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The Rule of Law and the Effectiveness of Enforcement of Claims of Former Owners Wrongfully Deprived of Their Property

JOZEF FORYSTEK, PH.D.*

For obvious reasons, the paper will present only a brief outline of the topic and not a detailed analysis. The author wishes to describe only the roots of the guarantees for the protection of property rights in Western culture.

As Dean of the Faculty of Law of the Cardinal Wyszyński University in Warsaw Anna Tarwacka mentioned in her paper, property protection issues have been present in the European legal tradition for hundreds of years. As early as in the described Roman Republic, disputes would arise among censors (supervising construction of roads and aqueducts) and rich nobiles (landowning senators). Dean Tarwacka presented to us a very interesting case: the case of Mark Krassus.

The tradition of the protection of property against confiscation by a ruler is long. In 1215, the famous *Magna Carta Libertatum* was enacted in England. It prohibited confiscation of property without a prior court judgment, although it was not applied until the post-Cromwellian times after the enactment of the famous *Bill of Rights* of 1689 by the English Parliament. In Poland, one of the first privileges of the nobility was enacted under the reign of King Wladislaus Jagiello.¹ The Privilege of Czerwińsk of 1422 also related to the prohibition of confiscating the right of ownership without the relevant judicial court approval (or approval from an authority independent of the king).²

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1. Wladislaus Jagiello (1362-1434) was the King of Poland and the grandest duke of Lithuania who ruled for the longest period of time (1386-1434).

2. WACLAW URUSZCZAK, HISTORIA PAŃSTWA I PRAWA POLSKIEGO (966–1795) [HISTORY OF THE POLISH STATE AND LAW (966–1795)] 158 (2005); KRZYSZTOF BACZKOWSKI, WIELKA HISTORIA POLSKI: DZIEJE POLSKI PÓŹNOŚREDNIOWIECZNEJ (1370–1506) [THE GREAT HISTORY

The origins of the contemporary understanding of the constitutional rule of protection of property date back to Thomas Jefferson's Declaration of Independence of July 4, 1776 (U.S.), which not only proclaimed the birth of the United States of America, but also stated that the right of ownership is an inherent right of every human being. This notion was repeated several years later in the United States Constitution (and, specifically, in the Bill of Rights of 1791), and in the Declaration of the Rights of Man and of the Citizen of 1789 during the French Revolution. Marie-Joseph La Fayette (a military officer who fought in the American Revolutionary War) prepared the French Declaration and France's National Constituent Assembly passed it.

Issues related to the use of confiscation of properties for political purposes during the partition of Poland have been presented in a very interesting and exceptionally detailed manner by Professor Sławomir Godek from the Cardinal Wyszyński University in Warsaw, which is hosting us today. For that reason, I shall omit topics referred to in the paper of the preceding speaker.

The first constitution of the reborn Polish state, enacted in March 1921 (modelled on the French Constitution of the 3rd Republic), provided for the protection of property rights in its Article 99.³ The Article states, "the Republic of Poland recognizes all property, whether belonging personally to individual citizens or collectively to associations of citizens, institutions, self-government organizations, or the state itself, as one of the most important bases of social organization, legal order, and guarantees to all citizens, institutions, and associations, protection of their property, permitting only in cases provided by a statute, the abolition or limitation of property, whether personal or collective, for reasons of higher utility, against compensation."⁴ Only a statute may determine to what extent property, for reasons of public utility, shall form the exclusive property of the state, and how far rights of citizens and their legally recognized associations to freely use land, waters, minerals, and other resources of nature, may be subject to limitations for public reasons.⁵ Similar provisions were adopted in the April Constitution of 1935. There is, however, a disagreement as to the regularity of its adoption by the members of the Nonpartisan Bloc for Cooperation with

OF POLAND: HISTORY OF POLAND IN THE MIDDLE AGES (1370–1506)] 125 (Jan Pieszczechowicz et. al. eds., 1999).

3. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Mar. 17, 1921, art. 99 (Dz. U. nr. 44, pos. 267) (Pol.).

4. *Id.*

5. *See id.*

the Government (“BBWR”) because of the absence of the opposition members of the parliament in the Chamber.

After World War II, the issue of the protection of property was first confirmed in the Universal Declaration of Human Rights of the United Nations of 1948. The protection of property was then confirmed in Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights, an international agreement ratified by Poland in the years 1994 and 1995, and published in the Journal of Laws of the Republic of Poland in 1995.

