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

FOURTH SECTION

DECISION

Application no. 50003/99
by Andrzej WOLKENBERG and OTHERS
against Poland

The European Court of Human Rights (Fourth Section), sitting on 4 December 2007 as a Chamber composed of:

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges,*
and Mrs F. ARACI, *Deputy Section Registrar*,

Having regard to the above application lodged on 5 March 1999,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the decision to examine the case simultaneously with the case of *Witkowska-Toboła v. Poland* (no. 11208/02), pursuant to Rule 42 § 2 of the Rules of Court,

Having regard to the decision to apply the pilot-judgment procedure and to adjourn its consideration of applications deriving from the same systemic problem identified in the case of *Broniowski v. Poland* (no. 31443/96),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the All-Polish Association of Borderland Creditors of the State Treasury,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Andrzej Wolkenberg ("the first applicant"), Iwona Fiałkowska ("the second applicant"), Ewa Kitlińska ("the third applicant") and Barbara Sobocińska ("the fourth applicant") are Polish nationals. The first applicant was born in 1931. The three remaining applicants are the daughters of the late Mr Włodzimierz Szczerbicki ("W.S."), who lodged the present application together with the first applicant. They have not supplied their dates of birth. They pursued the application in the stead of their late father. The first applicant lives in Warsaw. The remaining applicants live in Grudziądz. They were represented before the Court by Mr R. Nowosielski, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background

3. Before the Second World War the applicants' family owned real property, including a house, in Brest-on-the-Bug (*Brześć nad Bugiem*) in the eastern provinces of pre-war Poland, the so-called "Borderlands" (*Kresy*). Those regions included large areas of present-day Belarus and Ukraine and territories around Vilnius in what is now Lithuania. In September 1939 the regions were invaded by the USSR.

4. Following the end of the war, when the Polish eastern border was redrawn westwards and fixed along the Bug River, the Borderlands acquired the name of the "territories beyond the Bug River" (*ziemie zabużańskie*).

5. On an unspecified date following 9 September 1944 the applicants' family, like some 1,240,000 other Polish citizens who were at various dates from 1944 to 1953 subject to repatriation from the territories beyond the Bug River, were repatriated from Brest-on-the-Bug (currently Brest-Litovsk in Belarus) to Poland under the provisions of the so-called "Republican Agreements" (*umowy republikańskie*).

6. A more detailed account of the historical background and the relevant provisions of the Republican Agreements and other related treaties and laws can be found in the Court's judgment in the pilot case of *Broniowski v. Poland* (see, in particular, *Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-V, §§ 10-12 and 39-45).

2. The applicants' attempts to recover compensation

7. On 25 May 1998 the first applicant and W.S. obtained a certificate (no. 28/98) issued by the Warsaw District Office (*Urząd Rejonowy*) confirming that their family had abandoned real property in Brest-on-Bug, the value of which amounted to 808,633 Polish zlotys (PLN) as of March 1998.

8. The certificate was issued on the basis of the Cabinet's Ordinance of 13 January 1998 on the procedure for offsetting the value of real property abandoned abroad against the price of a title to real property or against the fees for perpetual use, and on the methods of assessing the value of such property (as amended) (*Rozporządzenie Rady Ministrów w sprawie sposobu zaliczania wartości nieruchomości pozostawionych za granicą na pokrycie ceny sprzedaży nieruchomości lub opłat za użytkowanie wieczyste oraz sposobu ustalania wartości tych nieruchomości* – "the 1998 Ordinance").

9. At the material time, such a certificate was a necessary document enabling a "Bug River claimant", i.e. a person entitled to compensation for the property abandoned beyond the Bug River, to enforce their right to compensation through participation in auctions for the sale of State property and, on condition of his bid being successful, to offset the value of the property against the price of the one purchased from the State (see also *Broniowski* cited above, §§ 48-52 and "B. Relevant domestic law and practice" below).

10. Shortly after obtaining the certificate the first applicant closely followed all advertisements concerning auctions for the sale of State property but he never came across any auction that was available to the Bug River claimants.

11. Later, in 2001-2003, the first applicant made several attempts to enforce his and W.S's claim for compensation at auctions for the sale of State real property. In particular, he made several attempts to participate in competitive bids for the sale of State agricultural property, organised by the State Treasury's Agricultural Property Agency (*Agencja Własności Rolnej Skarbu Państwa*). However, all his endeavours proved unsuccessful since not only was the general, acute shortage of State-owned land designated for the realisation of the Bug River claims officially acknowledged but also the possibility of obtaining State agricultural property by the Bug River claimants was suspended by virtue of the law adopted already in 1993.

These facts and, in particular, the fact that at the material time it was the authorities' common practice to desist from organising auctions for Bug River claimants or to openly deny them the opportunity to enforce their entitlement through the statutory bidding procedure was established by the Court in the *Broniowski* judgment (see *Broniowski*, cited above, §§ 48-61, 69-87 and 168-176).

12. On 24 August 2004 W.S. died. On 25 October 2004 the Grudziądz District Court (*Sąd Rejonowy*) gave a decision declaring that the second,

third and fourth applicants had acquired their late father's estate and that they were entitled to receive one-third each.

3. The Polish Government's offer to secure the so-called "accelerated payment"

13. In November 2005, following the friendly settlement concluded in the *Broniowski* case (see, *Broniowski v. Poland (friendly settlement*, [GC], no.31443/06, ECHR 2005-IX) and the entry into force of the Law of 8 July 2005 on the realisation of the right to compensation for property left beyond the present borders of the Polish State (*Ustawa o realizacji prawa do rekompensaty z tytułu pozostawienia nieruchomości poza obecnymi granicami państwa polskiego*) ("the July 2005 Act"), a delegation of the Government visited the Court's Registry and inspected the case files of all "Bug River" cases. The purpose of the Government's mission was to select a group of applicants in respect of whom, on account of their age, health or difficult personal situation, the Government were prepared to secure the accelerated implementation of their right to compensation as defined by the July 2005 Act. Their initiative was aimed at the implementation of the general measures indicated in the *Broniowski* merits judgment and of the commitments undertaken in the friendly settlement concluded in the pilot case (see *Broniowski*, cited above, § 194 and the third and fourth operative provisions of the judgment; and also *Broniowski (friendly settlement)*, cited above, § 31).

