

***Broniowski v. Poland (friendly settlement) [GC] - 31443/96***

Judgment 28.9.2005 [GC]

**Article 1 of Protocol No. 1**

**Article 1 para. 1 of Protocol No. 1**

**Peaceful enjoyment of possessions**

Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *friendly settlement (general and individual measures following finding of violation originating in a systemic problem)*

**Article 37**

**Article 37-1-b**

**Matter resolved**

Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *friendly settlement (general and individual measures following finding of violation originating in a systemic problem)*

*Facts:* Following the Second World War, the Polish State undertook to compensate persons who had been "repatriated" from the so-called "territories beyond the Bug river", which no longer formed part of Poland, in respect of property which they had been forced to abandon. Such persons were entitled to have the value of such property deducted either from the price of immovable property purchased from the State or from the fee for "perpetual use" of State property. The estimated number of claimants was in the high tens of thousands. In 1968, the applicant's mother inherited the estate of his grandmother, who had abandoned a plot of land and a house when repatriated. The applicant's mother was subsequently granted the right of "perpetual use" of a plot of State land at a fee of PLZ 392 per year. For the purposes of compensation the value of the abandoned property was fixed at PLZ 532,260 and was offset against the total fee for "perpetual use" (PLZ 38,808). After inheriting his mother's estate, the applicant requested payment of the remainder of the compensation due. He was informed that as a result of the enactment of the Local Self-Government Act in 1990, by which most State land had been transferred to the local authorities, it was not possible to satisfy his claim. In 1994 the Supreme Administrative Court dismissed the applicant's complaint about the Government's alleged inactivity in failing to introduce legislation dealing with such claims. Between 1993 and 2001, several laws were passed which further reduced the already small stock of property designated for compensating repatriated persons. In December 2002 the Constitutional Court declared unconstitutional various statutory provisions restricting the possibility of satisfying entitlement to compensation for abandoned property. The court considered that by excluding particular types of State-owned land, the legislation had rendered the "right to credit" illusory. In practice, claimants had to participate in auctions of State-owned property and were

frequently excluded as a result of additional conditions being imposed. Furthermore, following the Constitutional Court's judgment the State Agricultural and Military Property Agencies suspended auctions pending the adoption of new legislation. Subsequently, a law of December 2003 provided that the State's obligations towards persons who, like the applicant, had obtained some compensatory property under the previous statutes, were considered to have been discharged. Claimants who had never received any such compensation were awarded 15% of their original entitlement, subject to a ceiling of 50,000 PLN.

The Grand Chamber delivered its principal judgment on 22 June 2004, finding that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention; that the violation had originated in a systemic problem connected with the malfunctioning of Polish legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants; and that Poland was to secure, through appropriate legal measures and administrative practices, the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu. The Court reserved for later the question of an award in respect of any pecuniary or non-pecuniary damage.

In December 2004 the Constitutional Court declared unconstitutional certain provisions of the Law of 2003, including the section fixing the 15% and 50,000 PLN ceiling on claims and the section excluding from the scope of the compensation scheme under that Act anyone who, like the applicant, had received at least some compensation under previous laws.

In March 2005 the respondent Government asked the Registrar for assistance in negotiations between the parties, aimed at reaching a friendly settlement of the case. A settlement was achieved in September 2005 according to which the applicant was to be paid 213,000 Polish zlotys (approximately 54,300 euros) for pecuniary and non-pecuniary damage and a certain amount in costs and expenses. The Government – which, in July 2005, had passed a new law setting the ceiling for compensation for Bug River property at 20% of its original value – furthermore undertook:

to implement as rapidly as possible all the necessary measures in terms of domestic law and practice to 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;

to intensify their endeavours to make the new Bug River legislation effective and to improve the practical operation of the mechanism designed to provide the Bug River claimants with compensation;

to ensure that the relevant State agencies do not hinder the Bug River claimants in enforcing their "right to credit";

to make available to the remaining Bug River claimants some form of redress for any material or non-material damage caused to them by the defective operation of the Bug River legislative scheme.