Today, much more precise provisions are included in the Constitution of the Republic of Poland of 1997, as confirmed in Article 2. It says, “the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice,”⁶ and according to Article 21(1) “the Republic of Poland shall protect ownership and the right of succession.”⁷

The question is whether the Constitution of 1997 applies to the illegal acts of state that involved deprivation of property of whole groups of citizens (so-called social classes), owners of land properties, owners of Warsaw lands, entrepreneurs, and pharmacists? And if so, does it have a retroactive effect in this respect?

Contrary to the position of the Commissioner for Human Rights that has been presented by Ms. Małgorzata Świątczak from the Department of Civil Law in the Office of the Commissioner for Human Rights, the answer to such questions should be clearly in the affirmative. Article 239(1) of the Constitution of the Republic of Poland explicitly provides that the Constitutional Tribunal rules on the non-conformity to the Constitution of statutes adopted before they come into force, and Article 8(1) and (2) further establish a principle of supremacy of the Constitution and its direct application.⁸ It was confirmed in numerous rulings of the Constitutional Tribunal, such as in a judgment of March 31, 1998,⁹ and in a judgment of June 16, 1999.¹⁰

The fundamental human rights, including the right of ownership, are “inherent.” Therefore, the Constitution does not grant this right, but merely confirms its permanent nature regardless of political changes. The nature of that right, which is “pre-state and supra-constitutional,” has

6. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Apr. 2, 1997, art. 2 (Dz. U. nr. 78, poz. 483) (Pol.).

7. *Id.* art. 21(1).

8. *Id.* arts. 8(1), 8(2), 239(1).

9. Trybunał Konstytucyjny [Constitutional Tribunal], K 24/97, Mar. 31, 1998 (Pol.).

10. Trybunał Konstytucyjny [Constitutional Tribunal], P 4/98, June 16, 1999 (Pol.).

been rooted in that human dignity. Thus, simple human justice requires that persons who have been wrongfully and illegally deprived of their property as a result of actions pursued by an undemocratic legislator—like those who were persecuted by Tsars during the partition of Poland, about which we have been informed by Prof. Sławomir Godek—should either have their real property returned to them in kind or at least have any form of formal rightful financial compensation.

Therefore, the present constitutional provisions are a triumph of the supporters of natural law, since the existence of personal rights, including the right of ownership based on the “inherent and inalienable human dignity,” are defined in Article 30 of the Constitution, which is “a source of fundamental human rights” that must be respected and protected by public authorities.¹¹ The right of ownership is not a gift from the legislature, but is inherent in the dignity of every human being. Therefore, the fundamental civil rights and freedoms are rooted in inherent human dignity, which means that they are “pre-state and supra-constitutional.”

I should now clarify that by the right of ownership I mean its broadest concept: not only a classic triad of possession, benefiting from property and free disposal, but also the entire scope of claims that may usually be raised by the owners against persons infringing such rights, including claims for compensation for unlawful deprivation of property. The fundamental constitutional principles arising from the democratic rule of law include the principle of the protection of legitimate expectations adopted into the Polish legal system from the rule of the “state of law” developed in judicial decisions of the Federal Constitutional Court.

It is a guaranteed principle. It provides that laws may not be adopted in a manner that would be uncontrollable for a citizen and that might be a specific “trap for the citizen.” If the legislature granted the right of indemnity or compensation, it should comply with its obligations in accordance with the “*pacta sunt servanda*” principle. This principle gives rise to other more specific rules, which include the following principles: *lex retro non agit* (law does not apply retroactively) that is one of the fundamental principles of a civilized legal system; the principle of decent legislation; the obligation to apply transitional provisions; the principle of appropriate *vacatio legis*; the principle of maintenance of rights acquired (it refers also to the maximum established expectations, including claims under the Warsaw Decree and is connected with another principle of the protection of continuing interests), whilst the principle of

11. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION], Apr. 2, 1997, art. 30.

