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

FOURTH SECTION

DECISION

Application no 8585/13
Jolanta PIEKARSKA against Poland
and 32 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 17 May 2016 as a Chamber composed of:

András Sajó, *President,*
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

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. The applicants are the owners, co-owners or perpetual lessees of estates on which various types of utility grids, substations or equipment were installed between the 1950s and 1980s. In respect of at least twenty-

two of the thirty-three applications, the utilities were set up prior to the acquisition of the land by the applicants.

4. Until 1989, the installations in question belonged to the State Treasury (various State utility enterprises). They are currently owned by different utility companies which are the legal successors of the State enterprises. In thirty-one cases, the current owners are commercial joint-stock companies controlled by the State Treasury as the largest shareholder. In the two remaining applications, the utility equipment belongs to State companies (see Annex 1; applications nos. 8585/13 and 28531/14).

5. Since the date of their installation, the utility grids, substations and equipment have been accessed, maintained and used by the utility companies without any interruption or disputes with legal consequences. The applicants either live on the estates in question or use them for agriculture or manufacturing purposes. Their use of the parts of the land where the utility grids or equipment have been placed is to a greater or lesser extent restricted. Under the applicable law, access to areas directly under, over or around utility stations, pipes, poles or other equipment cannot be hindered; in particular, it cannot be blocked by vegetation or buildings.

2. Proceedings concerning utility installations

6. On various dates the applicants became parties to various civil proceedings aimed at regulating the legal status of the utility installations on their estates.

(a) Overview of proceedings according to subject matter

7. Twenty-one applicants (application nos. 36350/13; 49800/13; 50041/13; 63957/13; 14891/14; 14934/14; 31089/14; 46099/14; 47538/14; 54240/14; 56980/14; 70263/14; 78040/14; 18939/15; 20670/15; 21667/15; 24271/15; 41154/15; 45573/15; 45619/15 and 48023/15), sought compensation for the resulting restriction of their property rights. They brought actions either for compensation for the establishment of a transmission easement (*o ustalenie służebności przesyłu*) (for the applicable domestic law, see paragraphs 28-31 below) or compensation for non-contractual use of land (*o bezumowne korzystanie z nieruchomości*) (for the applicable domestic law, see paragraphs 32-35 below). Some of those actions were accompanied by a claim to remove the utility equipment considered cumbersome.

8. Two applicants (application nos. 52591/13 and 55666/13) did not seek payment and instead brought actions exclusively for restitution of the owner's lawful position and for the removal of the utility equipment in question (for the applicable domestic law, see paragraph 36 below).

9. The remaining ten applicants (application nos. 8585/13; 13512/13; 42258/13; 44773/13; 52143/13; 22059/14; 28482/14; 28531/14; 36799/14 and 20818/15) did not bring any actions and were respondents in

proceedings resulting from actions for easements by prescription (*o zasiedzenie służebności*) lodged by relevant utility companies (for the applicable domestic law, see paragraphs 37-40 below).

(b) Overview of proceedings according to their outcome

(i) Thirty applications, including application no. 45573/15

10. In respect of thirty applicants (application nos.: 8585/13; 13512/13; 42258/13; 44773/13; 49800/13; 50041/13; 52143/13 52591/13; 55666/13; 63957/13; 14891/14; 14934/14; 22059/14; 28482/14; 28531/14; 36799/14; 47538/14; 54240/14; 56980/14; 70263/14; 78040/14; 18939/15; 20670/15; 20818/15; 21667/15; 24271/15; 41154/15; 45573/15; 45619/15 and 48023/15), the domestic courts delivered judgments concluding that the companies which ran the utility installations on the applicants' estates had acquired the easements in question by prescription. Accordingly, it was held that the applicants concerned were either not entitled to claim compensation for past or future use of the utility grids or to seek the removal of the electrical equipment from their land.

11. In most of these cases, the courts of first instance initially ruled in favour of the applicants. Those decisions were later reversed by the higher courts.

12. The proceedings involving each of these applicants are described in more detail in Annex 1, and the applicable domestic law and practice are set out at paragraphs 37-58 below.

(ii) Three applications

13. In respect of three applicants (applications nos. 36350/13, 31089/14 and 46099/14), the domestic courts held that their property rights had been lawfully restricted by historical administrative decisions which had been issued under Section 35 of the 1958 Act (see paragraphs 20 and 21 below).

14. Further details about those proceedings and the applicable domestic law and practice are set out in Annex 2 and at paragraphs 48-56 below.

(iii) Application no. 45573/15

15. In the case of Mr Jędrzejczyk (no. 45573/15; see Annex 1), the applicant co-owns with his wife, among others, five adjacent plots of agricultural land in Potok and Kolonia Grudzień (lot nos. 802 and 804-PT1O/00007612/7 and PT1O/00024160/8 and lot nos. 278, 147/3 and 319 – 9PT1O/00023818/9). Title to the land in question was acquired in 1992, 1994, 1997 and 1985 respectively. In 1962 an overhead electrical grid with a number of electrical poles was installed across it.

16. In 2010 the applicant rejected a friendly settlement proposal made by PGE, the owner of the electrical grid. In March 2012 he sued the company

for compensation for non-contractual use of his land, claiming PLN 200,000 (approximately EUR 50,000).

17. On 20 May 2014 the Piotrków Trybunalski Regional Court gave the first-instance judgment in the case. On 9 March 2015 the Łódź Court of Appeal partially allowed the applicant's action. The court, granting an objection raised by the respondent, held that the utility company had acquired the easement for the electrical grids on the applicant's lot nos. 804, 319 and 147/3 by prescription in 1985. That date was determined in view of the entry into force of the 1965 Civil Code and the statutory requirement of twenty years' possession if it was, as in the case at hand, in bad faith. Consequently, the applicant could not claim remuneration for the use of the land since the date of prescription of the easement. In respect of the remaining two lots, the court held that the prescription period had not elapsed because, until 1997 and 1979 respectively, the State had been the landowner not possessor. In view of those considerations, the applicant was awarded PLN 41 (approximately EUR 10) on account of the utility company's non-contractual use of lot nos. 802 and 278 between April 2002 and July 2009. This amount was in line with the calculation put forward by a court-appointed expert.

B. Relevant domestic law and practice

1. Legal basis for installation and maintenance of utility grids and equipment

18. The process of rural electrification in Poland was regulated by the Public Electrification of Villages and Settlements Act of 28 June 1950 (*Ustawa o powszechnej elektryfikacji wsi i osiedli*), in force from 6 July 1950 until 5 December 1997. Similar processes concerning other utilities were regulated primarily by the Water Act (*Prawo Wodne*) of 30 May 1963, 24 October 1974 and 18 July 2001.

19. Currently, most of these matters are regulated by the Energy Act (*Prawo Energetyczne*) of 10 April 1997, which entered into force on 5 December 1997, the Water Act (*Prawo Wodne*) of 16 December 2016, which entered into force on 31 December 2015, and by European Union law.

20. The entitlement of State enterprises to access private estates in order to install and run various overhead or underground drainage, sewage, water or gas pipelines and electricity grids, substations or other similar equipment was originally regulated by the Expropriation Rules and Procedure Act of 12 March 1958 (*Ustawa o zasadach i trybie wywłaszczania nieruchomości* – "the 1958 Act"), in force until 1985.

21. Section 35 required State energy enterprises to obtain authorisation from the local administrative authority to gain access to private estates for the purpose of laying pipelines or installing electric poles and substations.

