

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

FOURTH SECTION

DECISION

Applications nos. 33081/11 and 14403/12
Maria WOŹNIAK and Eugeniusz WOŹNIAK against Poland
and Stanisław CHRUŚLIŃSKI and Janina POWODZIŃSKA against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 June 2014 as a Chamber composed of:

Ineta Ziemele, *President,*
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications lodged on 18 May 2011 and 24 February 2012 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicants in the first case, Ms Maria Woźniak and Mr Eugeniusz Woźniak, are Polish nationals, who were born in 1932 and 1925 respectively and live in Rybno.

2. The applicants in the second case, Mr Stanislaw Chruśliński and Ms Janina Powodzińska, are Polish nationals, who were born in 1949 and 1952 respectively and live in Łódź.

A. General background to the case

3. In the past decades road construction projects were often carried out in Poland on privately owned plots of land which were *de facto* taken over for that purpose by the authorities despite de fact that the ownership of those plots had not been validly transferred to the State or other public bodies.

4. In 1998 the legislator adopted a statute specifically addressing the situation of persons whose lands had in the past been taken over for road construction purposes; in particular with a view to bringing their legal status into line with the realities of the present day and to ensure payment of compensation to former owners or their legal successors (see Relevant domestic law, paragraphs 20-23 below).

B. The circumstances of the cases

5. The facts of the cases, as submitted by the applicants, may be summarised as follows.

1. Application no. 33081/11, Maria WOŹNIAK and Eugeniusz WOŹNIAK

6. On an unspecified point in time part of the applicants' land was taken over by the State and a road was built on it.

7. By virtue of the Sochaczew City Council resolution dated 25 March 1997 the road which crossed through the applicants' property was classified as a local town road (*droga lokalna miejska*).

8. On an unspecified date the Mazowiecki Governor (*Wojewoda Mazowiecki*), acting *ex officio*, instituted proceedings concerning the land taken over from the applicants.

On 2 July 2009 the Governor (*Wojewoda Mazowiecki*) issued a decision confirming the acquisition *ex lege* by the municipality with effect from 1 January 1999 of the part of the property covered by the road. This decision was based on section 73 (1) of the Act of 13 October 1998 – the Public Administration Reform (Introductory Provisions) Act, hereinafter the Introductory Provisions Act 1998 *(Ustawa -przepisy wprowadzajace ustawy reformujące administrację publiczną),* regulating the status of properties taken over in the past by the State for the purposes of constructing public roads (see Relevant domestic law below, paragraph 21*)*. Under this Act, owners whose land had *ex lege* become the State's or local municipalities' property on 1 January 1999 under its section 73(1), were entitled to request compensation if they applied for it between 1 January 2001 and 31 December 2005. On the latter date the period for submitting the compensation claim would expire.

9. On 14 August 2009 the applicants requested compensation for the land to which the decision of 2 July 2009 pertained.

10. On 28 September 2009 the Mayor of the Sochaczew District discontinued the proceedings for compensation, finding that the applicants' request for compensation had been lodged after the period for submitting their claim had expired. The applicants appealed.

11. On 3 December 2009 the Mazowiecki Governor quashed the decision of 28 September 2009 in so far as it had discontinued the proceedings and refused to allow the applicants' request for compensation, finding that the period for submitting their claim had expired on 31 December 2005.

12. On 10 November 2010 the Warsaw Regional Administrative Court dismissed the applicants' appeal, considering that they should have sought compensation prior to 31 December 2005. The judgment was served on the applicants' lawyer on 27 January 2011.

13. On 27 February 2011 the lawyer informed the applicants that there were no grounds on which to bring a cassation appeal before the Supreme Administrative Court as their entitlement to claim compensation claim had been extinguished under the provisions of the Introductory Provisions Act 1998. It followed that the cassation appeal would not have offered any prospects of success.

2. Application no. 14403/12, Stanisław CHRUŚLIŃSKI and Janina POWODZIŃSKA

14. On 1 March 2007 the Łódź Regional Office informed the applicants that administrative proceedings had been instituted *ex officio* with a view to giving a decision confirming the *ex lege* expropriation with effect from 1 January 1999 of land taken from them prior to 1989 for road construction purposes.

