Broniowski Case

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A. Historical Background to the Case

Following World War II and the fixing of Poland’s new borders, the former Polish eastern provinces—formerly called Borderlands—became part of present-day Belarus, Ukraine, and Lithuania. As a result of the change in boundaries, Poland suffered a loss of territory amounting to 19.78%. Following the → Yalta Conference (1945) and the → Potsdam Conference (1945), Poland assumed the obligation to compensate repatriated persons from the so-called territories beyond the Bug River. The Polish government estimated that about 1.24 million persons were repatriated between 1944 and 1953 (→ Repatriation). The vast majority of them have been compensated (→ Compensation for Personal Damages Suffered during World War II), either by the granting of perpetual use of land, or with land belonging to the State.

B. Facts of the Case

The applicant’s grandmother had been repatriated from Lwów, nowadays Lviv, Ukraine. She had owned 400 m² of land and a house with a surface area of 260 m². On 19 August 1947 the Polish State Repatriation Office issued a certificate attesting her ownership. The mother of the applicant inherited the entitlement and obtained compensation in the form of a right to perpetual use of 467 m² of land in Wieliczka in 1981. Jerzy Broniowski inherited the whole of his mother’s property and claims following her death in 1989. In September 1992 he requested to be granted full compensation from the government. His claim was registered but could not be satisfied. On 12 August 1994 Broniowski filed a complaint with the Supreme Administrative Court, which was rejected. In 2002 the Ombudsman presented a plea to the Constitutional Court, and requested the legal provisions restricting full compensation to be declared unconstitutional. On 19 December 2002 the Constitutional Court declared several legal provisions unconstitutional and ordered their amendment. The judgment took effect on 8 January 2003.

Following the judgment of the Constitutional Court, the Military Property Agency, one of the agencies in charge of distributing land to Bug River claimants, publicly announced that it would hold public auctions in order to give away land to claimants. It never did so. Also the State Treasury’s Agricultural Property Agency—another agency in charge of distributing land—stopped holding auctions for the sale of property among its resources. Both agencies later declared that several legal provisions had to be amended as a result of the judgment of the Constitutional Court, and therefore no biddings could take place.

In the spring and summer of 2003, the government calculated the number of claimants and the value of the claims. It stated that 4,120 claims were registered, of which 3,910 had been verified. The registered claims were valued at zl3 billion. Additionally, there were 82,740 unverified claims pending registration, of which 74,470 were likely to be registered. The estimated value of the unverified claims amounted to zl10.45 billion. The reports did not contain information regarding whether these claimants had ever received some form of compensation. An estimate of the number of persons whose entitlement had been satisfied was not possible.

On 12 June 2003 the government prepared a valuation report in which it estimated the cost of that the property which Broniowski’s grandmother had been forced to abandon at zl390,000. The report also stated that the compensation received by the family so far amounted to 2% of that value.

On 30 January 2004, according to the newly passed law of 12 December 2003, the State’s obligations towards Bug River claimants were considered by the government to have been discharged. On 30 January 2004, 51 members of the Polish Parliament filed a claim before the Constitutional Court challenging the provisions of the December 2003 Act.
C. Proceedings

7 The case originated in an application against the Republic of Poland filed on 12 March 1996 by Broniowski with the former European Commission on Human Rights (→ Human Rights, Individual Communications/Complaints). The applicant alleged a breach of Art. 1 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (‘Protocol No 1 ECHR’ → European Convention for the Protection of Human Rights and Fundamental Freedoms [1950]). He alleged that the entitlement to compensation for property that his family was forced to abandon had not been satisfied. On 26 March 2002 a chamber of the fourth section of the → European Court of Human Rights (ECtHR) relinquished jurisdiction in favour of the Grand Chamber. The Grand Chamber ordered on that same day that all similar applications pending before the court be allocated to the fourth section, and their examination adjourned until the judgment on the merits had been delivered.