14. By a letter of 16 February 2006 the Government supplied the Court with the names of 50 applicants chosen by them for inclusion in the so-called "accelerated payment procedure" on the basis of the above-mentioned criteria. The applicants were included in the list of such persons.

15. On 14 June 2006 the Government submitted a document setting out their "plan of action" for payment of compensation and explaining to the applicants concerned the requirements and formalities that had to be satisfied by them in order to receive payment, pursuant to the relevant provisions of the July 2005 Act. The Act introduced a ceiling of 20% of the original property's current value on compensation recoverable by Bug River claimants.

16. By a letter of 10 August 2006 the first applicant, acting also on behalf of the second, third and fourth applicants, accepted the Government's offer. However, he stated that they still wished to pursue their application before the Court and to assert their right to the remaining 80% of the current value of the original property under Article 1 of Protocol No.1 to the Convention.

17. On 22 December 2006 the Government, acting through the National Economy Bank (*Bank Gospodarstwa Krajowego*), credited the applicants' bank accounts with amounts corresponding to 20% of the current value of their family's Bug River property (*mienie zabużańskie*), indexed for the date

of payment. The first applicant received PLN 110,944.45 and the remaining applicants received PLN 36, 981.48 each.

4. Implementation of the July 2005 Act

18. From 2004 to 2006 Bug River claimants who decided to participate in a competitive bidding procedure won 1,635 bids organised by the Agricultural Property Agency (*Agencja Nieruchomości Rolnych*). In consequence, 1,581 contracts for the sale of State property were concluded. Over that period the claimants concerned acquired in total some 4,466 hectares of land, whose value was estimated at PLN 63,662,582 (approximately EUR 17,500,000), against which PLN 60,654,217 (approximately EUR 16,600,000) were offset as compensation.

19. In December 2006 the Ministry for the State Treasury (*Ministerstwo Skarbu Państwa*) officially acknowledged that, following the entry into force of the July 2005 Act, the authorities had so far issued some 4,000 decisions confirming entitlements to compensation for the Bug River property, in accordance with the provisions of that Act.

20. On 29 December 2006 the Ministry for the State Treasury published on its website a statement relating to the implementation of the compensation scheme under the July 2005 Act. It read, in so far as relevant, as follows:

> “On 18 December 2006 the National Economy Bank, acting upon the Minister for the State Treasury’s instruction, started payment of compensation for properties left beyond the present borders of the Republic of Poland, in amounts corresponding to 20% value of the abandoned properties.
>
> In the first place payments were effected in respect of 75 persons in a particularly difficult personal and financial situation, selected from among those who lodged complaints with the European Court of Human Rights under the European Convention of Human Rights and who had their entitlements confirmed by the domestic authorities. Those actions constitute the implementation of the Polish Government’s undertakings ensuing from the friendly settlement concluded in the case of *Broniowski v. Poland* of 6 September 2005.
>
> Accordingly, the first stage of the implementation of the July 2005 Act by the Ministry for the State Treasury has been terminated. It consisted in the preparation of the necessary elements of the system for payment of compensation, namely:
>
> - executive ordinances for the implementation of that Act;
>
> - the Compensation Fund for financing compensation;
>
> - an agreement on handling payment of compensation with the National Economy Bank;
>
> – a software for operating the central register of claimants.
>
> The next stage to be carried out in 2007 is to install in Governors’ Offices a compatible software for operating regional registers of claimants, in order to ensure a transmission of data from regional registers to the central register, which is a condition for an effective realisation of the remaining already confirmed Bug River

claims, which at present stand at some 4,000. Payment of compensation will progress depending on the acquisition of financial means from the sale of the State agricultural property by the Agricultural Property Agency.

...”

21. According to the Government’s records as they stood on 30 May 2007, 11,012 Bug River claimants had the right to compensation and there were some 50,000 applications for confirmation of entitlement to compensation pending before the regional authorities throughout Poland.

22. As of 16 July 2007 the Compensation Fund had at its disposal PLN 461,128,200 (EUR 126,650,000) designated for payment of compensation.

23. In August 2007 the Ministry for the State Treasury launched a special website disseminating information on the implementation of the July 2005 Act. According to communiqués nos. 1/2007 and 2/2007 published on the website on 14 August 2007 and 14 September 2007 respectively, the Ministry for the State Treasury had so far transmitted to the National Economy bank documents enabling payment of compensation to 1,730 persons. As of the end of August 2007, the bank had secured payment to 1,443 persons, which in total amounted to some PLN 48,164,185 (approximately EUR 13,234,000). In July and August 2007 the Ministry transmitted to the bank the documents of 265 and 226 claimants respectively.

B. Relevant domestic law and practice

24. A detailed description of the relevant domestic law and practice concerning the Bug River property, as applicable before the adoption of the July 2005 Act by the Polish Parliament, is set out in the judgment delivered by the Court in the pilot case of *Broniowski v. Poland* (see *Broniowski*, cited above, §§ 39-120).

25. The July 2005 Act entered into force on 7 October 2005. Pursuant to its section 13, the right to compensation (*prawo do rekompensaty*) for the Bug River property can be realised in two forms to be chosen by the claimant: either offsetting the indexed value of the original property against the sale price of State property acquired by means of a competitive bidding procedure or receiving a pecuniary benefit (*świadczenie pieniężne*), i.e. a cash payment secured by the Compensation Fund (*Fundusz Rekompensacyjny*). The amount of compensation available to Bug River claimants is subject to a statutory ceiling of 20% of the current value of the original property.