15. On 13 March 2007 the applicants requested that compensation be paid to them.

16. On 2 July 2009 the Łódź Governor (*Wojewoda Łódzki*) issued a decision confirming the acquisition *ex lege* by the municipality with effect from 1 January 1999 of the land covered by the road. It was based on section 73 (1) of the Introductory Provisions Act of 13 October 1998

17. On 2 July 2008 the Łódź County Sheriff (*Starosta*) refused to pay compensation to the applicants, referring to section 73 (4) of the 1998 Act. The applicants appealed, relying on the constitutional protection of their right to the peaceful enjoyment of their possessions. They argued that the authorities had failed to deal with their case speedily, since the proceedings to confirm expropriation had not been instituted until 2006, eight years after the Introductory Provisions Act 1998 had entered into force. As a result, they had been deprived of their entitlement to compensation. Had the authorities instituted the proceedings before the relevant expiry date, the applicants would not have lost their entitlement. They referred in particular to their advanced age and to the fact that the second applicant was in poor

health, which made it extremely difficult for her to take the relevant steps, in particular in the absence of any information about her legal situation.

18. On 25 May 2009 the Łódź Governor dismissed their appeal. The applicants appealed to the Regional Administrative Court. On 27 October 2009 the Łódź Regional Administrative Court stayed the proceedings, pending the outcome of the case No. K 20/09 instituted by the Ombudsperson which was at that time being examined by the Constitutional Court (see below, Relevant domestic law).

19. The proceedings were resumed at a later date. By a judgment of 24 August 2011 served on the applicants on 12 September 2011 the administrative court dismissed their appeal, referring to section 73(4) of the Introductory Provisions Act and to the judgments of the Constitutional Court (see paragraphs 27-33 below). It held that the period for submitting the compensation claim had expired in accordance with the terms specified in the Act.

C. Relevant domestic law and practice

1. Public Administration Reform (Introductory Provisions) Act 1998

20. As well as introducing general reforms to public administration, the Public Administration Reform (Introductory Provisions) Act 1998 of 13 October (*Przepisy wprowadzające ustawy reformujące administrację publiczną*) regulated the legal status of land taken over in the past for the purposes of road construction without a formal transfer of ownership of the land.

21. Section 73(1) of that Act conferred *ex lege* on the State Treasury or on the relevant local municipality ownership of such lands with effect from 1 January 1999 based on *de facto* possession. It further stipulated that the former owners had a right to compensation.

22. Section 73(4) of the 1998 Act provided that the former owners could submit compensation claims to the administrative authorities between 1 January 2001 and 31 December 2005. After 31 December 2005 the compensation claim had to expire. The original wording of this provision referred to a future statute which would govern the principles and procedures for the determination of the compensation to be awarded. It was amended in 2000 and the general reference to a "separate Act" therein was replaced by the specific reference to the Land Administration Act 1997 (see paragraphs 24-26 below).

23. The Act was published in the Journal of Laws of the Republic of Poland in 1998, no. 133, as item no. 872. It entered into force on the day of its publication, 29 October 1998.

2. The 1998 Land Administration Act

24. On 1 January 1998 the Land Administration Act of 21 August 1997 (*Ustawa o gospodarce nieruchomościami* – "the Land Administration Act") entered into force. It provides a generally applicable legal framework for expropriations. Although some of its provisions were modified in recent years, the substance of the provisions relevant to the present case remained unchanged.

25. In accordance with section 128 § 1 of the Act, compensation for expropriation has to correspond to the value of the property right concerned. Under section 130 § 1 of the Act, the amount of compensation is fixed regard being had to the status and value of the property on the day on which the expropriation decision was given. The value of the property is estimated on the basis of an opinion prepared by a certified expert.

26. Section 134 of the Act provides for the market value of the expropriated property to serve as a basis on which the amount of compensation is fixed. The following criteria are to be taken into consideration when establishing the market value of the property: its type, location, the use to which it has been put, the existence of any technical infrastructure on the property, its overall state and current prices of properties in the municipality.

3. Judgments of the Constitutional Court

27. In its judgment of 14 March 2000 (P 5/99) the Constitutional Court declared the section 73 (1) and 73 (5) of Introductory Provisions Act 1998 compatible with the Polish Constitution as well as with the Article 1 of the Protocol No. 1 to the Convention. It discontinued the proceedings in respect of the section 73(4) of Introductory Provisions Act 1998.