8 On 19 December 2002 the ECtHR declared the application admissible. In its decision on admissibility, the court declared that it had jurisdiction ratione temporis to review the case only regarding those facts that arose after 10 October 1994—the date on which Poland ratified Protocol No 1 ECHR. Further, the court considered that it could have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date, or if they were relevant for understanding the facts. It considered that the core of the complaint lay in the failure to satisfy the entitlement of compensation, which had continuously been vested in the applicant. According to the court, the applicant’s entitlement was still valid on the date of entry into force of Protocol No 1 ECHR and subsisted on the date on which the application was lodged. Further, the court joined the government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies to the merits of the case, and declared Art. 1 Protocol No 1 ECHR applicable to the case (→ Local Remedies, Exhaustion of).

9 The ECtHR decided on the merits on 22 June 2004 in the form of a pilot-procedure judgment, Broniowski v Poland (Judgment). On 6 July 2004 the Grand Chamber decided that all similar applications—including future ones—should remain adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level. On 5 July 2005 the Committee of Ministers (‘CoM’) of the → Council of Europe (COE) adopted ‘Interim Resolution ResDH (2005) 58 Concerning the Judgment of the European Court of Human Rights of 22 June 2004 (Grand Chamber) in the Case of Broniowski Against Poland’ acknowledging the measures adopted by the government so far, and pointing out outstanding questions. It called upon the Polish authorities to intensify their efforts rapidly to finalize the legislative reform and create the conditions necessary for its effective implementation. On 28 September 2005 the ECHR struck the case out of the list following its acceptance of a friendly settlement between the parties. At the time of writing, the execution of the judgment was being supervised by the CoM.

D. The Judgment on the Merits

10 The first issue dealt with by the ECtHR regarded the applicability of Art. 1 Protocol No 1 ECHR (→ Property, Right to, International Protection). The applicant maintained that his entitlement constituted a property right, recognized by Poland at the moment when it took upon itself the obligation to compensate repatriated persons. This right was explicitly recognized by Polish courts as a property right, and had been recently defined by the Polish Constitutional Court as a right to credit. According to the government, the entitlement constituted merely a conditional claim that had lapsed due to the failure to fulfil a procedural condition. The ECtHR subscribed to the interpretation of the Constitutional
11 The Court then addressed the State’s compliance with Art. 1 Protocol No 1 ECHR. Broniowski submitted that the State, after having conferred on him an entitlement to compensatory property, had continuously failed to satisfy his entitlement through a series of acts and omissions. The problem had originated in the failure of the State to fulfil its legislative duty to regulate the matter properly and timely. The State had also enacted obstructive laws that had rendered the obtainment of property as compensation almost impossible. State authorities had further made the realization of his entitlement to compensation impossible in practice. He argued that there had been a ‘common and widespread policy not to put State land up for sale and to prevent the entitled persons from bidding for State property at auctions’ (Broniowski v Poland [Judgment] para. 138). The government denied that there had been an interference with the applicant’s right because he had no possessions in the sense of Art. 1 Protocol No 1 ECHR. It further stated that the State had not failed to fulfil its positive legislative duties since it had continuously legislated on the matter, and the vast majority of repatriated persons had obtained compensation. The government further declared that it had made constant efforts to enact legislation to enable the restitution of claims such as the applicant’s.

12 The ECtHR first concluded that the acts and omissions of the Polish State were provided by law, within the meaning of Art. 1 Protocol No 1 ECHR. This was not enough however, since the principle of lawfulness also required that the State ensure the legal and practical conditions for their implementation. The Polish authorities thus should have removed the incompatibility between the letter of the law and the State-operated practice. In addition, the court considered that the aims pursued by the State were in the general interest of the community. The ECtHR took into consideration that the State had to deal with an exceptionally difficult situation which involved large-scale policy decisions of great complexity. In such circumstances, the State is awarded a wide margin of appreciation. However, reiterated the ECtHR reiterated that, this margin is not unlimited, and its exercise cannot entail consequences contrary to the standards of the ECHR. In this regard, the court found that Poland had failed to strike a fair balance between the general interest of the community and Broniowski’s right to the peaceful enjoyment of his possessions (→ Proportionality). According to the ECtHR, Poland chose to reaffirm its obligation to compensate the Bug River repatriates in 1985 and 1997, and thus incorporated obligations under international treaties existent prior to the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (‘ECHR’) and of Protocol No 1 ECHR into its legal system. The court also stated that the → rule of law further required that Poland fulfilled such promises in good time, and in compliance with internal judgments, such as that of the Polish Constitutional Court.

