

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

FIRST SECTION

DECISION

Application no. 5815/22
Aleksandra BORKOWSKA and Others
against Poland

The European Court of Human Rights (First Section), sitting on 13 December 2022 as a Committee composed of:

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 5815/22) 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") on 15 January 2022 by the applicants listed in the appended table ("the applicants") who were represented by Ms M. Gąsiorowska and Ms J. Metelska, lawyers practising in Warsaw;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicants' predecessors owned a building and a plot of land situated in the centre of Warsaw. By virtue of the 1945 Decree on the Ownership and Use of Land in Warsaw (*Dekret o własności i użytkowaniu gruntów na obszarze m. st. Warszawy*) all land in Warsaw was nationalised. On 12 October 1948 the applicants' predecessors asked the administrative authorities to grant them a right of temporary ownership (*własność czasowa*) of their property. On 26 June 1950 the Board of the Warsaw National Council (*Prezydium Rady Narodowej*) dismissed their application. This decision was upheld on 8 June 1951 ("the 1950s decisions").

2. Forty years later, on 26 May 1998 one of the applicants' predecessors applied, under Article 156 of the Code of Administrative Proceedings, to have the 1950s decisions declared null and void, submitting that they were issued

in flagrant breach of the law. Her request was refused by decision of the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) on 20 April 1999. One of the complainants appealed, referring to the fact that she had not been properly notified about those proceedings. On 2 June 1999 the President of the Office for Housing and Town Development upheld his previous decision.

3. In 2006 the applicants lodged an application to have the 1999 decisions declared null and void on procedural grounds (allegedly not all interested persons had been notified about the proceedings). The application was examined by several administrative authorities and courts. Eventually, on 17 March 2021, the Minister of Development, Labour and Technology (*Minister Rozwoju, Pracy i Technologii*) declared the decision of 2 June 1999 null and void. The Minister found that one of the complainants mentioned in that decision had died on 22 April 1999 and indeed his heirs had not been summoned to join the proceedings in his stead. In consequence, the decision of 2 June 1999 ceased to exist and the authorities were to re-examine the appeal against the decision of 20 April 1999.

4. However, on 11 August 2021 the Act on the amendment of the Code of Administrative Procedure ("the 2021 Act") was adopted. It entered into force on 16 September 2021. The 2021 Act amended Article 156 § 2 of the Code of Administrative Procedure which now expressly provides that an administrative decision may not be declared null and void if it was served or published more than ten years before. Under section 2 of the 2021 Act, the new rules apply to pending proceedings. Proceedings which were initiated more than thirty years after the service of the impugned decision are discontinued by virtue of law alone.

5. The applicants invoked Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. They referred to the fact that, as a consequence of the entry into force of the 2021 Act, the administrative proceedings relating to their legal predecessors' request to declare null and void decisions relating to expropriation of their property issued in the 1950s were discontinued by virtue of law and they had no remedy.

THE COURT'S ASSESSMENT

6. The Court considers that the applicants' complaints fall to be examined under Article 6 of the Convention alone (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

7. The Court's case-law concerning the applicability of Article 6 § 1 of the Convention to proceedings initiated by a request for reopening or extraordinary appeal is summarised in the *Bochan* case (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 42-50, ECHR 2015). In sum, while Article 6 § 1 is not normally applicable to proceedings following a request for reopening, the nature, scope and specific features of such proceedings in

a given case and in the particular legal system may bring those proceedings within the ambit of Article 6 § 1 (see *Bochan*, cited above, § 50). These exceptions essentially refer to the situation where an extraordinary remedy leads automatically or in the specific circumstances to a full reconsideration of the case or, in certain instances, where the proceedings, although characterised as "extraordinary" or "exceptional" in domestic law, were deemed to be similar in nature and scope to ordinary appeal proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 60, 11 July 2017).

8. However, no such exception is revealed by the circumstances of the present case, as shown below.

9. The applicants' predecessors' claim was examined on the merits and refused by a decision issued in 1950 and upheld in 1951. Subsequently, forty years later, the applicants' legal predecessors applied to have these expropriation decisions quashed. The proceedings instituted in 1998, under Article 156 of the Code of Administrative Procedure (see the relevant domestic provisions as set out in the case of *Lubelska Fabryka Maszyn i Narzędzi Rolniczych 'Plon' and Others v. Poland* (dec.), nos. 1680/08 and 2 others, §§ 63-64, 3 October 2017), related to declaring the 1950s decisions null and void on merely procedural grounds. The latest set of administrative proceedings, launched in 2006, concerned in its turn declaring the procedural decisions of 1999 null and void.

10. Had the applicants succeeded in quashing these two sets of administrative decisions as well as the 1950s decisions, this preliminary phase of the proceedings would have been followed by a full reconsideration of the request of 1948. In the present case, during the proceedings for declaring the administrative decisions null and void, the domestic authorities did not express any views on an issue concerning the merits of the claim. The authorities were merely called upon to consider whether, in the circumstances of the case, annulling the decisions was possible under the domestic provisions concerning this remedy, and did not examine the case any further. The request therefore cannot be said to have entailed or actually resulted in a fresh reconsideration of the case (see *Bochan*, cited above, § 46, with further references) or in proceedings of a similar nature and scope to ordinary appellate proceedings (ibid., §§ 47 et seq., with further references).

11. Therefore, the nature, scope and specific features of the proceedings for declaring a final administrative decision null and void were not such as to bring those proceedings within the ambit of Article 6 § 1 of the Convention (see *Bukowski v. Poland*, no. 47395/99, §§ 51-53, 6 December 2018).

12. It thus follows that the application as a whole is incompatible *ratione materiae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President

Appendix

No.	Applicant's Name	Year of birth
1.	Aleksandra BORKOWSKA	1977
2.	Małgorzata Anna CZERNY-RŻEWSKA	1956
3.	Monica Eva RŻEWSKI	1986