A more detailed rendition of the relevant provisions of the July 2005 Act, related domestic judicial decisions and of other developments at domestic level that preceded the introduction of that law is included in the *Broniowski*

(friendly settlement) judgment (see *Broniowski (friendly settlement)* cited above, §§ 14-30).

COMPLAINT

26. The applicants submitted a two-fold complaint under Article 1 of Protocol No. 1 to the Convention.

First, they complained about the State's continued failure to secure the implementation of their right to compensation for the Bug River property in the period before the entry into force of the July 2005 Act.

Secondly, they alleged a violation of their right of property on account of the fact that the July 2005 Act, in contrast to the previous Bug River legislation which had at all times entitled the Bug River claimants to full compensation for their property, severely restricted their entitlement to a mere 20% of the original property's current value, thus depriving them of a significant – 80% – portion of their lawfully accrued right.

THE LAW

A. Scope of the case before the Court

1. Court's temporal jurisdiction

27. The Court notes that the applicants – like the applicant in the pilot-case of *Broniowski v. Poland* – do not complain about a single specific measure or decision taken before, or even after 10 October 1994, the date of ratification of Protocol No. 1 to the Convention by Poland. They allege the State's continued failure to secure the implementation of their right to compensation for the Bug River property in the period before the entry into force of the July 2005 Act and the subsequent restriction of their entitlement to 20% of the original property's current value by virtue of the Act (see paragraph 26 above).

Accordingly, the Court's jurisdiction *ratione temporis* covers the period following the date of ratification, the facts that occurred before that date being considered only inasmuch as they have created a situation extending beyond that date or are relevant for the understanding of the situation obtaining afterwards (see *Broniowski (merits,* §§ 122-123).

2. Questions put to the parties by the Court

28. When giving notice of the application to the respondent Government under Rule 54 § 2 (b) of the Rules of Court, the Court referred, in particular,

to two points. First, it made reference to the fact that the applicants had received payment of compensation for the Bug River property as determined by the July 2005 Act, namely in an amount corresponding to 20% of the current value of the original property. It referred, secondly, to the fact that, following the entry into force of the Act, it was open to any person with a Bug River claim to make use of the compensation scheme as defined therein, i.e. either to bid for State property at auctions or, like the applicants in the present case, to receive compensation in cash.

29. In this connection, the Court invited the parties to state whether, having regard to the above facts, the applicants' and other Bug River claimants' Convention claim under Article 1 of Protocol No. 1 had been satisfied at domestic level and whether, in consequence, "the matter ha[d] been resolved" within the meaning of Article 37 § 1 (b) of the Convention.

30. Consequently, the Court's examination of the case is limited at this stage to the issue of whether or not it is justified to apply Article 37 § 1 of the Convention.

3. Individual and general dimension of the case

31. The present case, like 273 similar cases currently on the Court's docket originated in the same structural shortcoming that was found by the Court in the *Broniowski* case to be at the root of its finding of the violation of Article 1 of Protocol No. 1 and defined as "a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants" which " ha[d] affected and remain[ed] capable of affecting a large number of persons". The Court also noted that "the deficiencies in national law and practice identified in the applicant's individual case may give rise to numerous subsequent well-founded applications" (see *Broniowski (merits)*, cited above, § 189 and the third operative provision of the judgment).

In that connection, it directed that "the respondent State must, through appropriate legal measures and administrative practice, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1" (ibid. § 194 and the fourth operative provision of the judgment).

32. In consequence, the Court, in the judgment given in the individual applicant's case, not only recognised the Convention violation in respect of all actual and potential applicants who found themselves in a similar situation but also made clear that general measures at national level were called for in execution of the judgment and that those measures should take into account the many people affected and remedy the systemic defect underlying the Court's finding of a violation.

33. This kind of adjudicative approach by the Court to systemic or structural violations has been described as a "pilot-judgment procedure" (see *Broniowski (friendly settlement)*, cited above, § 34).

B. Application of the pilot-judgment procedure

34. The object of the Court's designating a case for a "pilot-judgment procedure" is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order. One of the relevant factors considered by the Court in devising and applying that procedure has been the growing threat to the Convention system resulting from large numbers of repetitive cases that derive from, among other things, the same structural or systemic problem.

The pilot-judgment procedure is primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving such problems at national level, thereby securing to the persons concerned their Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress but also, at the same time, making it unnecessary for the Court to adjudicate on large numbers of applications similar in substance which it would otherwise have to take to judgment (see *Broniowski (friendly settlement),* cited above, § 35 and *Hutten-Czapska v. Poland*, [GC], no. 35014/97, ECHR 2006-.., §§ 231-234).

35. It is inherent in the pilot-judgment procedure that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicant and requires it to examine that case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons.

The same logic applies to the Court's interpretation of the notion of "respect for human rights as defined in the Convention and the Protocols thereto" in cases dealt with in the context of this procedure where the Court, in determining whether it can strike the application out of its list pursuant to Article 37 § 1 (b) of the Convention on the ground that the matter has been resolved, will have regard not only to the applicant's individual situation but also to measures aimed at resolving the general underlying defect in the domestic legal order identified in the principal judgment as the source of the violation found (see*, mutatis mutandis*, *Broniowski (friendly settlement)*, cited above, §§ 36-37 and *Hutten-Czapska*, cited above, § 238).

36. For that reason, the Court's findings in the present case as to whether the enactment of the July 2005 Act and its operation in practice "secure[d] the implementation of the property right in question in respect of the remaining Bug River claimants..., in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1" and whether,

in consequence, the “matter has been resolved” for the purposes of Article 37 §1 (b) will be valid in the context of all subsequent similar cases.