*Law: Implications of a "pilot-judgment procedure":* The friendly settlement had been reached after the Court had delivered its "pilot judgment" which in this case had aimed at facilitating the most speedy and effective resolution of a dysfunction affecting the protection of the right of property in the national legal order. After finding a violation the Court had also adjourned its consideration of applications deriving from the same general cause "pending the implementation of the

relevant general measures". In the context of a friendly settlement reached after the delivery of a pilot judgment on the merits of a case, the notion of "respect of human rights as defined in the Convention and the Protocols thereto" necessarily extended beyond the sole interests of the individual applicant and required the Court to examine the case also from the point view of "relevant general measures". In view of the systemic or structural character of the shortcoming at the root of the finding of a violation in a pilot judgment, it was evidently desirable for the effective functioning of the Convention system that individual and general redress should go hand in hand. In determining whether it could strike the present application out of its list on the ground that the matter had been resolved and that respect for human rights as defined in the Convention and its Protocols did not require its further examination, it was therefore appropriate for the Court to consider not only to the applicant's individual situation but also measures aimed at resolving the underlying general defect in the Polish legal order identified in the principal judgment as the source of the violation found.

*Terms of the friendly settlement agreed by the parties:* The friendly settlement reached between Mr Broniowski and the Polish Government had addressed both the general and the individual aspects of the finding of a violation of Article 1 of Protocol No. 1 in the principal judgment. The parties had recognised the implications, for the purposes of their friendly settlement, of the principal judgment as a pilot judgment.

*General measures:* Prior to the settlement, Poland had introduced the July 2005 Act, to take into account the findings of the Court's principal judgment and the judgment of 15 December 2004 by the Constitutional Court. The July 2005 Act and the Government's undertakings in their declaration in the friendly settlement were evidently designed to remove the practical and legal obstacles on the exercise of the "right to credit" by Bug River claimants. The declaration, as far as general measures were concerned, related both to the future functioning of the Bug River legislative scheme and redress for any past prejudice suffered by Bug River claimants as a result of the previous defective operation of that scheme. In particular, the Government had referred to specific civil law remedies in connection with enabling the remaining Bug River claimants to seek compensation before the Polish courts for any material and/or non-material damage caused by the systemic situation found to be in breach of Article 1 of Protocol No. 1 in the principal judgment and thus to claim redress, as would be possible under Article 41, if the Court were to deal with their cases on an individual basis. On the other hand, the position in Polish law regarding recovery of compensation from State authorities for non-material damage was less clear. In their declaration in the friendly settlement the Polish Government had suggested that compensation in kind for past non-material damage suffered by Bug River claimants, in particular frustration and uncertainty, had already been provided under the July 2005 Act. However, the Government had also undertaken not to contest that Article 448 read in conjunction with Article 23 of the Civil Code would be capable of providing a legal base for a claim in respect of non-material damage should any Bug River claimant wish to bring one before the Polish courts.

In their amending legislation and in their declaration in the friendly settlement, the Polish Government had, in the Court's view, demonstrated an active commitment to take measures intended to remedy the systemic defects found both by the Court in its principal judgment and by the Polish Constitutional Court. While it was for the Committee of Ministers to evaluate those general measures and their implementation as far as the supervision of the execution of the Court's principal judgment was concerned, the Court, in exercising its own competence to decide whether to strike the case out of its list under Articles 37 § 1(b) and 39 of

the Convention, could not but rely on the Government's actual and promised remedial action as a positive factor.

*Individual measures:* The payment to be made to the applicant under the settlement provided him with both accelerated satisfaction of his "right to credit" under the Bug River legislative scheme and compensation for any pecuniary and non-pecuniary damage sustained by him. Moreover, he remained free to seek and recover compensation over and above the current 20% ceiling on compensation fixed by the July 2005 Act in so far as Polish law allowed that, in the future, there was nothing to prevent a future challenge of that ceiling before either the Polish Constitutional Court or ultimately the European Court. The Court was therefore satisfied that the settlement in the case was based on respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 of the Convention and Rule 62 § 3 of the Rules of Court).

*Conclusion:* Case struck out of the list (unanimously).

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