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*Realizacja roszczeń zabużańskich z tytułu pozostawienia nieruchomości poza  
obecnymi granicami Rzeczypospolitej Polskiej*

*(The enforcement of the right to compensation for leaving behind real estate  
property beyond the borders of the Republic of Poland)*

## SUMMARY

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The subject of the dissertation is an analysis of the enforcement of the Bug River claims concerning property left behind which is beyond the current borders of the Republic of Poland. The term “the Bug River claims” is understood as an entitlement of the Polish citizens to be returned the value of property lost as a result of moving the Polish eastern border after World War II and establishing the border along the Curzon Line. This change led to the massive relocation of the population living in the Eastern Borderlands and was done under the “republican agreements” concluded between the Polish Committee of National Liberation and the authorities of the Ukrainian and Byelorussian Soviet Socialist Republics on 9 September 1944 and the Lithuanian Soviet Socialist Republic on 22 September 1944.

The dissertation is an attempt at filling the gap visible in the jurisprudence of international law as to the comprehensive presentation of the issue of the enforcement of the Bug River claims, as there is no study presenting an overall analysis of this problem, which would particularly focus on the current legal status of the issue.

The focal point of the dissertation is the systemic presentation of the legal solutions which were adapted in the postwar normative acts regulating the possibility to receive compensation for the property left behind beyond the eastern border of the country. Initially, the enforcement of this right was possible by means of the “right to offset,” which had different forms, but was based on the principle of offsetting the value of real property left against the equivalent compensation received. The Act on Enforcement of the Right to Compensation for Leaving Real Estate Properties beyond the Borders of the Republic of Poland of 8 July 2005, currently in force, alongside the previously existing form of enforcement of the right, “the right to offset”, introduced a new one in the form of monetary benefit paid from the resources of the Compensation Fund in the amount of 20% of the value of real property left beyond the country’s existing borders. The adoption by the Polish authorities of the statutory limitation of compensation for damage at the level of 20% of the value of the real property left behind was assessed, taking into account a wide margin of freedom granted to the state, as well as the fact that the aim of compensation is not to guarantee the return of the expropriated property, but to alleviate the consequences of deprivation of property.

In this study, an assumption was made that the legal acts which regulated the issue of the Bug River claims between 1944 and 2003 were functioning defectively in practice, which in some periods of their being in force made the recovery of compensation impossible. This problem was noticed by the European Court of Human Rights in the case *Broniowski v. Poland*. The judgement rendered on 22 June 2004 was a pilot judgement and it stated that



there is a defect in the Polish legal system, as a result of which an entire group of citizens was deprived of the right to enjoy their property. The Court highlighted that the Polish state is obliged to remove all obstacles to the enforcement of the rights of the people who left their property behind beyond the Bug River, or instead of it, provide them with an equivalent compensation and, by means of appropriate legal and administrative measures, ensure effective and prompt enforcement of the entitlement in question, in accordance with the principles of property protection stipulated in Art. 1 of Protocol 1 of the European Convention on Human Rights, with a special focus on the principles of compensation.

On 7 October 2005 the Act of 8 July 2005 on the Enforcement of the Right to Compensation for Leaving Real Estate Properties beyond the Borders of the Republic of Poland came into force. It was passed by Parliament in order to comply with the decision of the Court. The aim of this study is to examine whether the legal regulation in question fulfilled the obligation imposed on the Polish state by this judgement. To that effect, in this study there is a discussion of the provisions of the Act in force which regulate the issues related to the principles and procedure of the enforcement of the right to compensation for the Bug River property. In this dissertation it was also indispensable to make reference to the rulings, including those of the administrative courts, whose overview allowed for the examination and then for the assessment of how far the Polish state fulfilled the obligation imposed on it regarding the effective enforcement of claims for the Bug River property. In relation to the assessment made, it was necessary to verify the effectiveness of the new Bug River Act studying the examples of the most representative cases related to the claims concerning the Bug River property, taking into account the activity of the Łódź Voivodeship Office (Łódź Regional Office) as an organ of first instance competent to render a decision confirming or refusing to confirm the right to compensation.

In the study, the discussion was presented in a way based on a specific scheme. The point of departure for the analysis of the enforcement of claims concerning property left beyond the current borders of the Republic of Poland is the presentation of the genesis of the problem connected with the Bug River property, as well as the history of the recovery of claims. Afterwards, the issue of property protection in the light of the European Convention on Human Rights and the position of the European Court of Human Rights in the pilot ruling in the case *Broniowski v. Poland* is presented. The final point of the discussion are remarks on the recovery of claims made by people who left behind their property beyond the Bug River on the basis of the regulations of the Act on Enforcement of the Right to Compensation currently in force.



