

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

FIRST SECTION

DECISION

Applications nos. 45614/15 and 45615/15
Waldemar KAMIŃSKI against Poland
and Jarosław KAMIŃSKI against Poland

The European Court of Human Rights (First Section), sitting on 27 November 2025 as a Committee composed of:

Davor Derenčinović*, President*,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 45614/15 and 45615/15) 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 9 September 2015 by two Polish nationals, Mr Waldemar Kamiński, who was born in 1969 and lives in Charzykowy, and Mr Jarosław Kamiński, who was born in 1976 and lives in Chojnice ("the applicants"), and who were represented by Mr W. Zielonacki, a lawyer practicing in Poznań;

the decision to give notice of the applications to the Polish Government ("the Government") represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the refusal of the authorities to compensate the applicants for a plot of land which was used as an internal road and had never been expropriated.

2. On 1 June 2009 the mayor of Chojnice (*Wójt Gminy*) divided a plot of land owned by the applicants into a number of smaller plots, at the applicants' request. The decision designated one of the new plots, of 0.3 hectare, as an

internal road (*droga wewnętrzna*) allowing access to 14 other plots, on the basis of the local development plan of 27 June 2008.

3. The applicants did not appeal against the decision on the division of the land or challenge the local development plan which designated the plot in question as an internal road (and not a public road). They sold the other plots of land that they had subdivided, but retained ownership of the plot providing the access road to the other plots.

4. On 30 May 2011 the applicants instituted administrative proceedings seeking "compensation for property expropriated *ex lege* by the municipality" (*odszkodowanie za nieruchomość przejętą z mocy prawa*), basing their claim on the 2009 decision on the division of their land. They argued that that road had been *de facto* public despite its designation in the above-mentioned decision as an internal road.

5. After ultimately unsuccessful proceedings before administrative authorities (decisions of the mayor of Chojnice and the Pomorski Governor), the applicants appealed to the courts, relying on the Court's judgment in *Bugajny and Others v. Poland* (no. 22531/05, 6 November 2007).

6. On 5 February 2013 the Gdańsk Regional Administrative Court dismissed the applicants' appeal (case no. II SA/GD 614/12). The court explained that under the domestic law, only plots of land designated as public roads were expropriated *ex lege* by the State once the decision on the division of the land had become final. In the case at hand the plot of land in question had been clearly designated as an internal road in the local development plan of 27 June 2008 and by the decision of 1 June 2009 on the division of the land. The court further noted that no road had as yet been built on that plot and it did not appear that it had been used for public purposes. The applicants retained sole ownership of the road and had in fact granted a right of way to the new owners of the other plots.

The court also noted that if a road had been classified in the local development plan as an internal road, whereas it was in fact of a public nature, an interested party could institute proceedings seeking a change of that designation. The court indicated the provision of domestic law on which such a request to quash the local development plan should be based, and emphasised that the present administrative proceedings for compensation under the Land Administration Act of 21 August 1997 could not be an effective avenue.

In the current legal and factual situation, the applicants' claim for compensation could be examined only by a civil court. The court held that "... in the event of a restriction on the exercise of property rights by owners of plots of land designated as internal roads, which in fact serve as public roads, the owner shall have recourse only to civil proceedings in order to claim compensation in that regard."

7. On 23 January 2015 the Supreme Administrative Court dismissed a cassation appeal brought by the applicants, fully agreeing with the

conclusions of the lower court (notified to the applicants on 9 March 2015). The court reiterated that in accordance with the law and well-established practice of the administrative courts, the decision dividing the property was of crucial importance and would form the legal basis for transfer of the ownership of a public road to the State Treasury and payment of compensation. In the case at hand the decision of 1 June 2009 dividing the property clearly established that the road was internal and not public. The applicants had not appealed against that decision, nor had they challenged the local development plan. The court stated that the applicants remained owners of the plot in question, so their land had not been expropriated. There was no legal basis to award compensation.