22. Under Section 36 of the 1958 Act, a landowner was entitled to claim compensation for damage resulting from the installation or maintenance of equipment or lines. Examples of such damage were loss of harvest or a decrease in the value of the property due to the installation of the utility grid or equipment. Entitlement to compensation did not arise, however, from restrictions on the use of the land if no damage occurred.

23. From 1 August 1985 until 31 December 1997 these matters were regulated in a similar way by section 70 (et seq.) of the Land Administration and Expropriation Act of 29 April 1985 (*Ustawa o gospodarce gruntami i wywłaszczeniu nieruchomości*) Since 1 January 1998 they have been regulated by section 124 (et seq.) of the Land Administration Act of 21 August 1997 (*Ustawa o gospodarce nieruchomościami*). Under the provisions currently in force, a landowner is entitled to compensation not only for damage caused by the installation or maintenance of the grid, but also for granting access to the land and any related depreciation in value (sections 124 and 128).

24. Applications for such compensation must be lodged with the relevant administrative authorities and are not examined by the civil courts (Article 2 § 3 of the Code of Civil Procedure and the Supreme Court's (*Sąd Najwyższy*) decision of 15 March 1983 (IV CZ 15/83) and judgment of 9 March 2007 (II CSK 457/06)). Civil courts, however, retain jurisdiction in respect of actions for compensation if the alleged damage has been caused by activities beyond the scope of a relevant administrative decision and for non-contractual use of the land (the Supreme Court's judgments of 24 June 2010 (IV CSK 554/09) and 9 March 2007, cited above).

2. Rules on utility easements before 2008

25. Prior to 2008, the legal status of the parts of private land burdened by utility installations was regulated under the civil law only by analogy, originally to easements by necessity (*służebność drogi koniecznej*) under Article 145 of the Civil Code, which entered into force in 1965, and ultimately to land easements (*służebność gruntowa*) under Articles 285-295 of the Civil Code.

26. The former approach is illustrated by the Supreme Court's resolutions of 3 June 1965 (no. III CO 34/65) and 30 August 1991 (no. III CZP 73/91), adopted by a bench of three judges.

27. The latter practice was triggered by the Supreme Court's resolution of 17 January 2003 (no. III CZP 79/02), adopted by a bench of three judges, authorising the establishment of a land easement by means of a contract for the benefit of an energy company which owned a utility grid on a property. This practice was further developed by the Supreme Court's decision of

8 September 2006 (II CSK 112/06), authorising the energy company which owned a utility grid to acquire a land easement by prescription. In that decision, the Supreme Court applied the existing provisions beyond the traditional relationship between the two owners of estates, dominant and servient. It was reasoned that in general, a utility company owned estates which could be considered as benefiting from the easement. In this broad sense, a utility company could be viewed as the owner of a dominant estate within the meaning of the applicable provisions on land easements. It was therefore not required to identify a specific estate as dominant.

3. Transmission easements since 2008

28. Transmissions easements (*służebność przesyłu*) are limited property rights introduced in Poland by the Civil Code and Other Acts Amendment Act of 30 May 2008, which entered into force on 3 August 2008 (*Ustawa o zmianie ustawy - Kodeks cywilny oraz niektórych innych ustaw* – "the 2008 Amendment Act"). Under Article 305^1 of the Civil Code, a utility company (which owns a utility grid or equipment and is responsible for the supply and distribution of electric energy or other utilities to a given area) is entitled to enter onto and use property owned by a third party in a specific manner to run a sewage or gas pipeline or a utility grid situated on the land. The landowner, in turn, is restricted in his right to use the servient part of the estate.

29. Under Article 305^2 of the Civil Code, the landowner and the utility company shall establish a transmission easement either by means of a contract or a court action. Just compensation (*wynagrodzenie*) is payable for the easement from the moment of its establishment for the future.

30. Lodging a court action for a transmission easement interrupts the running of the prescription period (Article 123 of the Civil Code and the Supreme Court's resolution of 21 January 2011 (III CZP 124/10) and decision of 13 October 2011 (V CSK 502/10)).

31. Article 305^4 of the Civil Code provides that transmission easements are further regulated, in so far as applicable, by the provisions on land easements.

4. Action for compensation for non-contractual use of land

32. The owner or perpetual lessee of land with a utility installation is also entitled to seek compensation from a utility company if the latter has possession in bad faith, in the form of an action for compensation for non-contractual use of land (*o bezumowne korzystanie z nieruchomości*) under Article 225 in conjunction with Article 224 of the Civil Code (in force without amendment since 1 January 1965). Such compensation can only be claimed for use of the land from the date on which the possessor was informed of the owner's claim for compensation until the date of the court's

ruling and as long as an easement has not been established (the Supreme Court's judgment of 7 August 2014 (II CSK 573/13)). The limitation period for such claims is ten years (Article 118 of the Civil Code).

33. The landowner or perpetual lessee has a claim even if he or she acquired the land in full knowledge that it was encumbered by a utility installation (the Supreme Court's judgment of 4 July 2012 (ICSK 641/11)).

34. Prior to the 2008 amendments, introducing the paid transmission easement, the lodging of such a court action against a utility company interrupted the running of the prescription period. Since then, an action under Article 225 of the Civil Code ceased to have the same effect (the Supreme Court's resolution of 26 November 2014, adopted by seven judges (III ZP 45/14)).

35. The criteria for the calculation of the compensation awarded under Article 225 of the Civil Code was laid down by the Supreme Court in its resolutions of 17 June 2005 (III CZP 29/05) and 10 July 1984 (III CZP 20/84), adopted by a bench of three and seven judges respectively. The compensation must be commensurate with the degree of interference with the plaintiff's property rights and must not, in the long run, flagrantly exceed the value of the part of the land encumbered by the utility installation. The Supreme Court accepted that consequently, the amount of annual compensation awarded was likely to be insignificant.

5. Action for restitution of an owner's lawful position

36. Pursuant to Article 222 § 2 of the Civil Code (in force without amendment since 1 January 1965), a property owner has the right to claim restitution of his or her lawful position and discontinuation of infringements against anyone who infringes his ownership other than by depriving him or her of actual control of the property. There is no limitation period for such claims if they relate to immovable property (Article 223 of the Civil Code). Such actions can, but do not have to, be accompanied by a claim for compensation (*o zapłatę*) for past use of the property without legal title (see the Supreme Court's resolution of 17 June 2005, cited above).

The lodging of such a court action interrupts the running of the prescription period (Article 123 of the Civil Code).

Such an action will not be allowed if the defendant has legal title to the property in question or has acquired it through prescription or adverse possession. Moreover, a landowner who acquired property which had in the past been lawfully encumbered by a utility installation is not entitled to seek its removal (the Supreme Court's judgments of 13 January 2011 (III CSK 85/10) and 29 January 2008 (IV CSK 410/07).

6. Prescription of utility easement

(a) The law

37. The general rules concerning easements by prescription (*zasiedzenie służebności*) are contained in Article 292 of the Civil Code and in the provisions on adverse possession of property (*zasiedzenie własności nieruchomości*) contained in Articles 172-176 of the Civil Code (amended in 1990).

38. Under these provisions, an easement by prescription arises through the uninterrupted use of permanent and visible equipment by an autonomous possessor (owner-like possessor) without the permission of the landowner. In the event of possession in good faith (where use of the equipment has been open and notorious), the statutory prescription period was ten years prior to the 1990 amendment and is currently twenty years. In the event of possession in bad faith (where use of the equipment has been concealed or secretive), the applicable statutory period was twenty years prior to the 1990 amendment and is currently thirty years (Article 172 of the Civil Code).

39. Under Article 176 of the Civil Code, if during the running of the prescription period possession has been transferred from one autonomous possessor to another, the new possessor must include the period of possession by his predecessor.