13 Due to the fact that the matter was of public and general interest, the ECtHR considered that Poland should have eliminated dysfunctional provisions from its legal system and rectified extra-legal practices that hindered compensation. However, and in spite of public promises, the State had failed to realize Broniowski’s right to credit. Between 1991 and 1998 only 22 auctions for the sale of State property—the only manner in which compensatory property could be acquired—took place. The ECtHR declared that it had been common knowledge that the authorities had desisted from organizing auctions, or openly denied Bug River claimants the opportunity to seek enforcement of their right through bidding. For the court, the practices of the Military Property Agency ‘constituted a purposeful attempt to circumvent the rules’ (Broniowski v Poland [Judgment] para. 171) and ‘prepared the ground for the next restrictive statute’ (ibid). The 2001 amendment eliminated any possibility to seek compensation in the form of land belonging to the military. Since other land resources had practically been exhausted, the ECtHR considered
that the authorities had all but wiped out the applicant’s right from the domestic legal order, and had rendered it illusory. Thus, the court concluded that the auction bidding procedure could not be seen as an effective or adequate means for realizing an entitlement to compensation, and rejected the government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies.

14 Furthermore, in the court’s opinion, the conduct of polish agencies was tolerated, if not tacitly approved, by the executive and legislative branches of the State; all of which could be explained in terms of any legitimate public interest or the interests of the community as a whole. For the court, making a right to credit unenforceable in practice could not be accepted in a democratic State under the rule of law. The ECtHR marked the entry into force of the December 2003 Act as the culminating event of a series of actions and omissions. Under this act, the State declared all obligations in relation with Broniowski to be discharged, given that his family had previously received some kind of compensation.

15 In the view of the court, Polish authorities eliminated all possibility for Broniowski to seek compensation, through legislative and administrative practice both in the form of acts of omission and commission. By imposing limitations on the exercise of the right to credit, and applying practices that made it unenforceable and unusable, these authorities also destroyed the very essence of his right. The court also found that the state of uncertainty in which Broniowski found himself as a result of the delays and obstructions over the years was in itself incompatible with Art. 1 Protocol No 1 ECHR. Furthermore, Broniowski’s situation was worsened by the fact that his already, in practice, unenforceable entitlement was legally extinguished by the December 2003 legislation. This legislation created a difference in treatment between persons who had never received compensation, and could receive up to 15% of their entitlement, and those who had already been awarded a much lower amount, like Broniowski.

16 The ECtHR declared that Art. 1 Protocol No 1 ECHR requires that the amount of compensation be reasonable. According to the court, the payment of a much smaller compensatory amount than due would normally constitute a disproportionate interference with Art. 1 Protocol No 1 ECHR. Total lack of compensation would be justifiable only under exceptional circumstances. Given that Broniowski’s family was only awarded 2% of the compensation, the ECtHR found no reason why such an amount should deprive him from obtaining at least a proportion of his right on an equal basis with other Bug River claimants. The ECtHR concluded that the applicant had to bear a disproportionate and excessive burden which could not be justified, and that Poland had thus violated Art. 1 Protocol No 1 ECHR.

17 The ECtHR then went on to decide on just satisfaction. It found that the violation had originated in a widespread and systemic problem, which had resulted from ‘a malfunctioning of Polish legislation and administrative practice and which ... affected’ and remained ‘capable of affecting a large number of persons’ (Broniowski v Poland [Judgment] para. 189). The court concluded that the facts of the case showed the existence of a shortcoming which affected a whole class of individuals. Before examining the applicant’s individual claim for just satisfaction under Art. 41 ECHR, the court stated the consequences to be drawn from the judgment for the Polish State by virtue of Art. 46 ECHR.

18 The ECtHR found that the present case had its cause in a situation which also concerned thousands of other persons. This was not only ‘an aggravating factor as regards to the State’s responsibility ... but also ... a threat to the future effectiveness of the Convention machinery’ (Broniowski v Poland [Judgment] para. 193). Thus, in view of this systemic situation, the court declared that general measures were called for in the execution of the judgment. Said measures should be such as to remedy the systemic defect
underlying the finding of the violation under Art. 1 Protocol No 1 ECHR. In this manner, a further overburdening of the convention system could be avoided. The ECtHR stated that these measures should include a scheme which offered redress to all persons affected, and not only the applicant. For the court, once a systemic problem is identified, it falls to the national authorities to take the necessary remedial measures and thus avoid having to repeat its finding in a lengthy series of comparable cases. The ECtHR declared that Poland must take the general measures necessary to remove any obstacle to the implementation of the right to credit of those affected, or provide equivalent redress, and ordered the State to secure the effective and expeditious realization of the entitlement in respect of the remaining Bug River claimants through legal and administrative measures.

