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Communication from Poland concerning the case of Polanscy against Poland (Application No. 21700/02)

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Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Polanscy contre Pologne (Requête n° 21700/02)
(**anglais uniquement**)

ACTION REPORT¹

Information about the measures to comply with the judgment in the case of *Polanscy against Poland*

Case description

Polanscy, application no. 21700/02, judgment of 07/07/2009, final on 07/10/2009.

The case concerns violation of the applicants' right to peaceful enjoyment of possessions caused by delay in payment of compensation for the expropriated land designated for the widening of a regional road (violation of Article 1 of the Protocol No. 1 to the Convention).

The applicants had a legitimate claim for compensation for the loss of ownership since at least the day when the *Introductory Provisions Concerning Acts Reforming Public Administration Act* (ustawa z dnia 13 października 1998 r. – *Przepisy wprowadzające ustawy reformujące administrację publiczną*, Dz. U. z 1998 r., Nr 133, poz. 872 ze zm.) - hereinafter the 1998 Act - came into force, that is from 28 October 1998 (§72 of the Court's judgment).

However, the payment of the compensation had not been made until September 2007. The delay was on the one hand caused by the provisions of the 1998 Act, that required lodging a request for compensation after 1 January 2001 and on the other hand due to the lack of proper activity of the authorities responsible for determining the amount of compensation and payment of the fixed compensation, which those authorities justified by the lack of financial resources.

In its judgment the Court held that the lack of financial resources cannot justify the delays in performing the obligations of the public authorities. Moreover the applicants didn't receive any compensation for the damage incurred as a result of the delay in payment. Therefore the Court found violation of Article 1 of Protocol No. 1 to the Convention.

I. Payment of just satisfaction and individual measures

1. Just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	7,000 EUR	334 EUR	7,334 EUR
Due on 07/01/2010			Paid on 04/12/2009

2. Individual measures

The compensation for the expropriated property had already been paid to the applicants in September 2007. Moreover, the Court awarded the applicants just satisfaction for non-pecuniary damage.

In these circumstances, no other individual measure appears necessary.

¹ Information submitted by the Polish authorities on 14 November 2014

II. General measures

1. General information on legal regulations.

According to the Court's judgment the applicants lost ownership of their property to the State Treasury, as acquired for constructing the public road.

Expropriation of land for constructing roads may take place on the basis of the following regulations:

- acquisition of the ownership of the land pursuant to article 73 (1) of the 1998 Act (concerning the property which as of 31 December 1998 remained in the possession of State Treasury or local authorities but did not constitute their ownership and was expropriated for the purposes of constructing roads; on 1 January 1999 it shall become *ex lege* the property of the State Treasury or the respective local self-government authorities against payment of the compensation). This is the situation that took place in the *Polanscy* case;
- acquisition of the ownership of the land dedicated for public roads as a result of consolidation or division pursuant to article 98 (3) and article 106 of the 1997 Land Administration Act;
- acquisition of the properties intended for public roads and payment of the compensation provided by the Specific Rules for Preparation and Execution of Investments in Public Roads Act of 10 April 2003;
- acquisition of ownership of the properties for execution of the road investments in the preparation of the Final Tournament of European Soccer Championship UEFA EURO 2012 pursuant to Act of 7 September 2007.

As a rule compensation for expropriation of is calculated on the basis of the value of the property. Detailed rules governing calculation of compensation for expropriated property are provided by relevant legal acts.

In the case of *Polanscy*, the basis for determining the amount of compensation was the value of the property as of the 1998 Act's date of entry into force (29 October 1998). The 1998 Act provided that determination of the amount of compensation and payment could only been done at the request of the ex-owner lodged in the peremptory period between 1 January 2001 and 31 December 2005. The condition for payment was the confirmation of the fact that the real estate has been transferred to the road administrator in the declaratory decision of the respective Voivode which was in fact the legal basis for disclosing the transfer of ownership in the land register.

Moreover, on 26 May 2006 the Supreme Court (in the case III CZP 19/06) held that article 73 of the 1998 Act did not exclude the possibility to seek compensation for so-called extra-contractual use of land for the period before 1 January 1999.