legal certainty (regulatory texts should be drawn up correctly in terms of their language and logic and should be understood by the addressees) provides for control of the purpose and rationality of legislative actions (for example, a review commission), and constitutes a condition for a prohibition on creating “an apparent existence of a personal right” where such right cannot be actually enforced. It may be easily noticed that those in power have the biggest problem with the principle of equality before the law.¹² Thus, how to rationally justify the operation of the so-called Bug River Act (Act on Exercising the Right to Compensation Arising from Leaving Real Properties Outside the Current Borders of the Polish State) granting financial compensation in the amount of 20 percent of the value of lost real properties to persons who had been forced to leave their properties in the Eastern Lands incorporated to the Soviet Union as a result of the decisions of the Big Three (the United States, the United Kingdom, and the Soviet Union) in Teheran and Yalta, given that simultaneously a similar act on the properties lost within the current borders of Poland was missing.¹³

It is hard to explain the chessboard legal paradox when cases such as the following have happened under this system. Mr. X has been a continuous owner of a multi-story residential town house located at Szewska or Floriańska Streets in Kraków, and his brother owns a similar town house at Piotrowska Street in Łódź, but their cousins from Warsaw, living in the same Puławska Street, are in the neighbourhood of Warsaw’s Ursynów District and have maintained the ownership of his town house. His brother has a similar residential house that was not destroyed during World War II located a few hundred metres north (within the so-called small Warsaw of 1939) and could not have used his property, because the Bierut Decree on Warsaw Lands had been applied in that case.

However, the most important principle is the protection of property rights, and the resulting restrictions imposed on every public authority. According to Article 31(3) of the Constitution of the Republic of Poland, which proclaims the principle of proportionality, any limitation upon the constitutional right of property (as well as other rights and freedoms) may be imposed only by statute and only when necessary in a democratic state for the protection of its security and public order, to protect the natural environment, health or public morals, or the freedoms and rights of other

12. KONSTITUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION], Apr. 2, 1997, art. 32.

13. Ustawa z dnia 8 lipca 2005 r. o realizacji prawa do rekompensaty z tytułu pozostawienia nieruchomości poza obecnymi granicami Rzeczypospolitej Polskiej [Act on Exercising the Right to Compensation Arising from Leaving Real Properties Outside the Current Borders of the Polish State] (2005 Dz. U. nr. 169 poz. 1418) [hereinafter Bug River Act] (Pol.).

persons.¹⁴ They cannot by any means violate the essence of the property rights. It is confirmed also by Article 64(3) of the Polish Constitution, according to which “the right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.”¹⁵ The essence of the right of ownership is the famous triad: the ability to use the property, the ability to collect profits and other income, and the freedom to dispose of the property.

The furthest-reaching interference with the right of ownership is expropriation and forfeiture of property (Article 46 of the Constitution says property may be forfeited only in cases specified by statute and only by virtue of a final judgment of a court).¹⁶ According to Article 21(2) of the Constitution of the Republic of Poland, “expropriation may be allowed solely for public purposes and for just compensation.”¹⁷ Therefore, any expropriation is conditional upon existence of a public purpose. The basic criterion defining the public purpose (interest) is a general availability of the effects of the expropriation. Not every property that may be assigned for public purposes can be expropriated because the term “solely for” used by the Constitution provides for the “necessity” of such expropriation.

The right to compensation for damage caused by unlawful acts of public authorities is also important. Article 77 of the Constitution forms a foundation for the State’s liability for damages—“everyone shall have the right to compensation for any harm done to him by any action of public authority contrary to law”¹⁸ and “statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.”¹⁹ Article 121 of the Constitution of the Republic of Poland of March 1921 had similar language providing that every citizen has the right to compensation for damage inflicted upon him by civil or military organs of state authorities, and by an official act not in accordance with the right or duties of the service.²⁰ The State is responsible for the damage, jointly with the guilty organs; actions may be brought against the State and against officials independently of any permission by a public authority. Here, we are facing a clash of “law” and “history.” However, it should be borne in mind that the process of redevelopment of the ownership structure after the transformation of the

14. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION], Apr. 2, 1997, art. 31.

15. *Id.* art. 64(3).

16. *Id.* art. 46.

17. *Id.* art. 21(2).

18. *Id.* art. 77(1).

19. *Id.* art. 77(2).

20. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Mar. 17, 1921, art. 121.

political system has not yet ended. This will happen only after the adoption and implementation of the Reprivatization Act. The legal interpretation should be such that the totalitarian laws of the so-called “Lublin” Poland should be interpreted in accordance with the idea of the democratic rule of law.

