development of the property and had been left in a prolonged state of uncertainty as to its future fate. It could not be used for leisure purposes as it was situated in a rather unattractive area. They had been contacted by many potential buyers who,

having learnt about the lack of possibilities to develop the land immediately, had lost interest in buying the property. Their requests that the municipality acquire their land had been unsuccessful. As a result of the legal situation of the property, their ownership had been stripped of all economic value.

13. On 7 January 2002 the applicants were informed by the Municipal Office that their land would be acquired in the future by a company which would construct the roadway foreseen under the 1992 development plan.

14. On 11 April 2002 the applicants requested, for the first time, that an initial approval of a development project (*decyzja o warunkach zabudowy*) be issued for the construction of a small house on their land.

15. In a reply of 20 May 2002 the Warszawa-Włochy Municipal Office informed them that such a decision could not be issued as it would not be compatible with the local land development plan adopted in 1992.

16. In a further letter of 2 August 2002 the Warszawa-Włochy Municipal Office informed the applicants that the mere fact that their property had been foreseen for future expropriation for the purposes of the construction of the roadway did not entail for the municipality an obligation to acquire their land from them. Accordingly, there were no immediate plans to purchase the properties designated in the local development plan for the construction of the roadway. They were also informed that a new land development plan was being prepared by the municipality.

17. On 27 March 2003 the applicants complained to the Supreme Administrative Court about the local administration's failure to adopt a new land development plan. They referred to the restrictions which the 1992 plan imposed on the exercise of their ownership.

18. On 16 April 2003 the Supreme Administrative Court rejected their complaint, holding that a complaint against the administration's failure to act could not be made in respect of proceedings concerning elaboration of local land development plans.

19. On 31 December 2003 the relevant local development plan expired, pursuant to the Local Planning Act 2003 (see paragraph 23 below). Apparently to date no new land development plan has been adopted by the municipality.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Changes in land development legislation during the period concerned

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

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

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

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

24. 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.

25. 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.

26. 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.

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

28. 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.

29. Under section 87 of the 2003 Act (see paragraph 23 above), all local plans adopted before 1 January 1995 remained valid, but not beyond 31 December 2003.

30. Compensation entitlements for owners, provided for by the 1994 Act (see paragraph 25 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.

31. 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

32. 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

33. The applicants complained that their right to the peaceful enjoyment of their possessions had been breached. They referred to Article 1 of Protocol No. 1 Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. *Incompatibility ratione temporis with the provisions of the Convention*

34. The Government submitted that the alleged violation of the applicants' property rights had originated in the land development plan adopted in 1992. Moreover, the applicants' land had already been designated for agricultural purposes before they acquired a legal title thereto 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.

35. The applicants disagreed. They 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 of Protocol No. 1 to the Convention were to be taken into account as a background relevant to the assessment of the current situation. The applicants referred to the Court's reasoning in a case in which it had held that legislation which had been adopted prior to the entry into force of Protocol No. 1 had created for the applicant a continuing situation in that it had determined her legal situation and that this legal situation remained in force after the ratification (*Rudzińska v. Poland* (dec.), no. 45223/99, 7 September 1999). In addition, the applicants referred to the Court's judgment in the case of *Rosiński v. Poland* (no. 17373/02, 17 July 2007), concerning similar facts, where the Court had accepted that it had temporal jurisdiction.

36. 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-...).

37. The Court observes that the applicants' 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 their ownership and arising from various legal measures, adopted both before and after that date (see paragraphs 20-31 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*

38. The Government submitted that in 1993 the applicants had acquired agricultural land, with no construction rights. Hence, they could not have had any legitimate expectation that in the future they would be allowed to use it for construction purposes. They had never been deprived of such a right. Under Polish law the authorities could not be required to permit agricultural land to be designated for construction purposes. In the present case the applicants could have had no more than a mere hope that they would acquire such a right, but it could not be said that they had ever had a legitimate expectation to be able to build on their land.

39. The applicants disagreed and emphasised that as a result of the restrictions originating in the land development plan, seen as a whole, an effective exercise of their ownership, guaranteed by the applicable provisions of civil law, had been seriously limited.

40. The Court notes the Government's argument that under applicable laws the applicants had no right to build on the land concerned. However, it observes that the essence of the applicants' complaint relates to a set of *de facto* restrictions on the exercise of their ownership, with particular emphasis on the lack of any right to compensation for the future expropriation of their land (see paragraph 59 below), rather than on the mere impossibility to implement any construction projects which they might have had. The Court further notes that this state of affairs lasted for over eight years. It therefore rejects the Government's objection.

3. *Exhaustion of domestic remedies*

41. The Government argued that if the applicants had considered that the provisions on which the domestic decisions in their case had been based were incompatible with the Constitution, it would have been open to them to challenge these provisions by lodging a constitutional complaint under Article 79 of the Constitution. They should have lodged such a complaint against a judgment of the administrative court which the applicants should have sought in order to have the local land development plan amended.