2. Reasons for delayed compensation.

The source of the violation of Article 1 of Protocol No. 1 to the Convention found in this case was the above mentioned delay in the payment of the compensation due to two reasons:

1. Wording of the relevant provision (Article 73(4) of the 1998 Act), which explicitly provided for the possibility of requesting compensation no sooner than from 1 January 2001;
2. A delay in the payment resulting from incorrect practice of the relevant authorities after 1 January 2001 (when the payment was formally possible but was nonetheless not made due to inactivity of the administrative authorities, justified to the applicants by the lack of financial resources).

Currently (in relation to the cases commenced after 31 December 2005) there is no legal basis which would provide for filing a motion to establish and receive compensation for the acquired land in the above-mentioned procedure. It must be thus noted, that there is no legal basis for delays caused by the ability to file the above-mentioned motion only after 1 January 2001, in relation to cases previous to this date.

3. Measures undertaken to eliminate the problem of delayed payment caused by authorities' inactivity

A. An administrative decision as a legal basis for the payment of compensation

Compensation for the land acquired in the procedure of the above-mentioned Article 73 section 1 of the 1998 Act, in accordance with section 4 of the mentioned Article, is established and paid according to the rules and procedure specified in regulations pertaining to compensation for expropriated land, that is on the basis of the regulations from the Act dated 21 August 1997 on the Land Management (*ustawa z dnia 21 sierpnia o gospodarce nieruchomościami*, Dz. U. z 2014 r., poz. 518), hereinafter as the 1997 Act. The basis for payment of compensation is thus an administrative decision, issued in the first instance by the locally appropriate District Governor, who performs the tasks of the public administration, in the form of a decision (Article 129 section 1 and 5 of the 1997 Act).

Thus, in the situation when the not receiving the compensation is caused by the inability to receive a final compensatory decision, the party is vested (in accordance to Article 37 § 1 of the Code of Administrative Proceedings (law journal 2013, item 267) dated 14 June 1960), with the right to lodge a complaint to the body of higher degree or summon to remove the infringement of law due to the failure to deal with the case in the period specified in Article 35, special regulations, which was established in the context of Article 36, or due to the lengthiness of the proceedings. Accordingly to the essence of Article 37 § 2, the body mentioned in § 1, holding that the complaint is justified – indicates at the same time whether the failure to deal with the case on time was in gross breach of the law. The above entitlements are also vested with the administrative courts (check Art. 54 § 3 of the Act dated 30 August 2002, on the proceedings before administrative courts, hereinafter as the 2002 Act).

In the case of stating that the failure to issue a compensatory decision was in gross breach of law, the party can claim the repairmen of the damage suffered before a common court on the basis of Art. 417¹ § 3 of the Civil Code dated 23 April 1964 (law journal 2014, item 121).

Moreover, in accordance to Article 154 § 4 of the 2002 Act, the person, who suffered damage due to the failure to execute a court's judgment, is vested with the claim to receive compensation on the basis of regulations specified in the Civil Code. § 5 of the above-mentioned provides for a special procedure of filing claims for damages; this is because the decision about granting the compensation is taken by the body, which did not execute the court's judgment. If this body does not pay the compensation in the period of three months from the date of filing a motion to receive compensation, the entitled party can file a lawsuit to a common court.

If in the legal system exists a basis for the payment of compensation in the form of a final compensatory decision, and the cause of the lack of compensation is a delay of the obliged entity, the entitled party can claim the ordered compensation as well as the interest for late payment, before a common court on the basis of regulations of the Civil Code.

Article 132 of the 1997 Act must be mentioned here:

Art. 132. 1. The payment of the compensation is one-time, in the period of 14 days from the date when the decision about expropriation is subject to execution, with the restriction of section 1a and 1b.

1a. In cases, in which there was a separate decision on compensation issued, the payment of the compensation is one-time in the period of 14 days from the date when the decision about compensation became final.

