



The Broniowski case and its aftermath – an overview

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Project Lawyer **T**he case of *Broniowski v Poland*¹

relates to the violation of the applicant's right to the peaceful enjoyment of his possessions (see also Dina Vedernikova's article on page 4). His entitlement to compensation for property abandoned in the territories beyond the Bug River (the Eastern provinces of pre-war Poland) in the aftermath of the Second World War had not been satisfied. By adopting both the 1985 and 1997 Land Administration Acts, the Polish State reaffirmed its obligation to compensate the 'Bug River' claimants (as they have become known), and to incorporate into domestic law obligations it had taken upon itself under international treaties concluded in 1944. However, the Polish authorities, by imposing successive limitations on the exercise of the applicant's right to compensation, and by resorting to practices which made it unenforceable in concrete terms, rendered that right illusory and destroyed its very essence. Moreover, the right was extinguished by legislation of December 2003 under which claimants in the applicant's position who had been awarded partial compensation lost their entitlement to additional compensation. However,

those who had never received any compensation were awarded an amount representing 15% of their entitlement. In the light of these considerations, the European Court concluded that the applicant had to bear a disproportionate and excessive burden which could not be justified.

The Court concluded that the violation had originated in 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' (according to the terminology used by the Polish Constitutional Court) of 'Bug River' claimants. It also concluded that the respondent state must, through appropriate legal measures and administrative practices, 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 Art. 1 of Prot. No. 1.

The Court recalled that the violation originated in a widespread problem which resulted from deficiencies in the domestic legal order which had affected a large number of persons (nearly 80,000 people) and which might give rise in future to numerous subsequent, well-founded applications.

Referring to the Committee of Ministers' Resolution on judgments revealing an underlying systemic problem, and to the Recommendation on the improvement of domestic remedies, the Court decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiary character of the Convention, so as to avoid being seized of a large number of similar cases. The Court decided that all similar applications (240 at the time) - including future applications - should be adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level.

On 15 December 2004, the Polish Constitutional Court, basing itself in

particular on the Court's judgment, declared several provisions of the law of December 2003 contrary to the Polish Constitution, with the result that claimants in the applicant's situation (those who had been awarded partial compensation) would no longer be prevented from obtaining at least a proportion of their entitlement on an equal footing with the remaining 'Bug River' claimants.

On 8 July 2005, the Polish Parliament passed the Law on the realisation of the right to compensation for property left beyond the present borders of the Polish State. The statutory ceiling for compensation was set at 20% instead of the previous 15% cap. According to this law the 'right to credit' may be realised in two forms, depending on the claimant's choice: either, as previously, through an auction procedure or through cash payment to be distributed from a special compensation fund.

The Civil Code has been amended and the Supreme Court has adopted several resolutions concerning the right to compensation subject to the positions of the European Court and the Polish Constitutional Court. The authorities are in the course of adopting the measures necessary to implement the new 'Bug River' legislation of 2005. For instance, the Treasury Minister has adopted a regulation concerning the management of the compensation fund in December 2005, and in April 2006 an agreement concerning the conditions of payment of compensation was concluded between the Treasury Ministry and the Bank of National Property.

The Committee of Ministers' Deputies, having examined the progress made in ensuring execution has agreed to resume consideration of this case, on the basis of further information to be provided by the authorities of the respondent state.

1 (No. 31443/96), 22.6.04.