The court stressed that the legislator intended to regulate in a general manner the question of land ownership in a domain of particular public importance. Sections 73 (1) and 73 (5) of Introductory Provisions Act 1998 concerned plots taken over during several decades for the purpose of road construction. The *de facto* taking of land and construction of roads created irreversible situations. The contested provisions pertained only to past situations and did not allow any further taking over of plots. The legislation under review served not only the public interest but also the interests of owners. It ended the state of uncertainty caused by the fact that they had not been able to exercise their ownership. The *ex lege* effect of the provisions was a rational solution which made it possible to bring the legal status of the plots into line with the realities.

28. In its judgment of 20 July 2004 (SK 11/02) the Constitutional Court declared section 73(4) of Introductory Provisions Act 1998 compatible with the Polish Constitution. The court stressed that Section 73 of Introductory Provisions Act 1998 concerned plots whose legal status did not reflect their

actual situation existing for long periods of time, lasting for up to fifty years. The Constitutional Court emphasised that the owners concerned had in the past a possibility of asserting their rights but had failed to do so within the applicable time-limits.

29. The legislation vesting ownership of properties in the State Treasury or local municipalities by way of the 1998 Act was a one-off and exceptional solution the effects of which were limited in time. It concerned only land taken over for the purposes of road construction. It required special measures to be applied, partially departing from those envisaged by the Land Administration Act 1997. The solution consisting in assessing *ex officio* the status of all the plots concerned and issuing *ex officio* individual decisions confirming expropriation *ex lege* in each and every case could have not been carried out within a reasonable time.

30. The court observed that the special provisions created by the Introductory Provisions Act 1998 imposed certain limitations on the compensation paid to the owners whose lands had been in the past *de facto* expropriated for road construction purposes. These limitations included their inability to request compensation before 2001; a limitation on the period within which such applications could be made until 31 December 2005; a failure to specify exactly when compensation had to be paid to the person entitled; and a failure to take into account changes to the value of the property between the date ownership was formally transferred by way of a decision confirming the *ex lege* expropriation and the date the compensation was decided. However, the context and character of the set of measures created by section 73 of the 1998 Act justified these restrictions.

31. On 15 September 2009 the Constitutional Court gave a judgment (33/07) in reply to legal question put to it by the Gliwice Regional Administrative Court. That court requested the Constitutional Court to make an assessment of compatibility of section 73(4) of the 1998 Act with the Constitution in so far as this provision allowed for a compensation entitlement to be irrevocably extinguished regardless of whether an administrative decision confirming the acquisition *ex lege*, as from 1 January 1999, of land used for road construction purposes by the municipality (or the State Treasury) had been given. The Constitutional Court noted that proceedings concerning such decisions were governed by the generally applicable provisions of the Code of Administrative Procedure. Former owners were parties to these proceedings. The decisions confirming that the municipality or the State Treasury, as the case might be, had acquired ownership of properties taken *de facto* over by the State in the past were of a declaratory character. The fact that the 1998 Act did not provide for a time-limit for the authorities to give such decisions did not mean that it was impossible in law for former owners to claim compensation in absence of these decisions. These decisions were not a legal prerequisite for claiming compensation prior to the expiry of the

substantive time-limit provided for by that Act, namely 31 December 2005. If a request for compensation was submitted in the absence of a decision, the compensation proceedings should be stayed. The authority to which the compensation request was submitted was obliged to request the governor to give a decision confirming the expropriation *ex lege* as from 1 January 1999, after which the compensation proceedings had to be resumed. The Constitutional Court referred to the practice of the administrative authorities, established by the courts (the Supreme Administrative Court, I OSK 260/08, 2 February 2008; the Warsaw Regional Administrative Court, I SA/Wa 1/06, 14 June 2006 and I SA/Wa 681/07, 10 July 2007).

The court observed that the request for compensation under Section 73 the 1998 Act was in principle a second opportunity for owners to seek compensation as they could have claimed it in the past when their land had been taken for the road construction purposes.

32. On 30 November 2009 the Ombudsman challenged the constitutionality of the section 73(4) of the 1998 Act, submitting that it breached the proportionality principle enshrined in the Constitution by introducing an unclear and unconstitutional notion of "equitable" (*słuszne*) compensation, differing from that used for ordinary compensation purposes in the 1997 Land Administration Act. It was also in breach of the constitutional protection of the right to the peaceful enjoyment of possessions, as the compensation entitlement had irrevocably ceased to exist on 31 December 2005. It was further submitted that the period for submitting a compensation claim should not have been allowed to expire before the administration had given an expropriation decision. No provision was made in the 1998 Act obliging the authorities to issue the expropriation decisions prior to 31 December 2005, which rendered that regulation manifestly unfair ("*regulacja pozorna*") and deprived owners of a reasonable protection of their rights.