42. The Government further argued that the applicants should have lodged a civil action with a court, claiming damages against either the State Treasury or the municipality for the interference with their right to the peaceful enjoyment of their possessions. Had a civil court found against

them, they could subsequently have lodged a constitutional complaint with the Constitutional Court.

43. The applicants disagreed. They submitted that they had tried to remedy their situation by submitting various requests to the municipality in 1992, 2001 and 2002. In April 2002 they requested to be granted building permission. In reply, the municipality informed them, by way of a letter, that such permission would have been incompatible with the land development plan. However, in the absence of a formal refusal in the form of an administrative decision, the applicants could not lodge a formal appeal and pursue their application before the Supreme Administrative Court and, ultimately, to the Constitutional Court.

44. They further submitted that the provisions of civil law on civil liability of public authorities had not been applicable to their case. The Local Planning Act 1994 had expressly excluded civil liability of public authorities for claims originating from interferences with property rights in connection with future expropriations in the context of implementation of land development plans. They concluded that they had not had at their disposal any compensatory remedies that would have been available and offered reasonable prospects of success not only in theory, but also in practice.

45. The Court recalls that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of 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 further reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was 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 and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

46. 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; *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 of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional.

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

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

48. The Court further 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 paragraph 32 above).

49. The Court observes that the applicants' requests to have their property acquired by the municipality were refused, but only by informal letters (see paragraphs 14 and 15 above). Hence, the authorities did not issue binding administrative decisions against which the applicants could have appealed to the administrative court. It has not been shown or argued that the applicants could oblige them to do so. Therefore the Court is of the view that it has not been shown that in the circumstances of the case the way to the Constitutional Court was open to them.

50. Insofar as the Government argued that the applicants 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 excluded. Hence, this remedy did not offer any prospects of success. It further notes that the Government have not adduced any case-law of the domestic courts which would have demonstrated that such a claim, in the circumstances arising against the background of the 1994 Act and the successive land planning legislation, offered any prospects of success.

51. Having regard to the above, the Court dismisses 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. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

52. The Government first submitted that there had been no interference with the applicants' right to the peaceful enjoyment of their possessions. The plot at issue had been designated for agricultural purposes before the applicants acquired it. They had never had an unconditional right or a legitimate expectation to be able to use their property for housing purposes. Even if there had been no public investment planned for their property, the applicants 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 1993, when the applicants had inherited the land, the planned course of the new roadway had already been known.

53. 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 applicants had bought a property designated for agricultural use and should have been aware that their ownership right had not encompassed the right to build a house there. They had been entitled to use or dispose of their plot only within the limits prescribed by the law, the principles of reasonable social co-operation and the socio-economic purpose of ownership. The applicants' 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. The applicants' ownership had therefore not become precarious.

54. 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 communication and environmental problems of the municipality. As the Court acknowledged on many occasions, such matters corresponded to the general interest of the community and the measures taken in the present case had been dictated by the difficult situation concerning the communications network in the municipality.

55. The Government argued that by adopting in 1994 the provisions of the Local Planning Act, insofar as it conferred on the owners to be expropriated in the future an entitlement to obtain compensation, the legislature had given the local authorities time to adjust land development

plans to the new needs of the municipalities. However, the latter were not 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.

56. The Government argued that the procedure for the adoption of the development plan had sufficiently involved the local community. All stages of the procedure had been public and the inhabitants of the municipality, including the applicants, had been able to comment on the draft plans.

57. The Government were of the opinion that in the present case the individual burden imposed on the applicants had not been excessive. They had not been prevented from either selling or leasing their property. It had remained possible for them to continue using the property for agricultural purposes in the same way in which their parents had apparently been using it prior to the entry into force of the 1994 Act. Therefore the special compensatory entitlements provided for by that Act did not in any event apply to the applicants.

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 Saffi v. Italy* ([GC], no. 22774/93, ECHR 1999-V) as the applicants could fully enjoy their ownership rights. The authorities could not be held responsible for the fact that the value of the land had decreased as a result of the land development plan having been adopted in 1992. In any event, the property situated in the vicinity of an airport was not attractive to prospective buyers. The applicants had not shown that they had sought to lease the property to third parties or that they envisaged any other economically viable manner in which the property could be used until the expropriation.

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

59. The applicants were of the view that the circumstances of the case amounted to a breach of their right to the peaceful enjoyment of their possessions. Their land had been designated for expropriation at an undetermined future date and this state of affairs had lasted for a long period of time, despite the fact that no funds had been available throughout this period to finance the planned investment. The public authorities, while they were obviously entitled to take appropriate measures to implement their spatial planning policies, should have also eliminated uncertainty concerning the future fate of the properties affected by such policies. The applicants stressed that uncertainty – whether originating from legislative or administrative sources or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time and in an appropriate and consistent

manner (see *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1078, § 51; *Beyeler v. Italy* [GC], no. 33202/96, §§ 110 *in fine*, 114 and 120 *in fine*, ECHR 2000-I; *Sovtransavto Holding v. Ukraine*, no. 48553/99, §§ 97-98, ECHR 2002-VII).