40. A domestic court can rule on prescription in the event of an action for establishment of prescription (Article 609 of the Code of Civil Procedure) or in the course of other proceedings, if such an objection has been made by a party. A domestic court cannot rule on prescription of its own motion.

(b) Case-law of the domestic courts

(i) Prescription of transmission easements and land easements corresponding to transmission easements

41. Since the 2008 amendments, the following approach has been developed by the domestic courts in cases concerning easements for utility grids and equipment.

If possession of the part of the land with a utility grid reached the necessary prescription period after 2008, when the legal concept of a transmission easement was created, the domestic courts established prescription of the transmission easement. If, however, the end of the statutory prescription period fell on a date prior to the entry into force of the 2008 amendments, the domestic courts came up with the legal concept of a "land easement corresponding in its content to a transmission easement" (*służebność gruntowa odpowiadająca w swojej treści służebności przesyłu*) and accordingly, ruled on the prescription of such an easement.

42. In practice, most of the civil actions concerning transmission easements lodged under Article 305^1 of the Civil Code sought to regulate the status of historical utility grids and equipment. They therefore resulted in the establishment by prescription of land easements corresponding to transmission easements and, resulting from it, refusal to grant any payment to the owner of the servient estate.

43. In its resolution of 7 October 2008 (no. III CZP 89/08), adopted by a bench of three judges, the Supreme Court held that prior to the enactment of provisions on transmission easements (Articles 305^1-305^4 of the Civil Code; see paragraphs 28–31 above) it had been possible to acquire by prescription a land easement corresponding in its content to a transmission easement. It was reasoned that the content of the land easement was essentially the right to use servient property in connection with the activities of the company which benefited from the easement. In the resolution the Supreme Court cited its earlier case-law on the possession of utility grids and on land easements. In particular, it referred to its 2003 resolution and 2006 decision (described in paragraph 27 above).

44. This approach was further confirmed by the Supreme Court in its resolutions of 9 August 2011 (III CZP 10/11) and 22 May 2013 (III CZP 18/13), adopted by a bench of seven and three judges respectively; and in its judgment of 12 December 2008 (II CSK 389/08) and decisions of 26 July 2012 (II CSK 752/11), 18 April 2012 (V CSK 190/11), 6 July 2011 (CSK 157/11) and 5 June 2009 (I CSK 392/08).

45. Moreover, in its judgment of 12 January 2012 (II CSK 258/11), the Supreme Court held that in the event of prescription of an easement for a utility grid or equipment, the owner of servient land could not claim compensation for the easement.

(ii) Possession of easements by the State prior to 1989

46. Apart from the above-mentioned approach, the domestic case-law concerning transmission easements has not been uniform. Early on, the lower and higher courts diverged, among other things, on the issue of the possession of utility easements by State enterprises prior to 1989. Over time, this area has become harmonised by the Supreme Court.

47. It was therefore accepted that, if during the running of the prescription period possession of an easement had been transferred from a State enterprise to a utility company, the new possessor was entitled to include the period of possession by its predecessor prior to 1989 in the calculation of the statutory prescription period for the company's easement. It was reasoned that prior to 1989, when the principle of uniform State ownership (*zasada jednolitej własności państwowej*) was abolished, the State Treasury had installed and run utility grids as part of its economic activities under its mandate as a State legal entity and the owner of State property and not as a superior governor in the exercise of its imperial

powers. Moreover, the State Treasury at that time only had factual control (*władztwo faktyczne*) and operational management (*zarząd operatywny*) of utility grids and equipment. That corresponded to the activities of a limited-right possessor and not an owner-like possessor. Consequently, control over a utility grid of the predecessor of the claimant utility company could result in the prescription of a land easement for the benefit of the current possessor.

This view has been expressed in the following case-law of the Supreme Court: its judgments of 31 May 2006 (IV CSK 149/05) and 15 January 2009, adopted by a bench of seven judges (I CSK 333/07); its judgment of 10 May 2013 (I CSK 495/12); and decisions of 17 December 2008 (I CSK 171/08), 13 October 2011 (V CSK 502/10), 12 January 2012 (IV CSK 183/11), 13 June 2013 (IV CSK 627/12), 20 September 2013 (II CSK 10/13) and 18 June 2014 (V CSK 405/13). The opposite opinion was held by the Supreme Court in its judgment of 9 December 2009, adopted by a bench of three judges (IV CSK 291/09).

(iii) Legal consequences of historical administrative decisions issued under Section 35 of the 1958 Act

48. Another discrepancy occurred in so far as the domestic courts, including the Supreme Court, initially drew different conclusions from the existence of historical administrative decisions which had been issued under Section 35 of the 1958 Act in order to authorise the installation of utility grids and equipment on particular private estates (see paragraph 21 above).

(α) Absence of administrative decision

49. In cases in which an administrative decision under Section 35 of the 1958 Act had not been issued or in cases in which that element was left undetermined, the domestic courts generally ruled consistently. They held that a claimant utility company who had for a sufficiently long period exercised autonomous possession of an easement for a utility installation had acquired it by prescription. In all such cases, the domestic courts also refused to grant any compensation to the owner of the servient estate.

50. This line of case-law is illustrated by the Supreme Court's case-law described in paragraphs 41-45 above and, further, by the domestic court decisions delivered in the proceedings giving rise to the following twenty applications lodged with the Court: no. 8585/13; 13512/13; 42258/13; 49800/13; 50041/13; 52143/13; 52591/13; 55666/13; 63957/13; 14934/14; 56980/14; 70263/14; 18939/15; 20670/15; 20818/15; 21667/15; 24271/15; 45573/15; 45619/15 and 48023/15 (see Annex 1).

(β) Existence of administrative decision

51. In cases in which it was revealed that the installation of a utility grid or equipment had been authorised by an administrative decision issued

under Section 35 of the 1958 Act, some domestic courts still granted easements by prescription; others refused to do so. Either way, the domestic civil courts also decided not to allow claims for compensation to the servient land's owner for the restriction of his property rights.

52. The former approach was taken by the Supreme Court in its decision of 17 December 2008 (I CSK 171/08). It held that the restriction of property rights by means of a binding administrative decision issued under Section 35 of the 1958 Act (in that particular case, in 1977), was to be considered a "public easement" or a "transmission easement". Consequently, in the Supreme Court's view, prescription of a transmission easement was possible; the period of use of the electrical grid by the legal predecessor of its current owner could be calculated towards the statutory prescription period and the administrative decision in question made the use of the grid lawful, hence in good faith. This view was further upheld by the Supreme Court in its judgment of 9 December 2009 (IV CSK 291/09) and decision of 21 February 2013 (I CSK 354/12).

53. The domestic court decisions delivered in the course of the proceedings in the following ten applications lodged with the Court illustrate the above-mentioned line of case-law: no. 44773/13; 14891/14; 22059/14; 28482/14; 28531/14; 36799/14; 47538/14; 54240/14; 78040/14; and no. 41154/15 (see Annex 1).

54. The latter, opposite approach was expressed for the first time in the Supreme Court's resolution of 8 April 2014 (III CZP 87/13), adopted by a bench of seven judges. It held that the enforcement of rights bestowed by a decision issued under Section 35 of the 1958 Act did not lead to prescription of a land easement corresponding in its content to a transmission easement. The Supreme Court observed that the decision of a relevant local administrative authority issued under Section 35 of the 1958 Act to authorise construction and maintenance of a utility grid on private land had the character of an expropriation decision. Consequently, it did not create an easement but permanent legal title which determined the content or particular restriction of a property right. Unlike the right to an easement, such a restriction had a public-law character as it was derived from the act of law and from a related administrative decision.