C. Application of Article 37 of the Convention

37. Article 37 reads, in so far as relevant, as follows:

> “1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (b) the matter has been resolved; ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.”

1. The parties’ submissions

(a) The Government

38. The Government observed that the applicants had accepted their offer of accelerated payment of compensation and had received the relevant sum as determined by the July 2005 Act on 18 December 2006. Despite that fact, they still wished to pursue their application under Article 1 of Protocol No. 1 to the Convention, maintaining that they should have been granted full compensation. However, according to the Court’s case-law, that Article did not guarantee the right to full compensation in all circumstances.

In that connection, the Government cited a number of the Court’s judgments (among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52; *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98; and *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102), stressing that the legitimate objectives of “public interest”, such as those pursued by the State in adopting measures of economic reform or measures designed to achieve greater social justice might in general call for less than reimbursement of the full market value. The Court had also stated that the standard of compensation may vary depending on the nature of the property and the circumstances of the taking. Thus, in the *Broniowski* merits judgment, it accepted that the radical reform of the country’s political and economic system, as well as the state of the country’s finances, might justify stringent limitations on compensation for the Bug River claimants. It explicitly confirmed that in situations involving – like in Bug River cases – “a wide-reaching controversial legislative scheme with significant economic impact for the country as a whole the national authorities must have considerable discretion in selecting the measures to secure the respect for

property rights" and that their "choice of measures might necessarily involve decisions restricting compensation for the taking or restitution of property to a level below the market value".

39. In consequence, even if the restriction on compensation introduced by the July 2005 Act might be seen as an interference with the applicants' and other Bug River claimants' property rights, it was permissible under Article 1 of Protocol No. 1 as it served a legitimate aim in the public interest and there was a reasonable degree of proportionality between the means employed and the aim sought to be realised by the State.

It had to be reiterated, the Government added, that the Bug River cases involved compensation for individual losses resulting from the war and territorial changes in Europe and not a loss caused by a taking of property for public purposes by Poland. The Polish State had not benefited from the evacuation; on the contrary, it had had to bear the burden of providing repatriated persons with housing, financial and other assistance. Most of them – 90% – had received compensatory property under previous laws.

Their claims should also be looked at from a more general perspective. Not only the applicants but also many other Polish citizens had suffered considerable material losses caused by the war or nationalisation and expropriation under the totalitarian regime. In the circumstances, the State, in implementing the impugned legislation had had to take into account the interests of other persons and of the society as a whole

40. The statutory ceiling of 20% corresponded to the financial situation of the State; any increase could only be possible at the expense of other members of the society. It was a fair compromise between the expectations of the persons entitled and the State's budgetary constraints. The adoption of the July 2005 Act had been preceded by a long debate in Parliament which resulted in, among other things, the level of compensation being raised from 15% to 20%. The deputies had been aware of the fact that the Act would give rise to controversy and that the claimants would consider the reduction of compensation unacceptable, whereas other persons in need would complain that, given the scarcity of public money earmarked for restitution claims and other social issues, the Bug River claimants had unjustifiably received preferential treatment.

41. In the Government's view, the present Bug River compensation scheme had removed obstacles to the effective exercise of the claimants' rights and had created clearly more favourable conditions for the realisation of their claims. In particular, it created the possibility of obtaining payment of compensation in cash as an alternative to the more cumbersome bidding procedure. It also introduced an indexation mechanism for the revaluation of claims on the date of payment based on the retail price index. This solution, in contrast to, for instance, the real property price index, was more advantageous for claimants because it guaranteed that the value of the claim would increase in step with inflation and protected them against the risk of a

sudden fall in prices on the real property market – a likely scenario given the speculative nature of such prices in Poland.

42. Moreover, the Government emphasised that the July 2005 Act had been adopted in compliance with the Court's ruling in the *Broniowski* case. Mr Broniowski himself accepted, and received, under the terms of the friendly settlement a lump sum based on 20% of the agreed notional value of the original property. The Court, in its friendly-settlement judgment, had been satisfied that this solution was in conformity with respect for human rights, as defined in Article 37 § 1 of the Convention and had therefore accepted the statutory ceiling on compensation introduced by the Act. The Committee of Ministers, in its interim resolution of 5 July 2005 (ResDH92005)58) concerning the *Broniowski* judgment, had not challenged the statutory ceiling.

The Government further pointed out that in the friendly settlement they had recognised their obligation under 46 of the Convention to make available to the remaining Bug River claimants some form of redress for any material or non-material damage caused by the defective operation of the previous compensation scheme. They had specifically referred to the availability of civil actions under Articles 417 or 417[1] of the Civil Code to recover compensation for material damage and had undertaken not to contest actions for compensation for non-material damage based on Article 448 read in conjunction with Article 23 of the Civil Code. However, the applicants had not so far availed themselves of these remedies.

43. In the Government's opinion, if a Contracting State adopted new legislation aimed at implementing general measures indicated by the Court in a pilot judgment and the legislation was in conformity with the Convention and the legal framework as indicated by the Court in its ruling and by the Committee of Ministers in the execution process, all similar applications should be finally resolved by the domestic remedy, not by means of an international procedure. Otherwise, the purpose of the pilot judgment – which is to identify structural or systemic problems and to assist the States in resolving such problems at national level by offering redress to applicants – would be seriously undermined. Indeed, it would be against the purpose of the pilot-judgment procedure if an applicant with a "follow-up" case could seek further relief under the Convention in respect of the very same violation which had been identified by the Court in the pilot case, admitted by the respondent State and subsequently remedied by the implementation of general measures compatible with Convention standards. For that reason, the July 2005 Act, a measure which had not been contested by the Court and the Committee of Ministers, should be considered a final resolution of the remaining, similar cases. Consequently, applicants with cases pending before the Court and all future potential applicants should no longer be regarded as victims of a violation of the Convention and should be

prevented from pursuing before the Court any further claims based on the same Convention right.