As a result of the above assumptions, the theme of this study determined its structure. The dissertation consists of five chapters. The first of them is of an introductory character. The presentation of the genesis of the conclusion of the republican agreements between the Polish government and the governments of each Soviet Republic constitutes a necessary introduction to further discussion. A detailed analysis of the legal character of the agreements concluded in September 1944 in relation to international law and constitutional standards in force is conducted. Its aim is to examine whether the provisions of the republican agreements may constitute a direct source of claims for the return of property left beyond the eastern border. The validity of republican agreements was assessed from the point of view of whether their conclusion was in compliance with the constitutional provisions in force at the time when they were signed, within the scope of their implicit ratification and publication. The competences of the then authorities to conclude international agreements of such kind also raised doubts and required detailed examination. The main provisions of the republican agreements and of the immigration property contracts were presented and their analysis concludes the discussion in this part of the dissertation.

In the second chapter a chronological outline of domestic legal regulations as the legal grounds for the recovery of the Bug River claims was presented. An overview of the legal regulations binding in Poland between 1944 and 2003, with the emphasis, among others, on the subjective and objective scope of the particular legal acts and the limitation of the right to an equivalent in the light of their provisions was presented. Its aim was to assess the activities of the Polish state undertaken in order to fulfil the obligation imposed by the republican agreements in relation to their reception to the domestic legal system. The decisions of the domestic courts played an invaluable role in the effective enforcement of “the Bug River claims” on the basis of the legal acts at issue.

The impossibility of satisfying “the Bug River claims” for property left behind in the Eastern Borderlands became the reason for the Bug River claimants filing complaints with the European Court of Human Rights on the basis of Art. 1 of Protocol 1 of the European Convention on Human Rights. The complaint filed in 1996 by Jerzy Broniowski was one of them. Assessing the facts in the case *Broniowski v. Poland*, ECHR first of all had to decide on the terms of admissibility of the complaint and objections raised by the Polish government. Consequently, the discussion in the third chapter of the dissertation commences with the presentation of the aspects of protection of property based on Protocol 1 of the European Convention on Human Rights: the subjective scope of protection of property indicating obligees and obligors under this Convention; the objective scope; the terms of admissibility of



lawful interference of state in the right to property in the form of limitation and deprivation of ownership. As for the substance of the complaint, in its judgement the Court stated that the infringement on the claimant's right guaranteed under Art. 1 of Protocol 1 results from a problem which concerns the general public and found the necessity to pass a new legal regulation compliant with the Constitution and driving at a real, comprehensive and possibly final satisfaction of claims connected with the "right to offset."

Chapter 4 focuses on determining whether the Polish state enforced the judgement of the European Court of Human Rights by undertaking general measures in order to remove the systemic defect underlying the establishment of infringement by the Court. A detailed analysis of particular provisions of the Act of 8 July 2005 allowed the author to estimate how far the current legal regulation rejected the defective system of settlements with the Bug River claimants binding for more than 60 years and to what extent its provisions may be regarded as satisfying. Undertaking the discussion in this part of the study, it had to be taken into account that the Bug River Act of 8 July 2005 constitutes an attempt to regulate comprehensively the principles of enforcement of the right to compensation and to ultimately solve and close it.

Chapter 5 focuses on the examination of the effectiveness of the provisions of the current Bug River Act in the practice of bodies authorized under the Act of 8 July 2005 to conduct proceedings in cases within the scope of the Bug River property. To this effect, particular administrative decisions confirming or refusing to confirm the right to compensation of the Bug River claimants were examined, since the content of the legal norms regulating the principles and the procedure of enforcement of the Bug River claims is ambiguous. On the basis of the example of the decisions rendered by the Łódź Voivodeship Office (Łódź Regional Office) a catalogue of cases with similar factual status was created. Their resolutions constitute a kind of interpretation of the provisions of the Act. The due enforcement of the provisions of the Act of 8 July 2005 is safeguarded by the Minister of Treasury, who each time and individually issues instructions related to the factual status arising, where he indicates which circumstances should be taken into account when the case is reconsidered.

The summary of the study is its conclusion, which looks at the thesis of this dissertation from the perspective of the analysis carried out in its content. The presentation of the enforcement of the right to compensation for leaving behind real estate properties beyond the current borders of the Republic of Poland confirmed that the Strasbourg ruling in the case *Broniowski v. Poland* contributed to the improvement of the protection of property rights of the Bug River claimants through a comprehensive regulation of principles and procedure of

recovery of the Bug River claims under the Act on Enforcement of the Right to Compensation for Leaving Real Estate Properties Beyond the Borders of the Republic of Poland of 8 July 2005 currently in force.

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