The Supreme Court also expressly stated that the claims of utility companies which could not prove title for taking over and using private land were beyond the subject matter of that resolution.

55. This line of case-law was relied on by the domestic courts in the proceedings which gave rise to the following three applications lodged with the Court: no. 36350/13; 31089/14 and 46099/14 (see Annex 2).

56. Irrespective of the issue of prescription of easement, the Supreme Court consistently ruled that a decision issued under Section 35 of the 1958 Act constituted legal title for a utility company to permanently use the estate identified in such a decision. In consequence, no claims for compensation

for the authorised use of the land by such a utility company could be made under the civil law because it was lawful. Compensation could only be sought under the administrative law (the Supreme Court's resolution of 20 January 2010 (III CZP 116/09), adopted by a bench of three judges and judgments of 9 January 2008 (II CSK 432/07) and 9 March 2007, cited above).

(γ) Constitutional Court's practice

57. The divergent practice as described above gave rise to a question of law (*pytanie prawne*) as to whether Article 292 taken in conjunction with Articles 172 and 285 of the Civil Code, in so far as it provided a legal basis for the establishment by prescription of a land easement corresponding in its content to a transmission easement for the benefit of a utility company, was in compliance with the Constitution and with Article 1 of the Protocol No. 1 to the Convention.

58. On 17 July 2014 the Constitutional Court (*Trybunał Konstytucyjny*) held that it was beyond its mandate to pronounce on a question of law which in fact concerned the interpretation given to the law by the courts of general jurisdiction (P 28/13). It was observed that the Constitutional Court was entitled to rule on the constitutionality of a provision which gained particular judicial interpretation but only if that interpretation was obviously settled through uniform and authoritative practice of the Supreme Court and the Supreme Administrative Court. In the Constitutional Court's view, the uniform practice of granting prescription of land easement corresponding in its content to a transmission easement (as described in paragraphs 41-45 above), was disrupted by the 2014 resolution of the Supreme Court (III CZP 87/13) (see paragraph 54 above). Consequently, it was held that in the current situation, the applicable law was not implemented in an uncontestably uniform manner.

COMPLAINTS

59. The applicants relied on various provisions of the Convention, including Articles 6 and 14 and/or Article 1 of Protocol No. 1 to the Convention. In essence, they complained that the setting up and running of utility installations on their land, especially without or with a very small amount of compensation, constituted a disproportionate control of use of their property by the relevant commercial utility companies controlled by the State.

Furthermore, the applicants essentially argued that the decisions of the domestic courts had been arbitrary, inconsistent and, overall, unfair. They had also been allegedly discriminatory in that the domestic courts had, in

the applicants' view, ruled in favour of the utility companies because they were controlled by the State. The applicants also submitted that prior the change of the political regime in Poland in 1989, all legal actions to reclaim parts of land with utility installations or seek payment had been destined to fail.

60. More specifically, thirty applicants (application nos.: 8585/13; 13512/13; 42258/13; 44773/13; 49800/13; 50041/13; 52143/13; 52591/13; 55666/13; 63957/13; 14891/14; 14934/14; 22059/14; 28482/14; 28531/14; 36799/14; 47538/14; 54240/14; 56980/14; 70263/14; 78040/14; 18939/15; 20670/15; 20818/15; 21667/15; 24271/15; 41154/15; 45573/15; 45619/15 and 48023/15; see also Annex 1) submitted that the civil courts should not have granted prescription of the utility easement because the right to transmission easements had only been introduced into Polish law in 2008, and that they should not have included the State's possession prior to 1989 in the calculation of the statutory prescription period.

61. Three applicants (application nos. 36350/13; 31089/14 and 46099/14; see Annex 2) submitted that the civil courts should not have restricted their property rights on account of the historical administrative decisions, alleging that they had been arbitrary or otherwise invalid.

62. One applicant (application no. 45573/15; see paragraphs 15-17 above) also complained that the amount of compensation awarded to him had been too low.

63. Four applicants also complained under Article 6 of the Convention that the civil proceedings had been tainted by various procedural shortcomings (application nos. 13512/13; 31089/14 and 56980/14) or had lasted too long (application no. 78040/14).

THE LAW

Complaints under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention

64. The applicants essentially complained that the running of utility installations on their land, especially without the payment of any compensation, constituted a disproportionate control of use of their property by the relevant utility companies controlled by the State. They also argued that the domestic courts had given arbitrary, inconsistent, discriminatory or otherwise unfair decisions in their respective cases.

65. The Court considers that this part of all of the applications falls to be examined under Articles 6 and 14 of the Convention and under Article 1 of Protocol No. 1 to the Convention which, in so far as relevant, read:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"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."

1. The Court's competence ratione temporis, materiae and/or personae

66. The Court observes at the outset that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. The right to compensation for damage or wrongs caused prior to the entry into force of the Convention with respect to the Contracting Party concerned is not, as such, guaranteed by the Convention or its Protocols (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX and *Petrova and Valo v. Slovakia* (dec.), no. 49103/09, § 44, 5 November 2013). On the other hand, from the ratification date onwards, all the State's alleged acts and omissions 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 *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X).

67. In the circumstances of all of the present cases the utility installations giving rise to the applicants' grievance were set up before 10 October 1994, when Protocol No. 1 to the Convention entered into force in respect of Poland.

68. Consequently, the Court considers that any complaint in respect of the creation of the easement, the lack of compensation for its creation, any other event having occurred prior to the above date, and any loss suffered by some of the applicants prior to that date, is incompatible *ratione temporis* with the provisions of the Convention and *ratione personae* with respect to the applicants who only recently acquired title to the land in question (see, *mutatis mutandis*, *Petrova*, cited above, § 44).

69. It follows that this part of the application is incompatible *ratione materiae, ratione temporis* and/or *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. The Court's ruling in respect of thirty-three applications

(a) Article 1 of Protocol No. 1 to the Convention taken on its own and together with Article 14 of the Convention

70. For thirty-one applicants (application nos. 8585/13; 13512/13; 42258/13; 44773/13; 49800/13; 50041/13; 52143/13; 63957/13; 14891/14; 14934/14; 22059/14; 28482/14; 28531/14; 36799/14; 47538/14; 54240/14; 56980/14; 70263/14; 78040/14; 18939/15; 20670/15; 20818/15; 21667/15; 24271/15; 41154/15; 45573/15; 45619/15; 48023/15 and applications nos. 36350/13; 31089/14 and 46099/14; see paragraphs 7, 9, 10 and 13 above) the main complaint was about the lack of compensation for the restrictions on the use of the land stemming from the existence of the utility installations.

71. The restrictions in question consisted of the inability to use the parts of the estates which were directly under, over or around a particular utility installation for construction and for some, but not all, agricultural purposes. As submitted by the applicants, in contrast to their situation, the relevant utility companies profited from the above-mentioned restrictions without having to pay any compensation and the situation was not counterbalanced by any benefit to the applicants.

72. For two applicants (application nos. 52591/13 and 55666/13; see paragraph 8 above) their grievance was the inability to have these restrictions discontinued altogether by having the relevant utility equipment removed from their land, irrespective of any benefits which could or could not be derived from them.

73. The Court must first determine whether Article 1 of Protocol No. 1 is applicable in the instant case. It is therefore fitting to reiterate the following general principle.

74. The Convention institutions have consistently held that "possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised. On the other hand, the hope that a long-extinguished property right may be revived cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No.1; nor can a conditional claim which has lapsed as a result of the failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 69, ECHR 2002-VII, with further references).