44. In view of the foregoing and having regard to the fact that the matter involved in the case had been resolved since the applicants' claim had been satisfied by the State in a manner compatible with the Convention, the Government invited the Court to strike the application out of its list of cases.

(b) The applicants

45. The applicants disagreed. In their view, payment of compensation amounting to a mere 20% of the property's value could not be considered to be either the fulfilment of the State's obligation under Article 1 of Protocol No.1 or sufficient just satisfaction for the purposes of Article 41 of the Convention. They recalled that the State's obligation to provide Bug River claimants with full compensation originated in the Republican Agreements. Regardless of how the legal consequences of their provisions were to be interpreted at present, they had been the source of the "right to credit" and all the laws enacted since 1946 had continually affirmed the claimants' right to equivalent compensation.

46. Even though for 60 years the State had continually recognised that obligation, reiterating it in all relevant laws as applicable during that period, it had decided to restrict the right to credit to 20% of the original property's current value. This constituted a disproportionate interference with the applicants' and other Bug River claimants' right of property. This was tantamount to expropriation and could not be justified by any public-interest considerations. The State had also violated the principle of the protection of lawfully accrued rights because it had completely disregarded the fact that under the previous laws the applicants had already obtained valid administrative decisions confirming the State's obligation to provide them with compensatory property of equal value to the original property. On this basis, the applicants maintained that those claimants who, as they, had their right to full compensation confirmed by such decisions, should have been excluded from the application of the 20% statutory ceiling to their claims.

Furthermore, the July 2005 Act clearly discriminated against persons who, as the applicants, had not been able to enforce their entitlement under the previous Bug River legislation not because of their negligence but because of its defective operation. In that context, the applicants stressed that they had made determined and systematic efforts to enter competitive bids for the sale of State property, but to no avail.

47. The applicants did not accept the Government's argument that the July 2005 Act had been enacted with a view to implementing general measures indicated by the Court in the *Broniowski* pilot judgment and to resolving the systemic problem underlying the violation of property rights of the remaining Bug River claimants. In their submission, its provisions

were incompatible with that judgment and with the principle of the protection of property rights.

It was true that, as stated in many of the Court's judgments, there were circumstances, such as the state of the country's finances, that might justify the departure from the principle of full compensation. However, such partial compensation had to be reasonably related to the property's value and honestly justified. The statutory ceiling of 20% did not comply with these requirements since it reduced the applicants' property right to an insignificant proportion of its actual value.

48. Nor did the applicants accept the Government's explanation that the restriction on compensation available to the Bug River claimants had been dictated by budgetary constraints. How, they asked, could the Government explain the fact that 90% of claimants had been satisfied in the past, when the State had been in a much worse economic situation. Moreover, the Government had not supplied any evidence or even calculations showing why the State had been able to secure only 20% of compensation, and not 50% or 80%. This meant that the statutory ceiling had been fixed arbitrarily, without having regard to the real financial situation of the State.

49. As regards other aspects of the impugned legislation, the applicants criticised the indexation method used in respect of claims. They considered that this method was particularly disadvantageous for claimants and that claims should have been revaluated by reference to the real property index. They also pointed out that that no time-limits had been set for the authorities to terminate the procedure for the confirmation of entitlement and for cash payment, which generally resulted in delay in the realisation of claims.

50. Lastly, the applicants referred to civil law remedies whereby claimants could, as the Government maintained, have recovered compensation for material and non-material damage resulting from the defective operation of the previous Bug River legislation. They maintained that the measures allegedly securing to them redress equivalent to just satisfaction under Article 41 of the Convention, listed in the *Broniowski* friendly-settlement judgment had not been effective. In particular, so far there had not been a single final judgment of a Polish court awarding a Bug River claimant compensation for the full value of the original property or for non-material damage suffered on account of the State's failure to implement the proper compensatory mechanism. Most such claims had been dismissed by the civil courts. In their view, this was due to the particularly high standard of proof set by the Supreme Court's case-law.

51. In conclusion, the applicants submitted that the compensation scheme introduced by the July 2005 Act was defective and could not therefore be regarded as a measure whereby "the matter ha[d] been resolved" within the meaning of Article 37 § 1 (b). In consequence, the "respect for human rights" as defined in Article 37 § 1 of the Convention

required the examination of their application, and other similar applications, to be continued.

(c) The third party

52. The All-Polish Association of Borderland Creditors of the State Treasury shared the applicants' assessment. It agreed that the 2005 Bug River legislation had aggravated the situation of Bug River claimants and had not resolved the underlying structural problem of the defective operation of the compensation scheme found to have been in breach of Article 1 of Protocol No. 1 to the Convention in the *Broniowski* judgment.

While it was true that the July 2005 Act had in theory been designed to remedy that situation and put right the violation of their property rights, it had in practice worsened their position and had amounted to a subsequent interference with their property rights, which could not be justified by any conceivable "public interest".

53. The third party criticised, in particular, the following elements of the 2005 legislation. Firstly, it questioned, as the applicants had done, the justification for the 20% ceiling on compensation, adding that it discriminated against persons who had not to date been able to satisfy their claims. Secondly, it strongly objected to the indexation method used by the Government. Thirdly, it challenged the general effectiveness of the procedure for granting compensation.

54. As regards the restriction on compensation, the third party recalled, as the applicants had done, the principle of "equivalent compensation", which had originated in the Republican Agreements and had been incorporated into all laws enacted as from 1946, laws that had continually guaranteed Bug River claimants full compensation for the abandoned property. That principle had been deleted from the legal order following the enactment of the July 2005 Act, despite the fact that administrative decisions confirming the State's obligation to provide the entitled persons with compensation equal to the value of the property had been still in force. What was even more hurtful for the claimants, in most cases elderly and poor people, was the fact that the taking away of the substantial part – 80% – of the claim from them had occurred after many years during which the authorities had deceived and humiliated them, had completely ignored their rights, had obstructed their attempts to bid at auctions for the sale of State property and had effectively blocked the practical implementation of their claims.