8. In concluding that the applicants' property rights had not been limited in any way, both the Regional Administrative Court and the Supreme Administrative Court referred to the Convention and, in particular, *Bugajny and Others* (cited above) but emphasised the differences in the factual and legal circumstances of the cases.

9. The applicants complained under Article 1 of Protocol No. 1 to the Convention of a breach of their property rights on account of the authorities' refusal to formally expropriate their property and pay them compensation in that respect.

THE COURT'S ASSESSMENT

10. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

11. The Court considers it unnecessary to rule separately on each of the objections raised by the Government since the applications are in any event inadmissible for the following reasons.

12. The Court notes that the Act on Public Roads (*ustawa o drogach publicznych*) of 21 March 1985 contains a legal definition of a public road (see *Gogołek v. Poland* (dec.) [Committee], no. 66094/13, § 15, 22 October 2019). Under the domestic law, only plots of land designated as public roads are expropriated *ex lege* by the State once the decision on the division of the land has become final.

13. In the case at hand, the 2009 decision on the division of the land did not result in the *ex lege* transfer of ownership over the plot of land to the municipality. That decision unambiguously qualified the plot as internal road on the basis of the local development plan. The applicants nevertheless instituted administrative proceedings which had the specific purpose of compensating *ex lege* expropriations (see paragraph 4 above). The administrative authorities established that the plot in question had never been expropriated and did not have the status of a public road within the meaning of the domestic law. The applicants were therefore not entitled to any compensation in the administrative proceedings instituted by them.

14. The Court notes that the assessment of the domestic law and facts carried out by the Regional Administrative Court and the Supreme Administrative Court was consistent and based on a detailed analysis of the provisions of domestic law and established practice. The Court does not find that there was any appearance of arbitrariness or that the findings reached were otherwise manifestly unreasonable. Moreover, the applicants were duly represented during those proceedings and had ample opportunities to advance any arguments which they regarded as pertinent for the outcome of the case (see *Gniazdowska-Sapieha v. Poland* (dec.), no. 18887/11, § 76, 9 July 2024).

15. As argued by the Government, if the applicants believed that their internal road had been *de facto* used by the wider public, it would have been possible for them to bring a civil claim in order to seek the restitution of their land and compensation for the non-contractual use of that land. The applicants have not provided any convincing arguments as to why they failed to avail themselves of this remedy.

16. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants to first use the remedies provided by the national legal system, thus exempting States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. Recourse should therefore be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. As a consequence, complaints intended to be made before the Court should have first been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law, and any procedural means that might prevent a breach of the Convention should have been used (see, among many other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

17. The Court also notes that in another case against Poland, concerning the same legal question as that raised in the present case, the Court referred to a series of judgments of the domestic courts from 2008, and 2013 to 2015, relating to the effectiveness of remedies under the Civil Code (see *Gogołek*, cited above, § 30). In addition, the judgment of the Gdańsk Regional Administrative Court of 5 February 2013 (II SA/GD 614/12) given in the present case clearly indicated that *de facto* limitations on property rights could be remedied only in civil proceedings (see paragraph 6 above).

18. The Court notes that this development in the domestic case-law occurred after its judgment in *Bugajny and Others v. Poland* (no. 22531/05, 6 November 2007), which was heavily relied on by the applicants.

19. The Court sees no reason to doubt the effectiveness of the above-mentioned remedy and or to depart from its findings previously reached (see, *Gogołek,* cited above, § 31). Moreover, as indicated by the domestic courts, the applicants did not contest the local development plan or

appeal against the decision of 1 June 2009 on the division of the land. In view of the above, and having regard to the subsidiary character of the Convention machinery, the Court does not find that there were any special reasons exempting the applicants from the requirement to exhaust domestic remedies.

20. It follows that the Government's objection in this regard must be upheld and the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 18 December 2025.

Liv Tigerstedt Deputy Registrar	Davor Derenčinović President