75. In the present cases, it clearly emerges that, prior to the creation of the legal concept of the transmission easement, three legal remedies were available to landowners and lessees whose estates were encumbered by utility installations. Depending on the circumstances of each case, they were entitled to seek compensation for damage under the 1958 Act and the replacement laws (see paragraphs 22 and 23 above), seek compensation for non-contractual use of the land under Article 225 of the Civil Code (see paragraphs 32-35 above) or apply for the removal of cumbersome equipment under Article 222 (see paragraph 36 above and see also *mutatis mutandis Jędrzejuk v. Poland* (dec.), no. 6620/04, 19 January 2010).

76. Following the 2008 amendment, Article 305^1 of the Civil Code introduced an additional remedy, an action for compensation for transmission easements. The new regulation specifically provided that the general provisions on easement prescription were applicable to such easements (see paragraphs 28 and 29 above).

77. The Court notes that thirty applicants complained that they had not succeeded either in obtaining compensation or in having the electrical installations removed from their land because of the prescription of the easement (see Annex 1). Among these applicants, fourteen pursued one of the civil remedies which pre-dated the 2008 amendment, six brought actions for compensation for the transmission easement under the new civil law provisions and ten remained passive (at least initially), ultimately becoming defendants in the proceedings instituted by the utility companies.

78. In the end, the domestic courts ruled in respect of these thirty applicants that the utilities on their land constituted an easement which had been acquired by the relevant utility companies by means of prescription. This means that the applicants (or the previous owners or lessees of the estates in question) had not effectively contested the use of the installations by the utilities companies. In respect of at least seven applicants (application nos. 42258/13; 50041/13; 52591/13; 63957/13; 22059/14; 56980/14 and 45573/15) the domestic courts found that the statutory prescription period had elapsed before the applicants became owners or perpetual lessees of the land. In respect of at least sixteen applicants (application nos. 8585/13; 13512/13; 44773/13; 49800/13; 52143/13; 55666/13; 14934/14; 28482/14; 47538/14; 78040/14; 18939/15; 20670/15; 21667/15; 24271/15; 41154/15; and 48023/15) that period elapsed after the applicants had acquired title to the land.

79. The Court also notes that three other applicants (application nos. 36350/13; 31089/14 and 46099/14; see Annex 2) failed to obtain compensation for non-contractual use of their land on the grounds that the relevant utility companies had legal title to the parts of the applicants' estates. Those titles stemmed from administrative decisions which had been issued under the 1958 Act shortly before the installation of the utility grids and equipment on the estates which, in respect of two applicants, were

acquired several decades later and which, in respect of one applicant, was acquired around the time of the construction.

80. All thirty-three applicants therefore challenged the outcome of their proceedings for compensation and/or the removal of the utility installations, essentially arguing that the domestic courts had been arbitrary, inconsistent, discriminatory and overall unfair either in the way they had calculated the length of the statutory prescription period or in that they had given importance to flawed administrative decisions issued under the former political regime.

81. The Court observes that the applicants' arguments as described above have been endorsed only by decisions delivered by the lower courts in a number of the proceedings. Not one of those decisions outlasted the review of the appellate courts or of the Supreme Court.

82. The analysis of the domestic legislation and case-law shows that the domestic law has been clear on the point that in the absence of any action on their part, landowners and lessees such as the applicants were at risk that with the passage of time, the relevant utility companies could acquire title and the right to use the relevant parts of the land free of charge by way of prescription of what was then considered to be a land easement (see paragraphs 25-27 and 37-40 above). Likewise, it has been established that an action for removal of utility installations will not be allowed if the defendant has legal title to the property in question or has acquired it by prescription (see paragraph 36 above). In addition, a landowner who acquired property which had in the past been lawfully encumbered by a utility installation is not entitled to seek its removal (see paragraph 36 above).

83. Moreover, there is nothing to support the applicants' assertion that a somewhat uniform and consolidated practice of the domestic courts existed with the effect of excluding the period prior to creation of the specific transmission easement in 2008 and the period prior to 1989 when the utilities belonged to the State Treasury from the statutory period for prescription of easements.

84. On the contrary, the material examined by the Court demonstrates that prior to the enactment of the provisions on transmission easements in 2008, utility companies were often successful in acquiring by prescription, either a land easement or land easement corresponding in its content to a transmission easement (see paragraphs 27 and 41-45 above). It is also apparent that divergences, which initially existed between the lower and higher courts on the issue of the possession by the State, became harmonised by the Supreme Court. It has therefore been accepted that, if during the running of the prescription period possession of an easement had been transferred from a State enterprise to a utility company, the new possessor was entitled to include the period of possession by its predecessor

prior to 1989 in the calculation of the statutory period for prescription of the company's easement (see paragraphs 46 and 47 above).

85. Last but not least, the examples of the twenty applicants who did not succeed in obtaining compensation from the utility companies and one applicant who did, confirm that the domestic courts allowed actions for payment only in cases in which (a) it was not found that the restriction of property rights had been authorised by a historical administrative decision and/or (see paragraph 50 above) (b) it was not found that the easement of the utility had been subject to prescription. The latter element resulted either from the domestic courts' conclusion that in the light of the facts as submitted to them and on the basis of the evidence adduced by the parties, the statutory prescription period had not elapsed or from the omission of the respondent party to raise the relevant objection (see paragraphs 15, 16 and 40 above).

86. The Court accordingly holds that the applicants concerned have not shown that they had a claim sufficiently established to be enforceable, and that they cannot therefore argue that they had a "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, the domestic courts' decisions on prescription of the utility easement, which concerned thirty applicants and the decisions on the restriction of property rights on account of historical administrative decisions, which concerned three applicants, did not amount to interference with the peaceful enjoyment of their possessions. The facts of these cases do not fall within the ambit of Article 1 of Protocol No. 1 (see *mutatis mutandis*, *Gratzinger and Gratzingerova*, cited above, § 74, and *Polacek and Polackova v. the Czech Republic* (dec.) [GC], no. 38645/97, § 67, 10 July 2002).

87. That being so, in view of the fact that Article 14 of the Convention has no independent existence and in the absence of any appearance of discrimination in the circumstances of the present applications, the Court considers that Article 14 is not applicable either (see *mutatis mutandis*, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X).

88. It follows that the complaint under Article 1 of Protocol No. 1 taken alone and together with Article 14 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) Article 6 of the Convention

89. In respect of the applicants' complaint under Article 6 of the Convention that the case-law of the domestic courts was inconsistent, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is

primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, its role being to verify whether the effects of such interpretation are compatible with the Convention, save in the event of evident arbitrariness, when the Court may question the interpretation of the domestic law by the national courts (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-50, 20 October 2011).

90. In the light of the above principle and the fact that all the proceedings brought about the very same result for all thirty-three applicants, the Court finds that drawing different conclusions from the existence of an administrative decision issued under the 1958 Act, which occurred in respect of thirteen applications (see paragraphs 53, 55 and 56 above), did not constitute "profound and long-standing differences" in the case-law of the domestic courts such as to raise an issue under Article 6 of the Convention (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin*, cited above, §§ 86-87 and *Albu and Others v. Romania*, nos. 34796/09 et al., 10 May 2012, with further references).

91. Furthermore, the Court notes that the applicants had the benefit of adversarial proceedings, in which they were able to adduce evidence, and that their arguments were properly examined by the courts. At the same time, the courts' conclusions and their interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable.

92. Moreover, the Court finds that, in respect of application nos. 13512/13, 31089/14 and 56980/14, the material submitted does not disclose any appearance of procedural shortcomings on the part of the domestic courts deciding the applicants' cases.