55. It was not true, the association maintained, that the 20% ceiling had been accepted by the Court in the *Broniowski* friendly-settlement judgment. This settlement could not have any legal effect on the rights of other persons. If Mr Broniowski had preferred to settle his case on terms which had been slightly more advantageous than those under the 2005 Act, this had been exclusively his choice and his individual decision. Neither his

decision nor the Court's acceptance of the settlement could adversely affect the position of other claimants since they had not been included in the procedure.

56. The Association did not find convincing the Government's argument that the budgetary constraints and the need to secure means for the realisation of restitution claims of other persons who had lost their property during the war and during the totalitarian regime had necessarily required the State to limit the compensation available. Above all, the Government had never before kept any centralised register of claims or had made a proper valuation of the claims. In that regard, it referred to the Constitutional Court's judgment of 15 December 2004 (see *Broniowski (friendly settlement)*, cited above, §§ 14-17), in which that court had held that the State had "never made a comprehensive and reliable evaluation of the feasibility of the realistic, complete and possibly final realisation of the claims deriving from the "right to credit".

57. Nor was the third party convinced that, as the Government stated, 90% of persons who had the "right to credit" had been satisfied. The Government had not revealed the source of that information. In any event, there was no reason why the rights of the remaining 10% of claimants should be disregarded and why they should receive only an insignificant proportion of their claim. This amounted to discriminatory treatment in comparison with those who had realised their claims in their entirety, especially as the impossibility of having their entitlement satisfied had been caused by the State's failure to set up the proper compensatory mechanism.

58. In respect of the indexation method adopted by the State, the third party pointed out that it was unfair and had adversely affected the value of the claims. The authorities applied the retail price index, which was inappropriate given that the purpose of the procedure was to compensate individuals for the loss of real property. In its opinion, the relevant index should be linked to real property prices since otherwise the amount of compensation already reduced to 20% would decrease even further, leaving the claimants with no hope whatsoever of acquiring any property because of rapidly rising prices. For instance, the retail price index actually applied in the applicants' case had amounted to 7.5%, whereas the real property index had grown far more rapidly, increasing by 30% to 40% in 2006 alone.

59. Lastly, the Association maintained that the procedure under the July 2005 Act had in general not been effective.

It was true that the Government had secured accelerated payment to 50 selected persons relatively speedily. However, the remaining claimants were not in a comparable situation because they had not been given such privileged treatment. This was shown by the figures and statistics provided by the Government. There were still 50,000 claimants awaiting formal confirmation of their entitlements. Two years following the Act's entry into force 4,000 persons had their entitlement confirmed but only some 1,000 of

them had been paid compensation, which amounted to a mere 2% of the total number of claimants. No time-limits had been set for the authorities to terminate the procedure and many claimants, mostly elderly ones, had not been informed by the authorities when and how their claims would be satisfied.

In sum, considering all the legal and technical defects of the July 2005 Act, it could not be regarded as an adequate remedy for addressing the systemic problem identified in the *Broniowski* case. The examination of the case, as well as of other similar cases, was therefore necessary and should be continued.

2. *The Court's assessment*

(a) Principles for compensation deriving from the Court's case-law

60. The Court has held on many occasions that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only exceptionally. Article 1 of Protocol No. 1 does not, however, guarantee a right to full compensation in all circumstances – less than full compensation does not make the taking of a person's property *eo ipso* wrongful in every case. In particular, legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, among many other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 36, § 54; *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 50, § 120; *Scordino (no.1) v. Italy*, [GC], no. 36813/97, ECHR 2006-..., §§ 95 et seq., with further references; and *Broniowski (merits),* cited above, § 182).

In that connection, the Court would recall that the State has a wide margin of appreciation when passing laws in the context of a change of political and economic regime and that in such contexts there might even arise situations where the lack of any compensation would be found compatible with the requirements of Article 1 of Protocol No. 1 (see *Jahn and Others v. Germany* [GC] nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-..., §§ 113-117, with further references; and, *a contrario, Scordino (no.1),* cited above, §§102-103).

61. As explicitly stated in the *Broniowski* merits judgment, in a situation involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole, the national authorities must have considerable discretion in selecting not only the measures to secure respect for property rights but also the appropriate time for their implementation. The choice of measures may necessarily involve

decisions restricting compensation for the taking or restitution of property to a level below its market value (see *Broniowski (mertis)*, cited above, § 182).

62. Under Article 1 of Protocol No.1 the State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and to reduce, even substantially, levels of compensation under legislative schemes. This applies particularly to situations in which the compensatory entitlement does not arise from any previous taking of individual property by the respondent State, but is designed to mitigate the effects of a taking or loss of property not attributable to that State. What Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be "reasonably related" to its value (ibid. § 186).

(b) Compensation scheme under the 2005 Act

63. Unquestionably, the restriction on the applicants' and other Bug River claimants' compensatory entitlement has been imposed by the legislation enacted as part of a process of economic, social and political reform and linked to special circumstances, namely the loss of property abandoned as a result of the Second World War, a loss which did not originate in any act or omission on the part of Poland but resulted from the Great Powers' political arrangements on the delimitation of borders. Such features of the case justified by themselves inherent limitations on the availability of full compensation to the claimants. This was spelled out in unambiguous terms in the *Broniowski* judgment, in which the Court expressly accepted that the radical reform of Poland's political and economic system, as well as the state of its finances, might justify stringent limitations on compensation for the Bug River claimants (see *Broniowski (mertis)*, cited above, § 183).