The question is whether in the light of this rule of law the former owners have effective legal measures (instruments) to effectively pursue their property claims in Poland in the twenty-first century.

The last constitutional rule that should be mentioned is the principle of equal share in the public duties and responsibilities laid down in Article 84 of the Constitution.²¹ I would like to illustrate the above issues by highlighting several cases brought before the European Court of Human Rights (“ECHR”) in Strasbourg or before the Polish Constitutional Tribunal:

I. THE CASE OF ZAKŁADY WAPIENNE OGÓREK (OGÓREK LIMESTONE PLANT)

In general, the case refers to all entities whose enterprises were nationalized under the Act on the Acquisition of Basic Industries of 1946.²² The most important requirement is that the owner of the acquired enterprise was a natural person. The unlawful nationalization decisions were issued in two stages: the main decision in 1948 and the second decision, specifying the acquired property, in 1961, i.e., a decision approving the hand-over report drawn up in 1951. In 1992, the sons of the owner filed an application for annulment of the decision of 1948 and for compensation.

By its decision of 2003 (IV SAB 82-83/03), the Supreme Administrative Court dismissed an action for failure to act brought by the heirs against the Prime Minister and held that the failure to act regarding a normative activity of the public administration body did not fall within its jurisdiction. Thus, an administrative path of claiming compensation for the nationalized enterprise was closed, in which right to compensation was granted under the Act that was still effective, i.e., in Article 3, Article 7(1), and Article 7(6) of the Nationalization Act on the Acquisition by the State of Basic Industries of January 3, 1946.

Because the case continued for a long time with no decision being issued, in 2004 the limestone plant—on the basis of Article 3, Article 7(1) and Article 7(6) of the Nationalization Act on the Acquisition by the State

21. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION] Apr. 2, 1997, art. 84.

22. *Ogórek v. Poland*, App. No. 28490/03, Eur. Ct. H.R. (2012).

of Basic Industries of January 3, 1946,²³ which provided for compensation for an acquired enterprise—demanded the publication of an implementing regulation to that Act. Under the decisions of 2004 and 2005, the Prime Minister discontinued the proceedings on the grounds that a claim for issuance of a legal act cannot be pursued before a court even if the obligation to issue the act is prescribed by law. The Voivodship Administrative Court dismissed the complaint and the Supreme Administrative Court in its judgment of 2006 dismissed the cassation appeal on the grounds that a claim for the adoption of administrative provisions cannot be pursued in administrative proceedings, and at the same time the Voivodship Administrative Court pointed out that the claim can be pursued in civil proceedings regarding a so-called legislative lawlessness.

The plaintiffs brought an action for compensation for the legislative neglect that consisted of the failure of the Council of Ministers to adopt an implementing regulation, which prevented the exercise of the statutory right to compensation. At first, the court delivered a default judgment but as a result of an objection by the State Treasury, the case was examined from its beginning. A judgment of the court of the first instance was delivered in 2006. In the same year, the court of the second instance dismissed the appeal of the plaintiffs. The Supreme Court in a final decision of 2007 refused to proceed with the cassation appeal by reference to a resolution of the Supreme Court of November 24, 2005.²⁴ In that resolution, the Court held that in the cases where the state of neglect commenced before entry into force of the amendment of Article 417 of the Civil Code,²⁵ which provides for compensation for the legislative neglect, such compensation cannot be pursued because “omission of issuance of an implementing regulation by the Council of Ministers, as provided for in Article 7(4) and Article 7(6) of the Nationalization Act on the Acquisition by the State of Basic Industries of January 3, 1946 (Journal of Laws No. 3, item 17 as amended) until the effective date of the Act on Amending the Act on the Civil Code and Certain Other Acts of June 17, 2004 (Journal of Laws, No. 162, item 1692), did not constitute the basis for a claim by the owner of the acquired enterprise for compensation on those grounds.”²⁶

23. Ustawa o przejęciu na własność Państwa podstawowych gałęzi gospodarki narodowej [Act on the Nationalization of Basic Branches of the State Economy], art. 3 (1946 Dz. U. nr. 3, poz. 17) (Pol.); *id.* art 7(1); *id.* art. 7(6).