93. It follows that the applicants' Article 6 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. The Court's ruling in respect of the remainder of application no. 45573/15

94. The situation of Mr. Jędrzejczyk, in so far as it concerned estate nos. 802 and 278 (application no. 45573/15; see paragraphs 15-17 above) and his main complaint differed from what was examined above in so far as his action for pecuniary redress was not impeded by the establishment by prescription of an easement or by the existence of a relevant administrative decision. The applicant succeeded in obtaining payment for the restriction of his property rights to two, out of five, plots encumbered by the utility installations.

He complained, however, that the amount awarded to him by the domestic court had been disproportionately small in view of the public nature of the easement which he had had to endure and the fact that the

utility company had been controlled by the State and derived commercial profits from the restrictions on private land.

95. The Court considers that the relevant part of application no. 45573/15 falls to be examined under the second paragraph of Article 1 of Protocol No. 1, which allows Contracting States to control the use of property in accordance with the general interest.

96. For any such control of use of property to comply with the requirements of Article 1 of Protocol No. 1, it must first and foremost be lawful, and must also pursue a legitimate aim.

97. There must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including those designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

98. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article, the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden.

99. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of, although the existence of procedural and other safeguards may be of certain relevance (for a summary of the applicable principles see, for example, *Hutten-Czapska* cited above, §§ 167-168).

100. As to the question whether a fair balance was struck between the demands of general interest of the community and the requirements of the protection of the individual's fundamental rights, the Court will make the following observations.

101. Firstly, at the time of the acquisition by the applicant, the estates in question were already encumbered by the existence of the utility installations. The equipment in question was visible and the applicant either was or should have become aware of the legal regime in respect of it, including the payment of property taxes (see paragraph 15 above). The applicant nevertheless decided of his own free will to become the owner of the property (see *mutatis mutandis*, *Petrova*, cited above, § 48 and, *mutatis mutandis*, *Łącz v. Poland* (dec.), no. 22665/02, 23 June 2009).

102. Secondly, the surface area taken up by the installations in question appears rather insignificant and the presence of the protective zone does not constitute a significant impediment to the sale or use of the land for

residential or agricultural purposes. This aspect of the present case distinguishes it from applications such as *Hutten-Czapska* (cited above) and *Urbárska Obec Trenčianske Biskupice v. Slovakia* (no. 74258/01, 27 November 2007), where the applicants were completely prevented from making use of their property (see *Petrova*, cited above § 51). There is also no indication that the legal regime in respect of the applicant's property entailed actual financial losses for them beyond and above the compensation already awarded.

103. Thirdly, under the applicable law the owner of the utility installations is under a duty to reduce any interference with the applicant's use of his property to a minimum and the applicant is entitled to claim compensation should any damage result from the maintenance of such equipment or lines. However, on the facts of the present cases, no such losses appear to have been sustained (see, *mutatis mutandis*, *Petrova*, cited above, § 52).

104. Fourthly, the applicant had his case examined on the merits by two levels of domestic court in fully adversarial proceedings. The decision regarding how much money to award for the non-contractual use of the land by the energy company was based on the reports of independent court-appointed expert and on the criteria set by the Supreme Court (see paragraphs 17 and 35 above).

105. The Court considers that the domestic court's decision was not arbitrary or otherwise unfair and that the remuneration awarded to the applicant, the amount of which was in line with the above-mentioned calculations of the court-appointed expert, was proportionate to the degree of interference with his property rights. There is also no indication that the legal regime in respect of the applicant's property constitutes a disproportionate and excessive burden for him.

106. Lastly, the Court finds that there is no evidence in the submitted material that there has been any discrimination against the applicant because his adversary was a company controlled or owned by the State.

107. It follows that the relevant part of application no. 45573/15 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

4. The Court's ruling in respect of the remainder of application no. 78040/14

108. In so far as the applicant complained under Article 6 of the Convention that the proceedings for payment for non-contractual use of the land had been unreasonably lengthy, the Court notes that the applicant failed to lodge a complaint under the 2004 Act concerning their excessive length (see *Rozumecki v. Poland* (dec.), no. 32605/11, § 68, 1 September 2015).

109. It follows that this complaint 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 listed in Annexes 1 and 2;

Declares the applications inadmissible.

Done in English and notified in writing on 9 June 2016.

Marialena Tsirli
Registrar

András Sajó
President

ANNEX 1

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
			YEAR OF INSTALLATION			
			CURRENT OWNER			
1	8585/13 PIEKARSKA v. Poland 15/01/2013	Piotrków Trybunalski lot nos. 14/3 and 14/5 PT1P/00087082/7	underground sewage pipeline	action for prescription of easement by utility company (*o stwierdzenie zasiedzenia służebności*)	28 April 2011 Piotrków Trybunalski District Court; 6 October 2011 Piotrków Trybunalski Regional Court; 10 August 2012 Supreme Court (refusal to entertain cassation appeal)	prescription of easement in 2009 after thirty years' possession in bad faith
		2008	1976, became visible in 1979			
			City of Piotrków Trybunalski			
2	13512/13 RYBICKA v. Poland 05/02/2013	Ustrzyki Dolne lot no. 527 KS2E/00019232/5	overhead electrical grid with poles or pylons	action for prescription of easement by utility company	26 January 2012 Lesko District Court; 28 August 2012 Krosno Regional Court	prescription of easement in 2003 after thirty years' possession in bad faith
		after 1973	1973			
			PGE			
3	42258/13 IMBIORSKI v. Poland 12/06/2013	Palmowo lot no. 65 KW26596	three overhead electrical grids with poles or pylons	action for prescription of easement by utility company	12 October 2011 Koło District Court; 24 February 2012 Konin Regional Court; 14 December 2012 Supreme Court (refusal to entertain cassation appeal)	prescription of easement in 1985 and in 1988, respectively after twenty years' possession in bad faith
		1988	1960 and 1968			
			ENERGA			

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
4	44773/13 PAPIS v. Poland 02/07/2013	Klaudyn lot no. 1213 WA1P/00067982/1 2002	overhead electrical grid with poles or pylons 1984 PSE	action for prescription of easement by utility company	4 August 2011 Pruszków District Court; 2 March 2012 Warsaw Regional Court; 29 January 2013 Supreme Court (served on 19 March 2013; refusal to entertain cassation appeal)	prescription of easement in 2004 after twenty years' possession in good faith
5	49800/13 SZARKOWICZ v. Poland 22/07/2013	Sucha Górna lot nos. 623/11 and 623/26 LE1U/00034711/8	underground sewage pipeline	(1) action for remuneration for non-contractual use of both lots (*o bezumowne korzystanie z nieruchomości*)	16 August 2010 Lublin District Court (order of payment); 17 May 2011 Lublin District Court; appeal dismissed on an unknown date	action dismissed
		1980	1981 Energetyka	(2) action for prescription of easement by utility company	24 July 2012 Lublin District Court; 24 January 2013 Legnica Regional Court	prescription of easement on lot no. 623/11 in 2001 after twenty years' possession in good faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
6	50041/13 RUŚKOWSKA v. Poland 26/07/2013	Bielsko Biała BB1B/00068019/7	electrical substation	action for restitution of the owner's lawful position and compensation	18 January 2011 Bielsko-Biała District Court; 21 April 2011 Bielsko-Biała Regional Court;	action dismissed
		2006	1963 ENION and TAURON	action for payment for non-contractual use of land	20 December 2012 Bielsko-Biała District Court; 28 May 2013 Bielsko-Biała Regional Court	action dismissed; prescription of easement in 1983 after twenty years' possession in bad faith
7	52143/13 MALĄG v. Poland 30/07/2013	Olsztyn – co-ownership lot nos. 14 and 21 OL10/00129334/3 and OL10/00013385/9	overhead electrical grid with poles or pylons 1977	action for prescription of easement by utility company	20 December 2011 Olsztyn District Court; 23 May 2012 Olsztyn Regional Court; 17 January 2013 Supreme Court (served 2 March 2013; refusal to entertain cassation appeal)	prescription of easement in 2007 after thirty years' possession in bad faith
		date unknown & 2003	ENERGA			
8	52591/13 PYCIA v. Poland 03/08/2013	Kuligowo lot no. 24/3 GW1M/00002118/4	overhead electrical grid with poles or pylons	action for removal of the electrical equipment and for restitution of the owner's lawful position (*o przywrócenie stanu zgodnego z prawem*)	7 March 2013 Międzyrzecz District Court; 18 June 2013 Gorzów Wielkopolski Regional Court	action dismissed; prescription of easement in 1995 after thirty years' possession in bad faith
		1999	1965 ENEA			