64. It is true that a measure taking away 80% of their claims' value from them may *prima facie* appear to have been an exceptionally severe interference with the accrued property right which, as the applicants and the third party stressed, had already been conferred on them by virtue of valid administrative decisions confirming the value of property as established and accepted by the State without any qualification (see paragraphs 7, 46 and 54 above). It is also true that even though the right had become unenforceable in practice, at all times in the past the claimants had the right to recover the full value of the original property.

However, as stated above, the State has written off its obligation to provide them with full compensation in particular circumstances. The Government, in their submissions, stressed that the July 2005 Act was a compromise between the claimants' expectations and the State's budgetary constraints and that the State had also financial obligations towards many other persons who had suffered considerable material losses due to nationalisation or expropriation of their property under the totalitarian regime (see paragraphs 39-40 above). The Court accepts these arguments. It

has already recognised that, given the importance of the various social, legal and economic considerations that the authorities had to take into account in resolving the Bug River claims, the State dealt with an exceptionally difficult situation which involved a choice as to which pecuniary and moral obligations could be fulfilled towards persons who suffered past injustices (*Broniowski (merits)*, cited above, § 162). The choice that the authorities made, in particular their decision to impose a statutory ceiling of 20% on compensation, does not appear unreasonable or disproportionate, considering the wide margin of appreciation accorded to them and the fact that the purpose of the compensation was not to secure reimbursement for a distinct expropriation but to mitigate the effects of the taking of property which was not attributable to the Polish State (see paragraph 62 above).

65. The applicants and the third party also alleged that the indexation method adopted by the State adversely affected the value of their claims (see paragraphs 49 and 58 above). The Court would recall that the adequacy of compensation would be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as unreasonable delay. For instance, abnormally lengthy delays in the payment of compensation for expropriation lead to increased financial loss for the person whose land has been expropriated, putting him in a position of uncertainty especially when monetary depreciation occurs (see, *Akkus v. Turkey,* judgment of 9 July 1997, *Reports 1997-IV*, pp. 1309-1310, § 29). For the purposes of the revaluation of the Bug River claims on the date of payment the authorities applied the retail price index which, as the Government have maintained (see paragraph 41 above), links the value of their claims to inflation. The applicants and the third party consider that the real property prices index would be more advantageous. The Court is not persuaded by their submission. Given the State's margin of appreciation in selecting the measures for adjusting compensation in the light of developments such as inflation, the formula used in the July 2005 Act does not appear to be unfair to the claimants (see, *mutatis mutandis*, *Lithgow and Others v. the United Kingdom*, cited above, §§ 144 et seq.).

66. Having regard to all the foregoing considerations, and in particular to the legitimate public interest objectives pursued by the State in the enactment of the impugned remedial legislation, the Court considers that the July 2005 Act, in so far as it reduced the amount of compensation available to the applicant and other Bug River claimants to 20% of the current value of the original property and adopted the retail price index for the revaluation of the claims, struck a fair balance between the protection of their right of property and the general interest, in a manner compatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

(c) Operation of the July 2005 Act in practice

67. As regards the operation of the Act in practice, the Court agrees with the Government that it created more favourable conditions for the realisation of the Bug River claims, especially by introducing the possibility of receiving compensation in cash – an alternative to the hitherto available and more cumbersome bidding procedure (see paragraphs 25 and 41 above). As shown by the facts of the present case and the statistics supplied by the Government (see paragraphs 22-23 above), such payments, provided that they are effected quickly in respect of the remaining claimants, offer a satisfactory solution. Furthermore, in contrast to the situation obtaining before (see, *Broniowski (merits)*, cited above, §§ 22-23, 97, 168-176 and 180 *in fine* and paragraphs 10-11 above), the pool of land designated by the State for the realisation of Bug River claims through competitive bids has been considerably enlarged, which is shown by the number of bids – 1,635 – successfully entered by claimants in the period from 2004 to 2006 and the value of the claims satisfied, which amounted to some EUR 16,600,000 (see paragraph 18 above).

68. Following the Act's entry into force, that is to say during little more than 2 years, the authorities issued 4,000 decisions confirming entitlements to compensation. They estimate that the total number of claimants stands at around 11,000. The files of 1,730 persons have been referred to the State Economy Bank in order to effect cash payments and, as of August 2007, the bank made such payments to 1,443 persons (see paragraphs 19-23 above). Accordingly, in sum more than 3,000 Bug River claimants took advantage of the new procedure.

69. The Court finds these developments satisfactory but would at the same time draw the authorities' attention to the fact that the technical and logistical infrastructure for processing the large number of claims is of major importance for ensuring that the compensation scheme is at all times "effective and expeditious" (see *Broniowski (merits)*, cited above, § 194). In that respect, it is to be noted that, as the third party rightly pointed out, there are still 50,000 applications for confirmation of entitlements pending before the regional authorities. However, the process of setting-up the electronic register of claims, enabling the Governors to handle the claims more efficiently, has not yet been fully accomplished (see paragraphs 20-21 and 59 above).

The need to address these issues rapidly seems to have been perceived by the Government (see paragraph 20 above).

70. The Court further notes that the third party maintained that the procedure under the July 2005 Act was generally ineffective and that, in particular, the situation of other claimants was not comparable to the applicants' position since they had not been given any privileged treatment and had experienced delays in the procedure (see paragraph 59 above).

