

Judgment of 15th December 2004, [K 2/04](#)
**RIGHT TO OFFSET THE VALUE OF PROPERTY LEFT IN THE FORMER
 EASTERN TERRITORIES OF POLAND (II)**

Type of proceedings: Abstract review Initiator: Group of Deputies	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Principles and procedure of compensation for property lost by Polish citizens as a result of a shift of Poland's eastern border following the Second World War [Offsetting the Value of Property Abandoned Beyond the Present Borders of the Polish State Against the Price of State Property or the Fee for the Right of Perpetual Usufruct Act 2003]	Rule of law Protection of ownership and the right of succession Principle of proportionality Principle of equality Freedom of choice of place of residence Protection of property rights [Constitution: Articles 2, 21, 31(3), 32, 52(1), 64(1) and (2)]

Following the end of the Second World War, Poland's eastern and western borders were shifted westwards, as a result of a decision of the Allied Powers. Poland lost the areas situated east of the so-called Curzon line to the Soviet Union (more specifically to the Lithuanian, Belarusian and Ukrainian Soviet Republics). The Polish populations from these areas were relocated to Poland, within her new borders. The issue of compensation for property left by Polish citizens in the territories annexed to the USSR, the so-called "property left beyond the Bug River" (*mienie zabużańskie*), was intended to be regulated in domestic law, according to a series of so-called republican agreements (*umowy republikańskie*) – these being agreements concluded between the "Polish Committee of National Liberation" (*Polski Komitet Wyzwolenia Narodowego*, a provisional legislature and executive of the Communist regime), and the governments of the neighbouring Soviet Republics.

The Act challenged in the present case constitutes the first comprehensive regulation of the problem of compensation for property left beyond the Bug River. It is based on offsetting part of the value of property left beyond the Bug River against the price of real estate purchased from the State Treasury or the fee for the right of perpetual usufruct of State Treasury real estate. A similar mechanism was envisaged earlier by several partial regulations originating from various time periods.

In its judgment of 19th December 2002 ([K 33/02](#)), summarised separately, the Constitutional Tribunal pointed towards an obligation of the State to provide persons who left their property beyond the Bug River with an effective system for enjoyment of their rights.

The 2003 Act envisages a double limit (an upper ceiling) for offsetting the value of property left beyond the Bug River when purchasing real estate from the State Treasury: a maximum of 15% of this value may be offset, to a value not exceeding 50,000 Polish Zloty. The same limit was introduced in the act

regulating the privatisation of State property (i.e. Commercialisation and Privatisation Act 1996, amended by the reviewed Act). Moreover, the legislator conditioned enjoyment of the right to offset upon, inter alia, the former owner's possession of Polish citizenship and upon them permanently residing in Poland from at least the date of entry into force of the Act; these requirements also concern the heirs of former owners. The 2003 Act considers benefits acquired on the basis of hitherto provisions as compensation for property left beyond the Bug River, in connection with the republican agreements, as complete satisfaction of the right to compensation for this property, regardless of the level of compensation.

The aforementioned restrictions and certain procedural regulations (see summary of the ruling below) led to the entire Act being challenged by a group of Deputies.

On 22nd June 2004, following the entry into force of the challenged Act, the European Court of Human Rights (hereinafter referred to as the ECHR) passed judgment in case number 31443/96 (*Broniowski v. Poland*). According to the Strasbourg Court, the applicant's rights, as guaranteed by Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, were infringed by the introduction, in a legislative and administrative manner, of restrictions and impediments on enjoyment of the right to offset. In consequence, Jerzy Broniowski did not obtain sufficient compensation (in his case, the compensation amounted to 2% of the value of property left beyond the present borders of the Polish State). The reasoning of the ECHR's judgment contains indirect critique of the regulation of the 2003 Act, indicated below in point I.5 of the ruling, which deprived the applicant of the possibility to obtain higher compensation. The Court stressed that Article 1 of Protocol No. 1 to the Convention requires the amount of compensation to be "reasonably related" to the value of the lost property; it is, however, not the Court's task to consider the "reasonable" amount of compensation in an abstract manner.

Formally, the aforementioned ECHR judgment related only to the applicant's case. Indirectly, however, it was also significant for the general assessment of the Act reviewed by the Constitutional Tribunal in the present case.