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
9	55666/13 PIECEWICZ v. Poland 26/08/2013	Stare Bielice co-ownership lot no. 53/2 GW1K/00000079/2 1996 and 1998	overhead electrical grid with poles or pylons 1973 ENEA	action for removal of electrical equipment and for restitution of the owner's lawful position	12 October 2012 Strzelce Krajeńskie District Court; 26 February 2013 Gorzów Wielkopolski Regional Court	action dismissed; prescription of easement in 2003 after thirty years' possession in bad faith
10	63957/13 DROŻDŻAK v. Poland 30/09/2013	Brzyczyn lot no. 24/9 KR3I/00019340/3 1998	electrical substation 1964 TAURON	action for payment (*o zapłatę*)	27 November 2012 Cracow Regional Court; 19 April 2013 Cracow Court of Appeal	action dismissed; prescription of easement in 1985 after twenty years' possession in bad faith
11	14891/14 KRYZA v. Poland 11/02/2014	Niepołomice lot no. 404/5 KW no. unknown date unknown (applicant born in 1949)	overhead electrical grid with poles or pylons 1980 TAURON	action for payment for non-contractual use of land	4 September 2012 Wieliczka District Court; 12 August 2013 Cracow Regional Court	action dismissed; prescription of easement in 2010 after thirty years' possession in bad faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
12	14934/14 ROGOWSKI v. Poland 07/02/2014	Koszalin lot nos. 49 KO1K/0007417/9 and 426/16 KO1K/00037126/1	overhead electrical grids with poles or pylons	action for prescription of easement by utility company	20 April 2009 Koszalin District Court; no appeal lodged	prescription of easement in 2002 after thirty years' possession in bad faith
		1967	1972 ENERGA	action for payment for non-contractual use of land	3 September 2010 Koszalin Regional Court; 29 December 2010 Koszalin Court of Appeal; 12 January 2012 Supreme Court; 23 May 2012 Szczecin Court of Appeal; 7 June 2013 Supreme Court (refusal to entertain cassation appeal)	action dismissed in view of the 2009 prescription decision of Koszalin District Court
13	22059/14 KARWACKI v. Poland 07/03/2014	Brudzew lot nos. 51, 47/4 KW9797, 70 KN1T/00013313/00 and 23/3 KW 6086	overhead electrical grid with poles or pylons	action for prescription of easement by utility company	2 April 2012 Turek District Court; 31 August 2012 Konin Regional Court; 12 September 2013 Supreme Court (cassation appeal rejected as out of time)	prescription of easement in 1972 after ten years' possession in good faith
		1980	1962 ENERGA			

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
14	28482/14 PIETRASZ v. Poland 04/04/2014	Tartaj-Kuryły and Kraśniany lot nos. 97/1, 735, 736 and 766 BI1S/00004156/0 1970	overhead electrical grids with poles or pylons 1970, 1980, 1977, 1970 PGE	action for prescription of easement by utility company	21 June 20120 Sokółka District Court; 25 October 2012 Białystok Regional Court; 15 October 2013 Supreme Court (refusal to entertain cassation appeal)	prescription in 1990, 2010, 2007, 1990, respectively after twenty and thirty years' possession in bad faith
15	28531/14 JENDYK v. Poland 04/04/2014	Rzeszów lot no. 398 KW 30241 date unknown (applicant born in 1952)	station for pressure vessels 1975 MPWiK (a State company)	action for prescription of easement by utility company	7 December 2010 Rzeszów District Court; 2 December 2011 Rzeszów Regional Court; 21 February 2013 Supreme Court; 29 October 2013 Rzeszów Regional Court	prescription of easement in 1985 after ten years' possession in good faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
16	36799/14 STEC v. Poland 07/05/2014	Stalowa Wola lot no. 370/1 TB1S/00032749/5 date unknown (applicant born in 1924)	underground gas pipeline 1966 PGN	action for prescription of easement by utility company	28 April 2009 Stalowa Wola District Court; 25 March 2010 Tarnobrzeg Regional Court; 6 July 2011 Supreme Court; 22 September 2011 Tarnobrzeg Regional Court; 6 December 2012 Stalowa Wola District Court; 17 October 2013 Tarnobrzeg Regional Court (served on 18 November 2013)	prescription of easement in 1976 after ten years' possession in good faith
17	47538/14 GRZELAK v. Poland 17/06/2014	Umiastów lot no. 16/2 WA1P/00001116/0 Prior to 1981	overhead electrical grid with poles or pylons 1981 PSE	action for establishment of a transmission easement and for payment (*o ustanowienie służebności przesyłu)*	11 February 2013 Pruszków District Court; 13 November 2013 Warsaw Regional Court	action dismissed; prescription of easement in 2009 after twenty years' possession in good faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
18	54240/14 NIERODZIK v. Poland 23/07/2014	Białystok lot nos. 716/2 and 726/2 BI1B/00120389/5 co-ownership	overhead electrical grid with poles or pylons	action for establishment of a transmission easement and for payment	6 November 2012 Białystok District Court; 24 April 2013 Białystok Regional Court; 20 September 2013 Supreme Court (refusal to entertain cassation appeal)	action dismissed; prescription of easement in 2007 after thirty years' possession in bad faith
		date unknown (applicant born in 1953)	1977 PGE		2 February 2015 Constitutional Court	not entertained
19	56980/14 BUKIERT v. Poland 08/08/2014	Białystok lot nos. 707/1 and 726/1 BI1B/00120388/8	overhead electrical grid with poles or pylons 1977	action for establishment of a transmission easement and for payment	28 November 2013 Białystok District Court; 21 March 2014 Białystok Regional Court; 30 January 2015 Supreme Court (refusal to entertain cassation appeal)	action dismissed; prescription of easement in 2007 after thirty years' possession in bad faith
		2008	PGE		7 April 2015 Constitutional Court	not entertained

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
20	70263/14 LECHOWSKA and Others v. Poland 24/10/2014	Wojanów lot no. 91/2 JG1J/00027064/9 co-ownership	overhead electrical grid with poles or pylons	(1) action for prescription of easement by utility company	17 July 2013 Jelenia Góra District Court; 5 December 2013 Jelenia Góra Regional Court	prescription of easement in 2009 after twenty years' possession in bad faith
		date unknown (applicants born in 1972, 1977, 1977 and 1975)	1969 PSE	(2) action for establishment of a transmission easement and for payment	25 April 2014 Jelenia Góra District Court (served 23 May 2014); no appeal	action dismissed
21	78040/14 SZEWCZYK v. Poland 20/01/2015	Klementynów lot nos. 306 and 319 PT1P/00069366/0	overhead electrical grid with poles or pylons	action for payment for non-contractual use of land lodged on 3 February 2012	21 February 2013 Piotrków Trybunalski District Court; 18 July 2013 Piotrków Trybunalski Regional Court The applicant did not complain under the 2004 Act about the unreasonable length of these proceedings.	action dismissed; prescription of easement in 1987 after twenty years' possession in bad faith
		1982	1967 PGE			