19 Broniowski had requested zł990,000 in compensation for the loss of his right to property, and a further €12,000 for the non-pecuniary damage arising out of the state of uncertainty, stress, and frustration from his inability to enjoy his right to property. He also requested zł125,000 for costs and expenses. The ECtHR concluded that it was not ready to take a decision concerning just satisfaction under Art. 41 ECHR. In respect of the award to the applicant for pecuniary and non-pecuniary damage, the ECtHR invited the parties to submit written observations within six months and notify it of any agreement they might reach. The ECtHR reminded the parties that the issue of just satisfaction could not be resolved having regard only individual measures, but also to measures of a general nature which the government was bound to take. Lastly, the court awarded Broniowski €12,000 for costs and expenses.

E. Further Developments and Friendly Settlement of the Case

20 Following the judgment on the merits, the parties submitted their observations on measures of just satisfaction within the above-mentioned term of six months. Additionally, several important developments took place in Poland after the date of the judgment. First, on 15 December 2004 the Constitutional Court declared several provisions of the law of 12 December 2003 unconstitutional. Following this the government submitted a new bill to parliament on the realization of the right to compensation for Bug River claimants. The bill proposed that claimants should be given 15% of the original value of their property in compensation. This could be made effective in two ways: through an auction procedure or through cash payment from a special compensation fund. The bill was passed by the Sejm, the (first house of Parliament,) on 8 July 2005 and by the Senat, the (second house of Parliament) on 21 July 2005. The statutory ceiling for compensation was set at 20%. It entered into force on 7 October 2005.

21 On 6 September 2005, the parties agreed on a friendly settlement covering the issue of just satisfaction under Art. 41 ECHR. The settlement distinguished between individual and general measures for just satisfaction. As individual measures, the government agreed to pay the lump sum of zł237,000 to Broniowski (→ Lump Sum Agreements). This amount covered

a) zł213,000 representing 20% of the agreed notional value of the property—the parties could only agree on a notional value of the property for the purposes of the friendly settlement since its real actual value remained disputed—, compensation for any prejudice which Broniowski might have had to sustain as a consequence of the violation of Art. 1 Protocol No 1 ECHR, non-pecuniary damage arising from the uncertainty of his situation, and an assumed but not quantified material damage, and
b) zl24,000 for the costs and expenses incurred by Broniowski in addition to those awarded to him by the ECtHR in the judgment on the merits.

These sums have been paid. In return, the applicant accepted that the payment constituted the final and full settlement of his claims before the ECtHR and exhausted his entitlement under the Bug River legislation as it stood under the July 2005 Act. Accordingly, Broniowski agreed not to seek further damages from the State and waived any further claims in Polish civil courts or before the ECtHR or any other international body. As a separate point, both parties agreed that nothing in the friendly settlement should be interpreted as constituting an acknowledgement by Broniowski ‘of the legitimacy of the statutory ceiling of 20% fixed by the July 2005 Act or its compatibility with the Polish Constitution or the Convention’ (Broniowski v Poland [Judgment] [Friendly Settlement] 19).

22 Further, the government made a declaration regarding the general measures it would undertake in order to secure the right to credit not only of Broniowski, but also of all other persons in a similar situation. It first declared that it would implement all necessary measures of domestic law and practice to secure the implementation of the right to credit of the remaining Bug River claimants, or provide redress in return. Second, the government stated it shall ensure that the relevant State agencies do not hinder the Bug River claimants in the enforcement of their right to credit. Thirdly, it recognized its obligation to make some form of redress available to the remaining Bug River claimants for any material and non-material damage caused in the past. In this regard, the government noted several national remedies which could be adequate for affording such redress.

