CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

PILOT-JUDGMENT PROCEDURE

Application no. 4045/02
by Romana TOSZEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 12 February 2008 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Stanislav Pavlovschi,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku, *judges,*

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 2 January 2002,

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

Having regard to the decisions to strike the applications *Wolkenberg and Others v. Poland* (no. 50003/99) and *Witkowska-Toboła v. Poland* (no. 11208/02) out of the Court's list of cases,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Romana Toszek, is a Polish national who was born in 1939 and lives in Sławno.

A. The circumstances of the case

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

1. Background

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

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

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

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

2. The applicant's attempts to recover compensation

On an unspecified date in 2000 the applicant lodged a claim for compensation for the Bug River property, seeking payment of the material damage and non-material damage (frustration and stress involved in futile attempts to recover compensatory property).

The claim was dismissed on 6 November 2000. The court found that the applicant had failed to prove that she had actually suffered the material damage alleged. The applicant appealed. On 13 September 2001 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance judgment. On 19 November 2001 the Gdańsk Court of Appeal rejected the applicant's cassation appeal as she failed to lodge it in accordance with formal requirements set out in Polish law (she failed to indicate the grounds for her cassation appeal).

On 9 April 2003 the applicant obtained a certificate issued by the Mayor of Sławno (*Starosta)* confirming that she had the right to compensation for the property abandoned by her parents, valued at 139,029 Polish zlotys (PLN).

The applicant's subsequent attempts to acquire State property were unsuccessful. The only possibility of enforcing the claim was to participate in competitive bids for the sale of State property. However, the State authorities throughout Poland officially acknowledged the acute shortage of State-owned land designated for the realisation of the Bug River claims.

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

B. Relevant domestic law and practice

A detailed description of the relevant domestic law and practice concerning the Bug River property is set out in the judgments delivered by the Court in the pilot case of *Broniowski v. Poland* (see *Broniowski v. Poland (merits)*, cited above §§ 39-120; and *Broniowski v. Poland (friendly settlement)*, cited above, §§ 14-30) and the decisions given in the cases of *Wolkenberg and Others v. Poland* and *Witkowska-Toboła v. Poland*, cited above, §§ 24-25 and §§ 28-29 respectively.

The operation of the compensation scheme introduced by the July 2005 Act is described in the Court's decisions given in the cases of *Wolkenberg and Others v. Poland* (dec.) no. 50003/99, 4 December 2007, §§ 18-23 and *Witkowska-Toboła v. Poland* (dec.) no. 11208/02, 4 December 2007, §§ 22-27.

COMPLAINT

The applicant in essence complained about the State's continued failure to secure the implementation of her right to compensation for the Bug River property in the period before the entry into force of the July 2005 Act and about the subsequent reduction of her compensatory entitlement to 20% of the original property's current value. She alleged a violation of Article 1 of Protocol No. 1 to the Convention.

THE LAW

A. Application of the pilot-judgment procedure

The present case, like some 273 similar cases currently on the Court's docket, had been examined in accordance with the pilot-judgment procedure following the judgment given by the Court in the *Broniowski* case (see *Broniowski (merits)*, cited above §§ 189 et seq.). The applicant's complaint originated in the same structural shortcoming found to have been at the root of the Court's finding of a violation of Article 1 of Protocol No. 1 in the pilot case and defined as "a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants" which "ha[d] affected and remain[ed] capable of affecting a large number of persons" (ibid., see also the third operative provision of the judgment).

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

B. Application of Article 37 of the Convention

Article 37 of the Convention reads, in so far as relevant, as follows:

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

In the cases of *Wolkenberg and Others v. Poland* and *Witkowska-Tobola v. Poland* the Court, having regard to the general compatibility of the compensation scheme introduced by the July 2005 Act with the principles of protection of property rights, in particular with the principles relating to compensation and to the effective functioning of that Act in practice, as well as to the availability of domestic remedies enabling Bug

River claimants to recover compensation for any past material or non-material prejudice suffered as a result of the previous defective operation of the domestic legislation, was satisfied that the issue giving rise to the Bug River cases had been resolved for the purposes of Article 37 § 1 of the Convention.

The Court held that the procedures under the July 2005 Act had provided the applicants and other Bug River claimants with relief at domestic level which made its further examination of their applications and of other similar applications no longer justified. In consequence and finding no special circumstances regarding respect for human rights that would require the continued examination of the cases by virtue of Article 37 § 1 *in fine*, the Court decided to strike the applications out of its list of cases (see *Wolkenberg and Others v. Poland*, cited above, §§ 60-77; and *Witkowska-Tobola v. Poland*, cited above, §§ 62-79).

Having regard to the circumstances of the present case and to the fact that it is open to the applicant to avail herself of the compensation scheme introduced by the July 2005 Act, the Court finds no reason justifying its departure from the conclusion reached in the above-mentioned cases. Accordingly, the application should be struck out of the Court's list of cases.

For these reasons, the Court unanimously

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

Lawrence Early
Registrar

Nicolas Bratza
President