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
22	18939/15 ŚCIBAK v. Poland 10/04/2015	Łódź LD1M/00049476/6 1980 co-ownership 2008 exclusive ownership	overhead electrical grid with poles or pylons 1952 PGEiN	action for payment for non-contractual use of land and for compensation for the depreciation of property value	17 September 2012 Łódź Regional Court; 19 April 2013 Łódź Court of Appeal; 7 August 2014 Supreme Court	action dismissed; prescription of easement in 1982 after thirty years' possession in bad faith
23	20670/15 LEWANDOWSKI v. Poland 21/04/2015	Okuniew lot nos. 1706/3, 1706/2, 1850 SI1M/00063899/2 1989	overhead electrical grid with poles or pylons 1976 PGE	action for payment for non-contractual use of the land	17 April 2014 Mińsk Mazowiecki District Court; 23 September 2014 Siedlce Regional Court (served after 17 October 2014)	action dismissed; prescription of easement in 2007 after thirty years' possession in bad faith
24	20818/15 ADAMCZUK v. Poland 20/04/2015	Jatutów lot nos. 55/4, 55/11 and 55/6 ZA1Z/00014398/3 date unknown (applicant born in 1954)	overhead electrical grid with poles or pylons 1960s and 1975 PGE	action for prescription of easement by utility company	23 April 2012 Zamość District Court; 28 June 2012 Zamość Regional Court; 13 June 2013 Supreme Court; 17 October 2013 Zamość Regional Court; 17 September 2014 Supreme Court (served 20 October 2014; refusal to entertain cassation appeal)	prescription of easement in 2005 and in 1997, respectively after thirty years' possession in bad faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
25	21667/15 STAWOROWSKI v. POLAND 28/04/2015	Szczawno Zdrój lot nos. 680/04 and 682/04 SW1W/00002598/1 1964	underground gas pipeline 1975 Dolnośląska Spółka Gazownictwa	action for establishment of a transmission easement and for payment	31 January 2014 Wałbrzych District Court; 28 May 2013 Świdnica Regional Court; 18 June 2014 Supreme Court (served 29 October 2014)	action dismissed; prescription of easement in 2005 after 30 years of possession in bad faith
26	24271/15 ŁAZARSCY v. Poland 08/05/2015	Rogoż lot nos. 106/1, 106/5, 106/6 WR1W/00001071/5 1990	underground gas pipeline 1974 GAZ SYSTEM	action for transmission easement	21 August 2013 Trzebnica District Court; 21 February 2014 Wrocław Regional Court; 25 February 2015 Supreme Court (refusal to entertain cassation appeal)	action dismissed; prescription of easement at the latest in 2004
27	41154/15 MCA v. Poland 10/08/2015	Wrocław lot nos. 7/15 and 9 and 8/7 and 10 WR1K/00264253/6; 4/8, 5/6, 6/6, 7/5 and 8/6 WR1K/00161476/3 2003	overhead electrical grid with poles or pylons 1968 TAURON	action for payment for non-contractual use of land	5 April 2013 Wrocław Regional Court; 4 October 2013 Wrocław Court of Appeal; 10 February 2015 Supreme Court	action dismissed; prescription of easement in 2009 after 30 years' possession in good faith

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
28	45573/15 JĘDRZEJCZYK v. Poland 09/09/2015	Potok lot nos. 802 and 804 (PT1O/00007612/7; PT1O/00024160/8) Kolonia Grudzień lot nos. 278, 147/3 and 319 (9PT1O/00023818/9)	overhead electrical grid	action for payment for non-contractual use of land	20 May 2014 Piotrków Trybunalski Regional Court; 9 March 205 Łódź Court of Appeal (served 15 April 2015)	action partly dismissed; prescription of easement in 1985 after twenty years' possession in bad faith
		1992, 1994, 1997 and 1985 co-ownership	1962 PGE			
29	45619/15 KALINOWSCY-MIKOŁAJCZUK v. POLAND 04/09/2015	Baczyn lot nos. 197/4 and 197/5 GW1G/0011281/1 and GW1G/00090125/3	overhead electrical grid with poles or pylons	action for establishment of a transmission easement	30 December 2014 Gorzów Wielkopolski District Court; 11 April 2014 Gorzów Wielkopolski Regional Court; 24 April 2015 Supreme Court (served 21 May 2015; refusal to consider cassation appeal)	action dismissed; prescription of easement in 2007 after 30 years' possession in bad faith since 1977
		2007	prior to 1977 ENEA			
30	48023/15 DEPTUŁA v. Poland 21/09/2015	Bartąg lot no. 295/69 OL1O/00108494/9	overhead electrical grid with poles or pylons	action for payment for non-contractual use of the land and for removal of electrical equipment; for restitution of the owner's lawful position	31 October 2014 Olsztyn District Court; 31 March 2015 Olsztyn Regional Court;	action dismissed; prescription of easement in 2010 after twenty years' possession in good faith (calculated from 1990)
		2005 co- ownership	unspecified date in 1970s ENERGA			

ANNEX 2

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
1	36350/13 CHRZĄSZCZ v. Poland 25/05/2013	Łódź lot no. 358/5 KW97240 perpetual lease 2004	overhead electrical grid with poles or pylons 1972 PGE	action for payment for non-contractual use of the land and payment	8 March 1972 by the District Board of the People's Council in Łódź *(Prezydium Dzielnicowej Rady Narodowej)*	14 March 2011 Łódź Regional Court; 7 December 2011; Łódź Court of Appeal; 8 November 2012 Supreme Court
2	31089/14 GROMADZKA v. Poland 12/04/2014	Warsaw lot nos.12/3 and 12/7 WA1M/00436564/0 2004	overhead electrical grid with poles or pylons 1980 RWE Stoen	action for payment for non-contractual use of the land and payment	July 1980 by the Head of the Żoliborz District *(Naczelnik Dzielnicy*)	16 June 2008 Warsaw District Court; 4 February 2009 Warsaw Regional Court; 30 November 2011 Warsaw Regional Court; 12 July 2013Warsaw Court of Appeal; 6 November 2013 Supreme Court (served on 16 December 2013)

	CASE LODGED ON	PROPERTY	TYPE OF UTILITY EQUIPMENT YEAR OF INSTALLATION CURRENT OWNER	TYPE OF REMEDY USED	COURSE OF DOMESTIC PROCEEDINGS	OUTCOME
3	46099/14 GOGOLEWSKI v. Poland 18/07/2014	Wejherowo lot no. 226/6 GD1W/00002299/3	overhead electrical grid with poles or pylons	action for payment for non-contractual use of land and action for transmission easement	23 June 1983 by the Wejherowo City Office (*Urząd Miasta*) (served on the former owner of the land)	10 February 2009 Gdańsk Regional Court; 29 June 2009 Gdańsk Court of Appeal; 24 June 2010 Supreme Court; 7 February 2011 Gdańsk Regional Court; 5 July 2011 Gdańsk Court of Appeal; 30 March 2012 Regional Court; 24 October 2012 Gdańsk Court of Appeal 16 April 2014 Wejherowo District Court; 17 February 2015 Gdańsk Regional Court