The Court recalls that the new procedure was introduced a mere 2 years ago. The difficulty of setting up a completely new compensatory mechanism designed to register and process claims of, potentially, 80,000 persons is obvious, especially given that in the past there had been no centralised register of claims and no consistent procedure for registration. Taking into account the complexity of that process, involving large-scale policy decisions, vast number of persons and, last but not least, the very substantial value of their claims (see *Broniowski (merits*), cited above, § 33-34 and 162), the State cannot be censured for the actions it has so far taken in order to remedy the systemic violation of their property rights. Indeed, it acted promptly and decisively. The legislative process in Parliament was terminated just one year after the delivery of the *Broniowski* merits judgment and shortly before the conclusion of the friendly settlement. As a result, a special law was created for Bug River claimants, a law which, in contrast to the previous compensation scheme whose provisions were dispersed among several statutes and ordinances, lays down clear rules of procedure and makes the present system more foreseeable in its application. At the same time, the State allocated substantial money to the Compensation Fund, securing cash payments to the claimants (see paragraphs 18-23 and 25 above). Moreover, the Ministry for the State Treasury, the authority responsible for the overall supervision of the enforcement of the July 2005 Act, ensured that information on progress in its implementation would be systematically supplied to the public, thus making the process transparent both to claimants and taxpayers (see paragraphs 20 and 23 above).

71. In the circumstances and having regard to the manner in which the July 2005 Act has been implemented, the Court considers that the procedures available to the Bug River claimants under that Act, as demonstrated by the number and results of competitive bids and the operation of cash payments, have removed practical and legal obstacles on the exercise of their "right to credit" found to have been in breach of Article 1 of Protocol No. 1 in the *Broniowski* pilot judgment.

(d) Whether "the matter has been resolved"

72. It remains for the Court to establish whether, in view of the foregoing conclusions "the matter has been resolved" for the purposes of Article 37 § 1 (b) of the Convention.

73. As stated above, it is a fundamental feature of the pilot-judgment procedure that the Court's assessment of whether the matter involved in the case has been resolved is not limited to relief afforded to an individual applicant but necessarily encompasses general measures applied by the Sate in order to resolve the general underlying defect in the domestic legal order indentified in the pilot case as a source of the violation found (see paragraph 35 above).

In that regard, the Court has first sought guidance by reference to the indications set out in the pilot judgment, where it held that "the measures adopted must be such as to remedy the systemic defect underlying the Court's finding of a violation so as not to overburden the Convention system with large numbers of applications deriving from the same cause. Such measures should therefore include a scheme which offers to those affected redress for the Convention violation identified in the instant judgment in relation to the present applicant" (see *Broniowski (merits),* cited above, § 193).

74. Having regard to its findings concerning the general compatibility of the compensation scheme introduced by the July 2005 Act with the principles of protection of property rights, in particular with the principles relating to compensation (see *Broniowski (merits)*, cited above, § 194 and paragraph 66 above) and the effective functioning of that Act (ibid. and paragraph 71 above), the Court is satisfied that the Act effectively secures "the implementation of the property right in question in respect of the remaining Bug River claimants", as indicated in the fourth operative provision of the judgment.

75. As regards redress for any past prejudice, material or non-material, suffered by Bug River claimants as a result of the previous defective operation of the compensation scheme, the Court notes that in the friendly settlement concluded in the *Broniowski* case the Government referred to specific civil law remedies enabling claimants to seek compensation for material or non-material damage caused by the systemic violation of Article 1 of Protocol No. 1 and thus to claim redress, as would be possible under Article 41 of the Convention if the Court were to deal with their cases on an individual basis (see *Broniowski (friendly settlement*), cited above, §§ 31 and 41).

The applicants, who have not made use of those remedies, submitted that claims for payment of full compensation and damages for the State's past failure to implement "the right to credit" had not so far been successful in proceedings before the domestic courts (see paragraph 50 above).

The Court would point out that, as it clearly emerges from its conclusion as to the adequacy of the 20% ceiling on compensation, the redress for the systemic violation arising from the defective operation of the impugned legislation can by no means be tantamount to recovering the full value of the original property before the domestic courts or the European Court. Accordingly, and given that the applicants have neither sought redress themselves nor supplied the Court with evidence showing that in Poland there is any systematic policy of refusing claims for damages lodged by Bug River claimants, the Court sees no reason to consider that domestic measures for offering redress making up for an award under Article 41 referred to in the friendly-settlement judgment are not available or are generally ineffective.

76. In that connection, the Court would recall that under Article 41 of the Convention it may afford just satisfaction to the party injured by a violation of the Convention or the Protocols thereto if the internal law of the High Contracting Party concerned allows only partial reparation to be made. However, the Court would do so only if “necessary”. The Court’s principal task under the Convention is, as defined by Article 19 of the Convention, “to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto”, the adjudication on awards under Article 41 being only secondary. In consequence and having regard to the purpose of the pilot-judgment procedure which, as stated above, is to assist States in resolving systemic problems at national level, thereby securing to persons concerned their Convention rights and freedoms as required by Article 1 of the Convention (see paragraph 34 above), the Court’s role after the delivery of the pilot judgment and after the State has implemented the general measures in conformity with the Convention cannot be converted into providing individualised financial relief in repetitive cases arising from the same systemic situation.

77. While, by virtue of Article 46 of the Convention, it will be for the Committee of Ministers to evaluate the general measures adopted by the Polish State and their implementation as far as the supervision of the execution of the Court’s merits and friendly-settlement judgments in the *Broniowski* case is concerned, the Court, in exercising its own power to decide whether the matter involved in the present case and the remaining Bug River cases “has been resolved” and whether to strike the case out of its list under Article 37 § 1(b) of the Convention, has been satisfied that the procedures under the July 2005 Act provided the applicants and other Bug River claimants with relief at domestic level that makes its further examination of the present application and of similar applications no longer justified. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

However, the Court would stress that this conclusion is without any prejudice to its decision to restore, pursuant to Article 37 § 2, the present, or any other similar application, to the list of cases if the circumstances, in particular the future functioning of the compensation scheme under the July 2005 Act, justify such a course.

D. Discontinuation of the application of Article 29 § 3 of the Convention

78. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Fatoş ARACI	Nicolas BRATZA
Deputy Registrar	President