24. Sąd Najwyższy [Supreme Court], III CZP 82/05 Nov. 24, 2005 (Pol.).

25. Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny [The Act of April 23, 1964 Civil Code] art. 417 (1964 Dz. U. nr. 16 poz. 93) (Pol.).

26. Sąd Najwyższy [Supreme Court], III CZP 82/05 Nov. 24, 2005 (Pol.).

Moreover, according to the Supreme Court, a delegation to adopt a regulation prescribed by law does not meet the current constitutional standards because it is not sufficiently precise. With this decision, the persons harmed by the Nationalization Act were deprived of their right to pursue before the court even their claims for compensation awarded to them under the law of the then communist state. Only when following the exchange of the so-called *observations* (i.e., pleadings) by the parties did the European Court of Human Rights in Strasbourg attempt to issue the so-called pilot judgement in the case of the complaint of the Ogórek Brothers (similar to the one issued a few years earlier in the case of Broniowski) in the course of the supervisory administrative proceedings pending since 1990. Only in 2007 was a decision adopted on the annulment of the nationalization decisions of 1948, and only in 2009 was a decision adopted on the annulment of the decision of 1961, which made it possible to obtain compensation under a judgment of a civil court according to Article 160 of the Code of Administrative Procedure.²⁷

In such a situation in 2012, the Ogórek case was considered premature by the Strasbourg Court, in accordance with the principle of subsidiarity. Following adoption of the decisions on annulment of the nationalization rulings, the heirs filed a claim for compensation that was admitted by the civil court, first in a judgment of the first instance of 2011,²⁸ and then in a judgment of a Court of Appeal in 2013.²⁹

Therefore, those entities against whom unlawful nationalization decisions were adopted have a chance to obtain compensation in a normal administrative procedure provided they prove that the decisions were adopted in gross violation of the laws then in force,³⁰ for example, if the actual employability per one shift was much lower than that established in the nationalization decision, or if the Nationalization Act was applied to enterprises to which it was not applicable.

Currently, there are two related cases pending before the Strasbourg Court (No. 1680/08 and 3117/08).³¹ So far, they have been inactivated by

27. Kodeks postępowania administracyjnego [Code of Administrative Procedure], Jun, 14, 2016, art. 160 (Dz. U. nr. 98, poz. 1071).

28. Sąd Okręgowy [District Court], II C 271/09 (Pol.).

29. Sąd Apelacyjny w Warszawie [Warsaw Court of Appeals], I ACa 1069/11, Apr. 25, 2013 (Pol.).

30. See also Jozef Forystek, *Przedawnienie roszczeń o odszkodowanie za szkody spowodowane bezprawną decyzją administracyjną (Glosa do postanowienia Sądu Najwyższego z 9 lipca 2009 r., III CZP 47/09)* [Limitation of Claims for Compensation for Damages Caused by an Unlawful Administrative Decision (Gloss to the decision of the Supreme Court of July 9, 2009, III CZP 47/09)] 4 PRZEGLĄD SĄDOWY [JUD. REV.] 28 (2010) (Pol.).

31. Lubelska Fabryka Maszyn i Narzędzi Rolniczych “Plon” v. Poland, App. No. 1680/08, Eur. Ct. H.R. (entered 2007) and Przedsiębiorstwo Naftowe “Oterna” v. Poland, App. No. 3117/08,

the Court, but perhaps in the near future the procedure for the exchange of *observations* (pleadings) between the parties shall be implemented.

With regard to legal persons who, according to the principle of equality before the law, should have the same rights as natural persons, it now appears to be the only possible way because the previous draft reprivatization acts did not include legal persons among the entities entitled to claim reprivatization compensation.

II. THE BUG RIVER CASE (HEIRS OF THE TEISSEYRE BROTHERS)³²

In connection with the arrangements made during the conferences of the Big Three in Tehran (1943), Yalta (1945), and Potsdam (1945), and incorporation of Eastern Poland, the so-called Kresy, by the Soviet Union, the grandparents lost (upon consent of the government of the “Lublin” Poland) real property (a tenement house) in Lviv.