23 On 28 September 2005 the ECtHR formally struck the case out of its list in virtue of the friendly settlement, on the basis of Arts 39, 37 (1), and 38 (1) (b) ECHR. The court was satisfied that the settlement was based on the respect for human rights, as required by Art. 38 (1) (b) ECHR. For the court, the notion of ‘respect to human rights’ (Broniowski v Poland [Judgment] [Friendly Settlement] para. 36) in the context of a friendly settlement in a pilot-judgment procedure ‘necessarily extends beyond the sole interests of the individual applicant and requires the court to examine the case also from the point of view of “relevant general measures”’ (ibid).

24 The court noted that the friendly settlement between Broniowski and the Polish State dealt with both individual and general measures. The parties had thus adequately recognized the implications of the main judgment as a pilot judgment. It further noted that the July 2005 Act, along with the government’s undertakings in the friendly settlement, were designed to remove practical and legal obstacles on the exercise of the right to credit by Bug River claimants. Moreover, the ECtHR stated that the content of the settlement in regards to general measures related both to the future functioning of the Bug River scheme, and to the affording of redress for any past damage resulting from the previous scheme of compensation. The court welcomed the development of the specific civil-law remedies enabling the remaining Bug River claimants to seek compensation before Polish courts for any material and/or non-material damage, ‘as would be possible under Article 41 of the Convention if the court were to deal with’ the ‘cases on an individual basis’ (Broniowski v Poland [Judgment] [Friendly Settlement] para. 41). On a less positive note, the court observed that the position in Polish law regarding compensation for non-material damage was less clear. Nevertheless, the ECtHR considered that the government had demonstrated an active commitment to remediing the systemic defects of the case.

25 As to the reparation afforded individually to the applicant, the court noted that the payment provided him with accelerated satisfaction of his right to credit. Finally, the ECtHR stated that according to the terms of the friendly settlement, Broniowski remained free to seek and recover compensation above the actual 20% ceiling, ‘in so far as Polish law allows that in the future and there is nothing to prevent a future challenge of that 20% ceiling
before either the Polish Constitutional Court or ultimately the ECtHR itself (Broniowski v Poland [Judgment] [Friendly Settlement] para. 43).

26 As one of the main measures to implement the new Bug River legislation of 2005, the Treasury Minister adopted a regulation concerning the management of the compensation fund in December 2005. Additionally, in April 2006 an agreement concerning the conditions of payment of compensations was concluded between the Treasury Ministry and the Bank of National Property. On 4 December 2007, the court established in its decisions striking out the cases Wolkenberg and Others v Poland and Witkowska-Tobola v Poland, that the new Bug River compensation scheme satisfied the requirements set out in its judgment in Broniowski v Poland (see Wolkenberg and Others v Poland [Decision] paras 74–77; Witkowska-Tobola v Poland [Decision] App No. 11208/02 paras 77–79). Subsequently, in more than a hundred decisions, the court has struck out the remaining 276 cases. The last decision taken on 23 September 2008 and encompassing 176 individual applications, marked the end of the court’s pilot-judgment procedure in this case (see EG v Poland [Decision] App No. 50425/99 paras 24–29). However, similar complaints continue to be lodged every month, and the court will be called upon to give individual decisions in these cases as well.

F. Assessment and Contemporary Relevance

27 The case Broniowski v Poland represents an important step in the jurisprudence of the ECtHR. For the first time since its creation the ECtHR applied the pilot-judgment procedure to a case before it (→ International Courts and Tribunals, Procedure). The pilot-judgment procedure is a clear response to structural and systemic problems existing in many of the new members of the Council of Europe, previously unknown in the European human rights protection system. The nature of many of the cases coming to the court has changed due to the fact that often these new Member States, mostly Central and Eastern European countries, have to deal with very complex institutional and transitional problems, do not always count with a well-functioning judiciary, and/or have deficiencies regarding the rule of law and their democratic system, all issues which had not played an important role in the court’s jurisprudence before.

28 The pilot-judgment procedure is also one of the responses of the system to the overwhelming increase in caseload that has affected the court’s effectiveness in the recent past, which is directly linked to the enlargement of the Council of Europe with the incorporation of new Member States. Furthermore, many of the cases stemming from the new COE members are repetitive in nature. The sheer number of applications is threatening to bring the court’s system to a collapse, or render it ineffective due to the stagnation of cases.