33. In its judgment of 19 May 2011 (K 20/09) the Constitutional Court dismissed the Ombudsman's challenge. It essentially rephrased its own reasoning adopted in 2004 and reiterated that the former owners had had ample time to take appropriate steps to obtain compensation; initially two years of *vacatio legis* after the 1998 Act had entered into force and, subsequently, five years within which to seek compensation. It had been possible for them to secure their rights by demonstrating adequate diligence.

4. Case-law of the courts

34. In a number of decisions the courts held that the decisions given under the Introductory Provisions 1998 Act confirming acquisition *ex lege* of the land by the municipalities (or by the State Treasury) on 1 January 1999 were of a declaratory character. The courts also held that the fact that such a decision had not been issued did not prevent the persons concerned from claiming compensation under the provisions of that Act (see e.g. the

Warsaw Regional Administrative Court, I SA/WA 694/09, 21 October 2009; the Poznań Regional Administrative Court, II SA/Po 558/90, 15 January 2009 and the Supreme Court, resolution III CZP 77/02, 21 January 2003).

COMPLAINTS

35. The applicants complained that at no point in time had they been made aware of the fact that in 1999 their plot had become *ex lege* the property of the local municipality.

36. Furthermore, the authorities had failed to inform them that they could claim compensation in respect of that land and, in particular, that the period for submitting their claim would expire on 31 December 2005. They had only learned of the expropriation by way of the administrative decisions issued long after their compensation claims had expired. Their efforts to obtain compensation had failed essentially because the applicable legal framework did not provide for any mechanism allowing for minimum procedural protection of their right to compensation.

37. The applicants relied on Article 1 of Protocol No. 1 to the Convention.

THE LAW

38. Pursuant to Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications given their similar factual and legal background.

39. The applicants complained that at no point in time had they been made aware of the fact that in 1999 their plot had become *ex lege* the property of the local municipality. The authorities had failed to inform them that they could claim compensation and, in particular, that the period for submitting their claim would expire on 31 December 2005. Their efforts to obtain compensation had failed.

40. The applicants relied on Article 1 of Protocol No. 1 to the Convention which reads:

> "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."

41. The Court first emphasises that the applicants' complaint does not concern the decisions and acts prior to 10 October 1994 and thus before the entry into force in respect of Poland of the Protocol No. 1 to the European Convention on Human Rights on that date. In the present proceedings, the applicants complained essentially about the refusals of the domestic authorities to pay them compensation in respect of the *ex lege* expropriation effected under provisions which had entered into force in 1999. The Court's competence *ratione temporis* to deal with the applications is therefore not excluded (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and *Bennich-Zalewski v. Poland*, no. 59857/00, §§ 74-75, 22 April 2008).

42. The Court notes that the applicants did not lodge cassation appeals with the Supreme Administrative Courts against the judgments given in their respective cases by the Regional Administrative Courts (see paragraphs 12 and 18 above). However, it does not find it necessary to determine whether the applicants have exhausted domestic remedies, because it considers that the applications are in any event manifestly ill-founded for the following reasons.

43. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus in *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; see also, among many other authorities, *Skibińscy v. Poland*, no. 52589/99, § 73, 14 November 2006; *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, 7ECHR 2000-VI; *Tarnawczyk v. Poland*, no. 27480/02, § 87, 7 December 2010):

> "The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

44. As regards the nature of the alleged interference, the Court considers that the contested measures should be examined under the first paragraph of Article 1 of Protocol No. 1.

45. With regard to the aim of the interference, the Court reiterates that any interference with a right of property can only be justified if it serves a legitimate public interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of

public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, 17 October 2002, § 85, *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX; and *Iwaszkiewicz v. Poland*, no. 30614/06, § 43, 26 July 2011).

46. As established by the Polish Constitutional Court, the purpose of the contested provisions of the Introductory Provisions Act 1998 was to bring the legal ownership of the lands taken over *de facto* in the past by the State into line with the realities of the present day and to clarify the position of both the affected owners and the public-law entities – legal successors of those who had in the past taken the owners' land into *de facto* possession for road construction purposes (see paragraph 27 above). They were further designated to make it possible for the affected persons to claim compensation in respect of that land and to speed up the processing of their applications (see paragraph 29 above).