In 2005, after the pilot judgment of the ECHR in the case of *Broniowski v. Poland* (2004),³³ the so-called Bug River Act was adopted. It provided for the right to so-called monetary compensation for the lost properties at only twenty percent of their value (or much lower because the legislature introduced a conversion table).³⁴

In 2007, the grandchildren of the former owner applied for the Bug River compensation. However, both the Voivode of Silesia (in February 2010) and the then Minister of State Treasury (in 2010) decided that the compensation should be granted to one of the brothers only, and the other one was refused such right due to the lack of Polish citizenship. This occurred in a situation where their grandfather had Polish citizenship at the time he lost his property in Lviv to the Soviet Union, and where the right of inheritance was protected in a similar manner as the right of property.³⁵

It is worth noting that the brother is also a Finnish citizen (after the judgment of the Supreme Administrative Court in 2016 his Polish nationality was recovered). The Finnish nationality was acquired by his father in the 1980s, and it extended automatically to the then minor second brother. The Voivodship Administrative Court (“WSA”) in its judgment of 2011 and the Supreme Administrative Court (“NSA”) in its

Eur. Ct. H.R. (2007), were each ended by the decision of the European Court of Human Rights in *Lubelska Fabryka Maszyn i Narzedzi Rolniczych ‘Plon’ and Others v. Poland*, HUDOC nr. 1680/08 (Oct. 3, 2017).

32. Case C-370/13, *Teisseyre v. Poland*, 2014 E.C.R. I-28.

33. *Broniowski v. Poland*, App. No. 31443/96, Eur. Ct. H.R. 47 (2004).

34. 2005 Dz. U. nr. 169 poz. 1418.

35. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [CONSTITUTION], Apr. 2, 1997, art. 62(2).

judgment of November 24, 2014,³⁶ dismissed the complaints as they did not find any infringement of the constitutional right of succession, the protection of property, and expectation of compensation. The administrative courts did not make use of the possibility to apply the *in dubio pro libertate* interpretation of laws.

The Luxembourg Court dealt only with the small aspect of that case that is the freedom of movement of persons, and because he was a Finnish citizen who resided permanently in Finland, the Court refused to give a preliminary ruling because it did not find any cross-border element (lack of *ratione materiae*) in the concerned case.³⁷

In December 19, 2017, the Constitutional Tribunal decided to discontinue constitutional complaint No. SK 1/17 regarding infringement on the principle of equality before the law, the principle of proportionality, and the succession rights.³⁸

III. WARSAW LANDS, AGRARIAN REFORM, AND FORESTS

What needs to be discussed separately is the issue of properties seized under the Bierut Decree of October 26, 1945 on Warsaw lands.³⁹ The same applies to nationalization without any compensation under the Decree of the Polish Committee of National Liberation of September 9, 1944 on Agrarian Reform.⁴⁰ Such a method of deprivation of property has not been previously provided by any legal system of the Western states.⁴¹ The issue of nationalization of forests remains open. There are several cases relating to it that are pending in Strasbourg, for example,

36. Naczelny Sąd Administracyjny [Supreme Administrative Court], I OSK 2024/11, Nov. 24, 2014 (Pol.).

37. No C-370/13, *Teisseyre v. Poland*, 2014 E.C.R. I-28.

38. Trybunał Konstytucyjny [Constitutional Tribunal], SK 1/17, Dec. 19, 2017 (Pol.).

39. Dekret z dnia 26 października 1945 r. o własności i użytkowaniu gruntów na obszarze m. st. Warszawy [Decree of October 26, 1945 on the Ownership and Use of Land in the Area of the Capital City of Warsaw] (1945 Dz. U. nr. 50 poz. 279, as amended) (Pol.).

40. *See* Dekret Polskiego Komitetu Wyzwolenia Narodowego z 6 września 1944 r. o przeprowadzeniu reformy rolnej. [Decree of the Committee for National Liberation of September 6, 1944 Concerning the Agricultural Reform] (1944 Dz. U. no. 4 poz. 17, as amended) (Pol.); Jozef Forystek, *Glosa do postanowienia Trybunału Konstytucyjnego z 1 marca 2010 r. P 107/08 (dot. zmiany trybu administracyjnego na sa,dowy w sprawach reformy rolnej)* [Gloss to the decision of the Constitutional Tribunal of March 1, 2010, Ref. Act P 107/08 (on changing the administrative procedure to the court procedure in matters of agricultural reform)], 3 ZESZYTY NAUKOWE SĄDOWNICTWA ADMINISTRACYJNEGO [SCIENTIFIC J. ADMINISTRATIVE JUDICIARY] 165 (2010) (Pol.).