29 Even though the pilot-judgment procedure is in its incipient stage, it might prove to become one of the most effective solutions to the court’s problems. A first advantage of this special procedure is that it allows the court to deal with large numbers of applications in one single instance. Even though the ECtHR only reviews one application, the adjournment of all other applications with similar backgrounds until satisfactory general measures are taken by the State, allows the court to deal with the problem as a whole, and not be forced to dictate hundreds of repetitive judgments. The pilot-judgment procedure is a welcome step away from the strict single-case approach of the ECtHR to individual applications in the past, as it focuses more strongly on the general circumstances leading to the violation, and links the facts of the case to those of many other individuals. The ECtHR does not longer wait to decide in several cases in order to declare the existence of a systemic problem as it did, for example, in regards to the length of civil proceedings in Italy. In comparison, the → Inter-American Court of Human Rights (IACtHR) reviews cases with up
The pilot judgment procedure lacks treaty provisions since the Steering Committee chose not to include the procedure expressly in the text of Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the Control System of the Convention ([done 13 May 2004] CETS No 194). The ECtHR, however, included Rule 61 in its Rules of Court in 2011 which, among others, prescribes that pilot judgments should be processed as a matter of priority. It also calls for more and better communication between the court and the parties, as well as between the court and other organs of the Council of Europe. Rule 61 further recalls the competence of the ECtHR to direct remedial measures and highlights the importance of general measures, even in the case of a friendly settlement.

After the judgment on Broniowski v Poland, the ECtHR has applied the pilot judgment procedure in several instances. Some cases, like Broniowski v Poland, have dealt with the right to protection of property (for example Suljagic v Bosnia and Herzegovina [Judgment] App No. 27912/02; Maria Atanasiu and others v Romania [Judgment] App Nos 30767/05 and 33800/06 and Manushage Puto and others v Albania [Judgment] App Nos 604/07, 43628/07, 46684/07 and 34770/09). Other pilot judgments have dealt with the right to free elections (Greens and MT v the United Kingdom [Judgment] App Nos 60041/08 and 60054/08), the right to private and family life (Kuric and others v Slovenia [Judgment] App No. 26828/06) and excessive length of proceedings and lack of domestic remedies (for example Rumpf v Germany [Judgment] App No. 46344/06; Ümmühan Kalan v Turkey [Judgment] and Glykantzi v Greece [Judgment] App No. 40150/09). In an interesting development the ECtHR has also applied the procedure to cases dealing with inhuman and degrading treatment (Ananyev and others v Russia [Judgment] App Nos 42525/07 and 60800/08 and Torreggiani and others v Italy [Judgment] App Nos 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10). This opens a gate for the court to deal with practices of gross and systematic human rights violations more forcefully and declare the State’s aggravated responsibility. Recognizing that adjourning all similar applications may not always be adequate due to the possible grave consequences for the petitioners, the ECtHR did not adjourn other applications in the case of Ananyev and others v Russia.

The judgment in Broniowski v Poland entails a significant step away from the classical subsidiary role of the ECtHR (Subsidiarity). For the first time, the court spells out the obligations of State parties under Art. 46 ECHR, an ambit of work usually reserved for the CoM. The decision of the court could be perceived as an intrusion into the sovereignty of the State concerned. By adjourning all additional applications, however, the court gives the respondent State enough margin to take adequate action at the national level. All in all, the decision represents a new balance between the international and national levels in the European human rights system.

The success of the pilot-judgment procedure shall also depend on the degree of cooperation from the State involved. This will be especially relevant in instances of non-cooperation. Another inevitable consequence of the Broniowski v Poland judgment has been the re-adjustment of the competences between the CoM and the ECtHR. In addition, special regard must be had in regard to all other adjourned applications. A balance must be struck between the individual’s right to individual application and the margin granted to the State...
to solve the systemic problem, especially relevant when the main judgment has been struck out of the court’s list.

34 The judgment of the ECtHR in Broniowski v Poland is of great contemporary relevance and entails a substantial advancement for the European human rights system. Its importance for international human rights law must also not be underestimated. The court’s approach in Broniowski v Poland, and its definition of a systemic or structural problem, may prove of great value for other human rights bodies, as it provides the possibility of giving an adequate response to systemic problems and gross and systematic human rights violations.

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