47. The Court therefore accepts that the interference with the applicants' property rights pursued a legitimate aim "in accordance with the general interest".

48. As the Court has held on many occasions, interference with property rights must be prescribed by law and pursue one or more legitimate aims. In addition, there must be a reasonable relationship of proportionality between the means employed and the aims sought to be realised. In other words, the Court must determine whether a fair balance was struck between the demands of the general interest and the interest of the individuals concerned. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *James and Others v. the United Kingdom*, cited above, § 50, Series A no. 98; *Schirmer v. Poland*, no. 68880/01, § 35, 21 September 2004 and *Wieczorek v. Poland*, no. 18176/05, § 59-60, 8 December 2009).

49. It remains to be ascertained whether in respect of the alleged interference with the applicants' possessions whether it was lawful and whether a fair balance was struck between the means employed and the aim sought to be realised.

50. Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph of that Article authorises the deprivation of possessions "subject to the conditions provided for by law". Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000-XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against

arbitrariness (see, for example, *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999).

51. The legal norms upon which the interference with the right to the peaceful enjoyment of possessions is based should be sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 82-83, 8 December 2005). As to the notion of "foreseeability", its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.1. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, 7 June 2012). Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see, mutatis mutandis, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 88, 14 September 2010).

52. In the present case the interference complained of was provided for by section 73 of the Introductory Provisions Act 1998. It has not been argued, let alone shown, that this provision did not comply with the requirements specified above. The Court therefore accepts that that interference was prescribed by law.

53. As to whether the interference struck the fair balance between the interests involved, the Court has already noted that the applicants do not complain about the deprivation of property as such. The focus of their complaint is that they did not receive compensation. In this connection, the Court reiterates that in the case of deprivation of property, compensation terms under the relevant domestic legislation are material to the assessment of whether the contested measure observes the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicants. The taking of property without payment of an amount reasonably related to its value normally constitutes a disproportionate interference, and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 111, ECHR 2005-VI and *The Holy Monasteries v. Greece*, 9 December 1994, § 71, Series A no. 301-A).

54. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, in order to assess the proportionality of the interference the Court looks at the degree of protection from arbitrariness that is afforded by the proceedings in the case (see *Hentrich v. France*, 22 September 1994, § 46, Series A no. 296-A; *Gladysheva v. Russia*, no. 7097/10, § 68, 6 December 2011). Domestic law must provide for legal protection against arbitrary interference by the public authorities. Any interference must be accompanied

by certain procedural guarantees (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005-XII (extracts); *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 168, 9 October 2008).

The Court would, moreover, reiterate that the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the domestic policy-maker should be afforded a particularly broad margin of appreciation (see, for example, *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 52, ECHR 2006-VI). This also holds true in respect of urban and regional planning policies (see, under Article 6 § 1, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 70, ECHR 2004-III).

55. In the instant case, the Court observes that the question raised by the applicants has been examined by the Polish Constitutional Court which declared the contested legislative provisions compatible with the Polish Constitution and also with Article 1 of the Protocol No. 1 to the Convention. The Constitutional Court examined various aspects of the manner in which section 73 affected the legal position of the former owners. It repeatedly held that the restrictions it imposed on them did not infringe individual ownership rights. The Constitutional Court stressed, *inter alia*, that the provisions of the 1998 Introductory Provisions Act were intended to regulate questions of title in the interest of legal certainty and to ensure that the persons concerned obtain compensation within a reasonable time (see paragraphs 27 and 46 above). The Court is satisfied that the Constitutional Court gave sufficient and relevant reasons to justify the conclusions it reached.

56. The Court notes that the contested legislative provisions constituted a response to problems resulting from the authorities' practices in the context of construction of roads in Poland in the past decades (see paragraph 27 above). These provisions pertained only to factual situations created in the past and did not provide for further taking of land in the future. Furthermore, their scope appeared to have been defined with sufficient precision in order to avoid uncertainty as to their application. All the persons concerned were well aware that their plots had been *de facto* taken in the past for the road construction purposes. The Constitutional Court established that the legislator in fact created for the former owners who had not obtained compensation at the time of the taking a second opportunity to seek it (see paragraph 20 above).