RULING

I

1. Article 2(1) point 2 of the 2003 Act (conditioning the right to offset on the possession of Polish citizenship) conforms to Articles 2, 21, 31(3), 32, 64(1) and (2) and is not inconsistent with Article 52(1) of the Constitution.

2. Article 2(1) point 3 of the aforementioned Act (conditioning the right to offset on permanent residence in Poland from at least the date of entry into force of the Act) does not conform to Articles 2, 31(3), 32, 64(1) and (2) and is not inconsistent with Articles 21 and 52(1) of the Constitution.

3. Article 2(2) of the aforementioned Act (conditions regulating inheritance of the right to offset), as regards the stating: "...and reside permanently in the Republic of Poland at least from the date of entry into force of this Act", does not conform to Articles 2, 31(3), 32, 64(1) and (2) and is not inconsistent with Articles 21 and 52(1) of the Constitution.

4. Article 2(4) (exclusion of the right to offset in respect of persons having acquired ownership, or a perpetual usufruct right, of State Treasury real estate as compensation for property left beyond the Bug River, envisaged in the so-called republican agreements, on the basis of other statutes) and Article 16 of the aforementioned Act (deeming the benefits acquired on the basis of these statutes, or the 2003 Act, as having satisfied the obligations stemming from the so-called republican agreements), insofar as they concern persons who, on the basis of other statutes, acquired ownership, or a perpetual usufruct right, of State Treasury real estate having a value lower than that stemming from the operative provisions concerning the right to offset, do not conform to Articles 2, 32, read in conjunction with Article 64(1) and 2, and **are not inconsistent** with Article 21(2) of the Constitution.

5. Article 3(2) of the aforementioned Act (maximum limits on the right to offset: 15% of the value of real estate left in the former eastern territories of Poland and no more than 50,000 Polish Zloty) and Article 53(3) of the Commercialisation and Privatisation Act 1996 (in its wording as amended by the reviewed 2003 Act – taking into account the same limit in cases of purchasing components of privatised State property) do not conform to Articles 2, 31(3), 32, 64(1) and (2), since they arbitrarily determine limits on enjoying the right to offset in a manner which disregards the differentiated situation of entitled persons, and **are not inconsistent** with Article 21(2) of the Constitution.

6. Article 5(2) point 2 letter a of the 2003 Act (rendering inadmissible any testimony, regarding facts significant for confirming the right to offset, from persons who were minors at the time the so-called republican agreements were concluded) does not conform to Article 2 and **is not inconsistent** with Article 32 of the Constitution.

7. Article 9(2) of the aforementioned Act (application of Chapter 12 of the Administrative Procedure Code, with the exception of Article 146 § 1, to proceedings concluded by the issuing of a certificate confirming the right to offset) conforms to Article 2 of the Constitution.

8. Article 15 of the aforementioned Act (application of the provisions of the Act to proceedings instituted and not concluded prior to the Act's entry into force), insofar as it concerns proceedings prior to the issuance of a decision on the right to offset, does not conform to Article 2 of the Constitution.

II

The Tribunal ruled that the loss of binding force of the provisions indicated in Point I.5 of the present ruling **shall be delayed** until 30th April 2005.

PRINCIPAL REASONS FOR THE RULING

1. The constitutional guarantee of equal protection of property rights (Article 64(2)) refers to rights of a specific category. However, the principle of equal protection does not directly influence the content of the protected rights themselves. The specification of such contents is, on each occasion, a matter within the legislator's competence.
2. Statutory limitation of citizens' public property rights is permissible for the following reasons: public interest; barriers on the possible enjoyment of such rights; and the necessity for the State (constituting a common good in accordance with Article 1 of the Constitution) to successfully fulfil its basic functions.