2. The effects of delay in payment of compensation are dealt by the regulations of the Civil Code.

B. Obligation of payment by the public authorities

The regulations of the Code of Administrative Proceedings clearly specify the deadlines until which an administrative case has to be dealt with (Art. 35 paragraph 1 – 3 Code of Administrative Proceedings). According to paragraph 5 of the above regulation, the deadlines of dealing with an administrative case do not include the deadlines provided in the regulations for taking specific actions, periods of suspension of proceedings as well as the periods of delay caused by the party or reasons independent of the body. In the Government's opinion that regulation sufficiently confirms that the lack of financial resources cannot justify the delays in the execution of statutory obligations of the public authority.

However, the authorities can admit that there are situations of extending the procedure of receiving the final compensatory decision by the public law entities, for example by filing

complaints of the judgments delivered on the basis of Article 73 section 1 of the Act, which are necessary to commence the compensatory procedure, even though there is no questioning in relation to the premises of transferring the ownership of the land to the State Treasury or to the appropriate unit of self-government; another example is filing motions to establish invalidity of regulatory decisions and cessation of their execution.

The principle of dealing with public law obligations on time stems directly from the regulations of administrative proceedings and civil law – thus, it is backed by the entire system of domestic law. Moreover, in every case, the party unsatisfied with the proceeding of the authorities is vested with legal protective measures, especially the complaint against inactivity of a body. In each case, the control is performed by independent administrative courts.

C. Dissemination and information activities

Violations found in this case resulted from particular circumstances related to the statutory expropriation of the private properties, which were earlier acquired for the public roads, due to the 1998 Act. Those violations were related to the peremptory period of time, i.e. from 1 January 2001 to 31 December 2005, in which the expropriated person could claim his/her compensation and combined with the lack of proper activity of the state's authorities.

Questions concerning the excessive length of administrative proceedings are examined by the Committee of Ministers in the context of the Fuchs group of cases.

Moreover, in the Government's opinion in order to prevent similar infringements in the future, training and information activities, which would mainly consist of distributing the judgment among the relevant domestic entities, have a large significance.

Consequently in order to avoid further violations similar to the one found in the *Polanscy v. Poland* case, publication and dissemination of the Court's judgment as well as trainings for administration officials seem to be sufficient measures.

Therefore the Government would like to inform that the Court's judgment was translated into Polish and sent to the relevant ministry which at that time was the Ministry of Construction, Transportation and Maritime Economy and to the General Directorate of National Roads and Highways in order to forward it to all District Directorates of Public Roads.

The Judgment was also sent to the County Board of Urban Roads in Żywiec as well as to the District Governor of the Żywiec County.

Furthermore, in 2010 the relevant Ministry, which at that time was the Ministry of Infrastructure prepared the pamphlet "Compensation for the estates allocated for line-investments" ("Odszkodowania za nieruchomości przeznaczone na cele inwestycji liniowych"), which was updated in 2012 and is available at the following website:

https://www.mir.gov.pl/Budownictwo/Gospodarka_nieruchomosciami/Odszkodowania_za_nieruchomosci/Documents/Odszkodowania_za_nieruchomosci.pdf

D. Trainings for public and local administration officials

In the context of the execution of the Court's judgments concerning conduct of public and local administration authorities it is worth to mention the Government Agent's initiative on organizing trainings for administration officials.

The first set of such trainings was held by representatives of the Government Agent in cooperation with the Ministry of Administration and Digitalization in December 2013. There were trainings on dissemination of the Convention and the Court's case-law among local administration officials.

Moreover, information on the trainings together with the invitation to participate addressed to the administration organs are available at the Ministry of Foreign Affairs' website: http://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/aktu_alnosci/szkolenie_nt_standardow_praw_czlowieka_dla_pracownikow_urzedow_wojewodz_kich

In these circumstances, no other general measure appears necessary.

III. Conclusions of the respondent state

The Government consider that further individual measures are not necessary in the present case and that the general measures adopted are sufficient to conclude that Poland complied with its obligations under Article 46, paragraph 1 of the Convention.