57. The 1998 Introductory Provisions Act provided, from 2000 onwards, that the generally applicable legal framework governing the determination of compensation to be paid in the context of expropriation for public purposes was to be applied to the situation of the former owners. Hence, the owners affected by the fact that their possessions had in the past been *de facto* taken over by the State for road construction purposes had at their

disposal a complete set of legal provisions, identical with that applicable to each and every case of expropriation for public purposes, both as to the procedure to be followed and as to the determination of compensation to be paid (see paragraph 31 above].

58. The Court further notes that a first-instance administrative decision relating to compensation could be contested before the appellate administrative authority and that an appeal to the administrative court was available against that decision. The applicants availed themselves of those remedies. In sum, the applicants had a clear, practical and effective opportunity to challenge the administrative decisions regarding their right to compensation (compare and contrast, *De Geouffre de la Pradelle v. France*, 16 December 1992, §§ 34-35, Series A no. 253-B, *mutatis mutandis*).

59. The Court is therefore satisfied that the procedural framework applicable to the applicants' cases complied with the criteria set out by the Court's case-law and provided sufficient guarantees against arbitrariness.

60. The Court further observes that the Land Administration Act specified the criteria to be met for determining the level of compensation to be paid for expropriation. The Court emphasises that that Act expressly stipulated that compensation had to correspond to the value of the property right concerned. Under section 130 § 1 of the Act, the value of the property was to be estimated on the basis of an opinion prepared by a certified expert. The market value of the expropriated property was to serve as a basis on which the amount of compensation was to be fixed. The Court is therefore satisfied that the substantive framework governing the level of compensation to be paid to persons in the applicants' situation safeguarded their rights to obtain compensation reasonably related to the value of the expropriated land.

61. The Court is of the view that the temporal scope of the framework created by the Introductory Provisions Act in 1998 is of a crucial importance in the assessment of the present case. It observes that under section 73 (1) of that Act (see paragraph 21 above) persons whose land had been in the past *de facto* taken over for road construction purposes before the collapse of the communist system in 1989, were entitled to compensation. Section 73 (4) of that Act, which entered into force on 1 January 1999, created a clear temporal framework for the applicants to claim compensation. They could submit their compensation claims from 1 January 2001 onwards.

62. Hence, the legislature has first provided for a period of two-year *vacatio legis* which gave both public-law entities obliged to pay compensation and the former owners an opportunity to become aware of their rights and to prepare their actions in connection with the operation of the compensation scheme.

63. The period for submitting the compensation claims was to expire on 31 December 2005. It therefore lasted for five years and expired more than

seven years after the publication of the 1998 Act (see paragraphs 22-23 above). It cannot therefore be accepted that this period was so short as to make it unduly difficult for the applicants to become aware of their rights and to exercise them in a timely and effective manner. It appears that the applicants, for many years, refrained from taking any legal steps in order to claim their ownership or compensation rights.

64. The Court is of the view that holders of the Convention rights that are susceptible of regulation by public authorities in the general interest of the community are themselves expected to show at least a minimum degree of diligence in the vindication of their rights. This obligation is all the more relevant with respect to rights governed by civil law and falling within the ambit of Article 1 of Protocol No. 1 to the Convention. It is a normal obligation of persons vested with rights governed by civil law to display due diligence in their exercise and vindication. In the present case, the applicants have failed to advance any persuasive arguments to justify their failure, during a five-year period, to take steps to establish their legal situation arising out of the 1998 Act and to address it in an appropriate manner, by claiming compensation in the way determined by the provisions set out therein. In particular, it is not open to the applicants to say that in the particular circumstances of their cases they could not have become aware of the statutory framework applicable to their situation, or that the conclusions of the administrative authorities were unreasonable or unforeseeable, in the light of that legislation. It is further noted that the special provisions created by the Introductory Provisions Act 1998 were examined several times by the Constitutional Court, prior to the expiry of the five-year period during which the owners could apply for compensation in respect of their lands (see paragraphs 27-33 above). This, in the Court's opinion, created for the persons concerned another opportunity to become aware of their legal situation and to take measures with a view to safeguarding their rights prior the expiry of the time-limit on 31 December 2005. Furthermore, the Court accepts that the necessity to ensure legal certainty is a legitimate aim that entitles the State to set up strict temporal limits for claiming property rights.

65. The Court also attaches importance to the fact that under the established practice of the Polish courts issuing of a decision confirming the expropriation with effect from 1 January 1998 was not a necessary legal condition for claiming compensation by the former owners (see paragraph 34 above).

66. To sum up, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

67. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority

Decides to join the applications;

Declares the applications inadmissible.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President