3. The so-called republican agreements, concluded in September 1944 between the Polish Committee of National Liberation and authorities of the Soviet republics – Belarus, Ukraine and Lithuania – governing the “evacuation” of Polish citizens from the former eastern territories of Poland, did not directly constitute a legal basis for compensation claims against Polish authorities. These agreements created an obligation for those authorities to adopt internal law measures on settlements with Polish citizens (possessing Polish or Jewish nationality) having lost real estate as a result of the shift of the eastern borders (the so-called property left beyond the Bug River). The fulfilment of the promises contained in the republican agreements required, therefore, the undertaking of appropriate legislative and administrative actions of an internal nature.
4. The right to offset, confirmed by several Polish statutes, has a peculiar nature, since it is a property right of public-legal character (cf. the Constitutional Tribunal’s judgment of 19th December 2002, [K 33/02](#)). To a certain degree, it represents a substitute for the right to ownership and, concurrently, has a beneficial (social) aspect. The public-legal nature of the right to offset consists primarily in the fact that it gives rise to claims solely in relations with appropriate organs of the State authority and State institutions and may also not be subject to civil-legal transactions. This right enjoys constitutionally guaranteed protection of property rights, as envisaged in Article 64(1) and (2) of the Constitution. Article 21 of the Constitution, which directly concerns only property rights, is not directly and completely applicable to the right to offset.
5. Determination of the scale of justified limitations placed upon the right to offset and the balancing of the rights of persons who left their property beyond the Bug River with the financial capacity of the State and protected constitutional values, requires the legislator’s scrupulous and contemplative decision. When specifying the scope of limitations placed upon the right to offset, the legislator should, in particular, take into account the lapse of time as regards persons who left their property beyond the Bug River and their heirs, who have hitherto not realised their entitlement to compensation on the basis of earlier statutes. The compensation promised 60 years ago primarily had the feature of “aid to relocated citizens”, enabling Polish citizens to make a fresh start following the loss of property left beyond the new borders of the Polish State. Accordingly, it is necessary to dynamically formulate the compensation duties with the lapse of time, and to exercise tremendous caution in applying current instruments for protecting the property rights of natural persons to situations which arose during different historical conditions and are characterised by a different sensibility as regards matters concerning observance of these rights.
6. In the light of historical facts, it is unjustified to allege that persons who left their property beyond the Bug River represent a discriminated category in comparison with other groups of citizens who lost their property during, and following, the Second World War. It should be remembered that owners possessing Polish citizenship were in no way compensated for the loss of property (also in form of real estate) caused by war confiscations. Owners of real estate taken over with a view to rural land reform did not obtain equivalent compensation. An equivalent, or even a very modest, “pension” that domestic owners of property nationalised on the basis of the Nationalisation of the Basic Branches of the National Economy Act 1946 were supposed to receive, was very often not paid. Owners of the grounds lying within the borders of the City of Warsaw as of the year 1939 that were, without payment of compensation, taken into communal ownership directly following the Second World War, have hitherto not ob-

tained compensation. Moreover, it is also unfounded to suggest that the discrimination of persons, having left their property beyond the Bug River, resulted from a delay in realising their compensation expectations and from the fact that such compensation was in a material, as opposed to a pecuniary, form. It may not be ignored that the pecuniary obligations which would have arisen, and would have been confirmed and realised prior to the entry into force of the Amendment of the Monetary System Act 1950, would probably have been subject to the disadvantageous mechanism of money exchange, as envisaged by this Act.

7. The challenged Act's restriction of the group of persons in whom the right to offset is vested, by introduction of the requirements of possessing Polish citizenship and having permanent residence following relocation within Poland's present borders, remains in rational conjunction with the compensating-beneficial nature of the Polish State's obligations, as expressed in the republican agreements and realised in the successive regulations serving to fulfil these obligations (cf. Article 2(1) points 1 and 2 of the Act and point I.1 of the Tribunal's ruling).
8. The requirement for entitled persons to reside permanently on Polish territory following the entry into force of the reviewed Act (30th January 2004), i.e. 60 years following the relocation (cf. point I.2 of the ruling), however, does not remain in a necessary conjunction with the analogous requirement from 60 years ago. The challenged requirement indicates a conditioning of the right to offset upon a quite arbitrarily specified and accidental circumstance – permanent residence in Poland from 30th January 2004. It remains a condition introduced arbitrarily and in the absence of an adequate substantive justification. This requirement contradicts: Article 31(3) of the Constitution (since it limits rights for reasons other than those indicated in this provision); Article 32 (given the unequal treatment of potentially entitled persons permanently residing in Poland and beyond the borders of Polish territory); and Article 64(2) (given the excessive differentiation in protection of property rights vested in the two categories of aforementioned persons).
9. Quantitative restrictions of the right to offset, contained in the provisions indicated in point I.5 of the Tribunal's ruling, are excessive and, accordingly, do not conform either to the principles of protecting acquired rights and citizens' trust in the State, as stemming from the constitutional clause of the rule of law, nor to the principle of social justice (Article 2 of the Constitution). In particular, the adoption of a maximum limit on the compensation value, uniform for all entitled persons, at a level of 50,000 Polish Zloty, leads to unequal treatment of entitled persons and fails to conform to Article 32(1) of the Constitution. Furthermore, it results in unequal protection of their property rights, contrary to Article 64(2) of the Constitution.
10. [Delaying the loss of binding force](#) of provisions mentioned in point 9 (cf. part II of the ruling) is justified by the need to comprehensively and reliably estimate the possibility of a real, complete and possibly final satisfaction of claims connected to the right to offset, as well as by the need to establish constitutionally compatible statutory regulations eliminating obstacles and irregularities within the activity of State organs and institutions.
11. Exclusion of the right to offset in respect of persons who, on the basis of other statutes, have acquired ownership, or perpetual usufruct right, of real estate having a value