60. As a result of the authorities' failure to address their situation correctly, they could not freely use their property for purposes other than agricultural and could not seek requalification of their land. Moreover, they had not been entitled to any compensation for this interference with their rights. The applicants referred to the Court's finding of violations of Article 1 of Protocol No. 1 made in the aforementioned case of *Rosiński v. Poland*.

2. The Court's assessment

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

61. The Court must first examine whether there was interference with the peaceful enjoyment of the applicants' possessions. The Court observes that the applicants' situation was affected by the local land development plan adopted by the municipality in 1992 because it provided for the future expropriation of their land. The Court emphasises that the applicants were 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.

62. In that connection, the Court further observes 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 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 applicants' situation as the plan for the municipality had been adopted in 1992.

63. The Court notes the Government's argument that these compensation entitlements were available only to persons who could show that the future expropriation affected the current use to which their property could be put. In the Government's view, the applicants could not, in any event, avail themselves of such entitlements, because the future expropriation did not affect the agricultural use of the property concerned. However, the Court observes that, even assuming that this argument is correct, it is tantamount to acknowledging that the applicants did not have

any entitlements to compensation for the future expropriation, either before the Local Planning Act 1994 was adopted, or afterwards.

64. The Court further notes that the municipality repeatedly informed the applicants that it was not obliged to acquire their property which was to be expropriated in the future.

65. Consequently, the Court is of the view that the measures complained of, taken as a whole, in law left intact the applicants' right to continue to use and dispose of their possessions. Nevertheless, in practice, they significantly reduced the practical and effective exercise of that right. The Court considers that the prospect of the future expropriation could negatively affect the market value of the property. It also notes that it is reasonable to accept that a request to have the land reclassified so that it could be used for construction purposes was, in these circumstances, bound to fail. Likewise, the applicants could not reasonably expect that any development projects on their property would be accepted by the municipality.

Their property rights thus became precarious (*mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, cited above, §§ 58-60; *Skibiński v. Poland*, no. 52589/99, 14 November 2006, § 79; *Skrzyński v. Poland*, no. 38672/02, 6 September 2007, § 74, *Rosiński v. Poland*, cited above, § 72). The Court therefore concludes that there was indeed an interference with the peaceful enjoyment of the applicants' 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"*

66. The Court notes that it is not in dispute between the parties that the interference with the applicants' property rights was based on the Local Planning Act 1994 and subsequent legislation. 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"*

67. 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).

68. 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

69. 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).

70. 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).

71. In that connection, the Court first observes that in 1992 the municipality adopted the land development plan. Under this plan, the applicants' property was designated for future expropriation with a view to the construction of a road. However, that plan did not have any timeframe for its implementation. As a result, the applicants were threatened with expropriation at an undetermined point in time. In addition, they did not have any effective entitlement to compensation in the meantime. The Court emphasises that this situation lasted for a long period: from 1992 when the plan was adopted until 31 December 2003, when this plan eventually expired under the provisions of the Local Planning Act 2003.

72. 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 owners to be expropriated in the future could not claim any compensation from the municipality.

73. 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 for them 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.

74. The Court notes that compensation claims of owners who were affected by future expropriations can be pursued before civil courts. 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. It has not been argued or shown that the 2003 Act, or any other legislation, provides for any retroactive right to compensation for the prejudice suffered by the applicants before its entry into force, as a result of the restrictions originating in earlier development plans. Consequently, even assuming that the provisions on compensation contained in this Act were applicable to the applicants' situation (an assumption which the Government, in any event, refute; see paragraph 63 above), the entry into force of the 2003 Act did not alter their situation.

75. 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. 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).

76. Finally, the Court notes that the applicants' request for an initial approval of a development project was refused in 2001 (see paragraphs 14-15 above). In the refusal the authorities essentially referred to the provisions of the development plan. However, when the applicants requested that approval, there were no sound grounds on which to believe that the land development plan adopted in 1992 would be implemented promptly. As a result, the *de facto* blocking of any construction on the

property did not serve any immediate or medium-term purpose in the interests of the community.

77. In the Court's view, given that it was uncertain when the land development plan adopted in 1992 would be implemented, and in the absence of any reasonable timeframe, this state of affairs, seen as a whole, failed to strike the requisite fair balance between the competing general and individual interests. Consequently, the applicants were required to bear an excessive individual burden (see *Skibiński v. Poland*, cited above, § 97; *Skrzyński v. Poland*, cited above, § 91, *Rosiński v. Poland*, cited above, § 88). There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicants claimed 100,000 (PLN) in respect of pecuniary and non-pecuniary damage which they had sustained as a result of the violation of their rights.

80. The Government argued that the applicants' claim was exorbitant.

81. As regards pecuniary damage, the Court observes that the applicants have not quantified their claims. Accordingly, the Court considers that there is no call to award the applicants any sum on that account. At the same time, the Court accepts that the applicants suffered some distress as a result of the violations found and therefore awards to the applicants jointly EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

82. The applicants did not submit any claims in this respect. The Court, accordingly, makes no award under this head.

C. Default interest

83. 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, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President