41. *See generally* PIOTR KUCIUBINSKI, POWOJENNE PRZEKSZTAŁCENIA WŁASNOŚCIOWE W ŚWIETLE KONSTYTUCJI [POST-WAR OWNERSHIP TRANSFORMATIONS IN THE LIGHT OF THE CONSTITUTION] (2013) (Pol.).

the Zambrzycki case (it is another example of the legislative neglect of 2001).⁴²

IV. A BRIEF SUMMARY

Each of the cases presented above shows that the measures available to the legal successors of former owners are not sufficient.⁴³ When confronted with state policy, they usually lose. The cases before the Polish public administration bodies and courts last for several years or even longer. Often, they return to the administrative stage. For example, in the well-known Beller case, there were sixteen judgments delivered by administrative courts, a similar number of administrative decisions, and the state unit is still in possession of the real property without a proper title and despite the fact that the Committee of Ministers of the Council of Europe has implemented a procedure to enforce a judgment of the European Court of Human Rights.⁴⁴ The first judgment of the European Court of Human Rights which confirmed infringement of the right to be tried within a reasonable time was delivered in 2003 and another complaint is now pending before the Court. This shows a weakness of the controlling authorities of the Council of Europe.

Obviously, there may be numerous postulates. First, we should call for urgent adoption of a comprehensive restitution act which should resolve the so-called hard cases in which two rules of property ownership and interests of persons who rightly obtained the property titles after World War II collide. Such disputes are unavoidable since the interests of both groups obviously collide. It is the legislator who, as quickly as possible by way of the reprivatization act, should appropriately balance the arguments on the part of the wronged heirs and persons who, after World War II, lawfully acquired rights to the same real properties. A false myth is that ruling courts contributed in any manner to the violation of the rights of persons who had acquired the properties in good faith. It is just the opposite. In my nearly twenty-five years of practice, I have not

42. Zambrzycki v. Poland, App. No. 63007/13, joint to the case Zamoyski and 23 Others v. Poland, App. No. 19912/13, Eur. Ct. H.R. (2018).

43. See, e.g., Jozef Forystek, *Dochodzenie roszczeń reprivatyzacyjnych w świetle orzecznictwa sądów cywilnych i administracyjnych oraz Trybunału Konstytucyjnego* [Pursuit of Reprivatization Claims in the Light of the Judgments of Civil and Administrative Courts and the Constitutional Tribunal], 21 MONITOR PRAWNICZY [LEGAL MONITOR] 1133 (2011) (Pol.); Jozef Forystek, *Odpowiedzialność odszkodowawcza Skarbu Państwa w sprawach reprivatyzacyjnych* [Liability for Damages of the State Treasury in Reprivatization Cases], 3 TRANSFORMACJE PRAWA PRYWATNEGO [TRANSFORMATION PRIVATE L.] 29 (2011) (Pol.).

44. Beller v. Poland, HUDOC no. 51837/99 (2005) and Beller v. Poland, HUDOC no. 6992/11.

seen any single judgement of civil or administrative courts that would not protect the rights acquired in good faith. This is the purpose of the generally accepted principle of public credibility of land and mortgage registers. Obviously, it does not apply to the property of the State Treasury or of communes because until the ownership transformations commenced after the “Round Table” finally ended, the public bodies must take into account the possible obligation to reconstitute the property to the rightful owners, unless they have received appropriate compensation. This complies with the rule of equal share in the public duties pursuant to Article 84 of the Constitution,⁴⁵ according to which no citizen should bear an excessive burden for the entire society. This idea in particular applies to those citizens whose properties, illegally nationalized, have been used during the last seventy years.

An important postulate is to authorize the administrative courts to resolve administrative matters as to the merits and not only to repeal defective administrative decisions. There should also be a radical reduction of court fees in matters where claims for compensation are based on Article 160 of the Code of Administrative Procedure or other preliminary rulings, as well as in matters concerning damage caused by legislative lawlessness or legislative neglect.⁴⁶

45. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [KRP][CONSTITUTION], Apr. 2, 1997, art. 81 (Pol.).

46. For further information, see Jozef Forystek, *Odpowiedzialność deliktowa za zaniechanie wydania decyzji administracyjnej* [Non-Contractual (Tort) Liability for Failure to Issue an Administrative Decision], 5 PALESTRA 15 (2017) (Pol.).