lower than the value of the right to offset regulated in the reviewed 2003 Act and, *ipso facto*, enjoyed merely part of this right (cf. point I.4 of the ruling), infringes the constitutional principles of equal protection of property rights (Article 64(2)) and equal treatment and non-discrimination (Article 32). It indicates an unjustified differentiation in the treatment of persons who have not hitherto benefited from the right to offset in any way and persons who have enjoyed this right to a lesser extent than envisaged by the reviewed Act. Such regulation is also socially unjust, undermines citizens' trust in the State and, in consequence, does not conform to Article 2 of the Constitution.

12. The restriction with relation to admissible evidence, as instituted by the provision indicated in point I.6 of the ruling, is unjustified in light of the constitutional principle of the rule of law.
13. The aim of the regulation contained in the provision indicated in point I.7 of the ruling was to eliminate procedural dualism, differentiating entitled persons according to the time and manner in which they obtained confirmation of a right to compensation for property left beyond the Bug River. The solution adopted in the challenged Act corresponds both to the principle of equal treatment of citizens (Article 32(1) of the Constitution) and to the principle, recognised in jurisprudence, of the direct application of new procedural regulations. The possibility to verify existing confirmations of the right to offset is also of great importance.
14. Article 15 of the Act, challenged by the applicants, exclusively concerns procedure – an administrative decision concluding the proceedings determines the acquisition, or otherwise, of the right to offset. This provision, *per se*, does not regulate the *ratione personae* of the right to offset, the manner (criteria) of determining the value of property left beyond the Bug River, nor the principles governing enjoyment of this right when acquiring rights to State Treasury real estate. Accordingly, its content has no impact on the level of compensation. For this reason alone, it may not be alleged that Article 15 is “less beneficial” for potentially entitled persons (cf. point I.8 of the ruling).
15. When, as in the present case, a statute is challenged in its entirety before the Constitutional Tribunal, and, concomitantly, the applicant alleges that certain of the Act's individual provisions fail to conform to the Constitution, the Tribunal should first consider these latter allegations. Proceeding in such a manner corresponds to the requirement for the applicant to indicate the provisions at which the allegations of unconstitutionality are directed, and explicitly identify the bases of constitutional review (Article 32(1) points 2 and 4 of the Constitutional Tribunal Act). A ruling that a whole statute fails to conform to the Constitution may take place in such an event only as a result of challenging the constitutionality of the statute's basic assumptions, which are merely represented concretely in other provisions, whose content remains inseparable from the former.

Provisions of the Polish Constitution, the Constitutional Tribunal Act and the Protocol No. 1 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms

Constitution

Art. 1. The Republic of Poland shall be the common good of all its citizens.

Art. 2. The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

Art. 21. 1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purposes and for just compensation.

Art. 31. [...] 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 52. 1. Freedom of movement as well as the choice of place of residence and sojourn within the territory of the Republic of Poland shall be ensured to everyone.

Art. 64. 1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
3. 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.

CT Act

Art. 32. 1. The application or question of law shall comply with requirements referring to procedural letters and shall, in addition, include:

- 1) identification of the organ which enacted the normative act in question;
- 2) a precise identification of the normative act, or a part thereof, called in question;
- 3) formulation of the claim alleging the non-conformity of the normative act called in question to the Constitution, ratified international agreement or statutes;
- 4) reasons for the claim containing indication of supporting evidence.

Protocol No. 1 to the European Convention

Art. 1. 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.