

Anna Korzeniewska-Lasota¹

15 years of the implementation of the Bug River Scheme Act. Summary Attempt

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Summary

The purpose of the Act of 8 July 2005 on the exercise of the right to compensation for property left outside the present borders of the Republic of Poland is to settle real estate left in the provinces of the Second Polish Republic. The act has been implemented for 15 years and is likely to be completed... The article discusses the most essential factors that have affected – or still affect – the extension of the compensation payment process, and therefore the definitive settlement by the Polish state of obligations incurred towards the so-called Zabuzanie (persons whose property was left in the territories beyond the Bug River). The analysis is mainly based on information obtained from: governors (being authorities of first instance in the proceedings for the confirmation of the right to compensation), the Ministry of the State Treasury and the Ministry of Interior and Administration. It was also necessary to analyse justifications of judgements

Key words: the Bug River Scheme Act, Zabuzanie, property left in the territories beyond the Bug River, right of claim satisfaction

¹ PhD in legal sciences, the Pomeranian Academy in Słupsk. E-mail: anna.korzeniewska
ORCID: 0000-0002-2072-2807.

1. Introduction

On 8 July 2005 the Polish Sejm passed the Act on the exercise of the right to compensation for property left outside the present borders of the Republic of Poland² (hereinafter referred to as: the 'Bug River Scheme Act'). It was the second so-called Bug River Scheme Act. The first act adopted by the parliament after many years of attempts³ was the Act of 12 December 2003 on setting off the value of the property left beyond the present borders of the Polish State against the sale price of property or the right of perpetual usufruct held by the State Treasury⁴. It was in force for only 20 months: from 30 January 2004 to 7 October 2005, as at the stage of the legislative process many substantiated allegations⁵ concerning non-compliance of some of its provisions with the Constitution of the Republic of Poland were raised⁶. As a consequence of the judgement of the Constitutional Tribunal issued on 15 December 2004⁷, as well as the ruling of the European Court of Human Rights in Strasbourg in the case of *Broniowski v. Poland*⁸, the legislator decided to adopt a new act.

The purpose of this Act of 8 July 2005 is to complete the process of settlements on account of leaving real estate outside the present borders of the Republic of Poland. This is to be achieved by the solution assuming that the provisions of the Act apply not only to new cases, but the rules for the exercise of the right to compensation included therein also refer to situations in which a person holding a certificate or decision confirming the right to the benefit, issued

² Journal of Laws of 2017, item 2097. The Act entered into force on 7 October 2005.

³ After 1989, the Sejm worked on many draft acts on reprivatisation, including such acts which covered the issue of settlement for property left beyond the eastern border of Poland. For more information see A. Korzeniewska-Lasota, *State, Owners and Their Heirs in relation to Property Left by Polish Citizens in Eastern Provinces of the Second Polish Republic. Historical and legal study*, Gdańsk 2018, pp. 273–296.

⁴ Journal of Laws of 2004, no. 6, item 39.

⁵ These allegations were repeated in the petition to the Constitutional Tribunal, which was submitted by the group of 51 members of the Civic Platform (PO) on the first day of the Act validity, i.e. 30 January 2004.

⁶ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78 item 483).

⁷ See judgement of the Constitutional Tribunal of 15 December 2004, file reference K2/04, LEX no. 140356. The Tribunal ruled that some provisions of the Act of 12 December 2003 are non-compliant with the Constitution, recognising in particular the following provisions as non-compliant: 1) the provision introducing the requirement that entitled person should reside in the territory of the Republic of Poland as of the date of entry into force of the Act; 2) the provision introducing the uniform limit of the amount of compensation granted; 3) the provision depriving persons that partly exercised their rights from the right of claim satisfaction; 4) the provision allowing statements of witnesses at legal age at the time of the execution in 1944 of the so-called Republican Agreements in order to confirm the right of claim satisfaction in the case of lack of documents allowing the determination of description and value of the property left beyond the borders of the Polish State.

⁸ Judgement of the European Court of Human Rights of 22 June 2004 on complaint no. 31443/96 (etpcz.ms.gov.pl). In the judgement, apart from the statement that the Polish State infringed Article 1 of Protocol no. 1 to the European Convention on Human Rights, the European Court of Human Rights indicated that the Act of 12 December 2003 is not sufficient to ensure the respect for the rights of *Zabużanie* and it is necessary to introduce further legislative solutions. The Tribunal recommended the removal of all impediments in the scope of pursuing the 'right of claim satisfaction' or alternatively awarding the entitled persons appropriate compensation.

on the basis of relevant provisions being in force earlier, have not exercised the right or exercised it partially⁹. Unfortunately, from the very beginning the implementation of the Act has encountered various problems:

They often resulted from negligence from previous years, and quite frequently – from a considerable lapse of time from events constituting the basis for the request for compensation. The following part discusses the most essential factors that have affected – or still affect – the extension of the compensation payment process. Their distinguishing and analysis are mainly based on information obtained from: governors¹⁰ (being authorities of first instance in the proceedings for the confirmation of the right to compensation), the Ministry of the State Treasury and the Ministry of Interior and Administration¹¹. It was also necessary to analyse justifications of judgements of courts.

2. Lack of estimation of the scale of claims concerning property left beyond the Bug River

One of cardinal errors made from the beginning of the fulfilment of claims concerning property left beyond the Bug River was lack of estimation of their scale and failure to draw up the records of persons who had already satisfied their claims. Until the 1990s there were no records of rights concerning property left beyond the Bug River¹². The first attempt to determine claims for property still not satisfied was the Report of the Office of the Council of Ministers of 26 August 1994 prepared on the basis of the Central Catalogue of State Treasury Creditors on account of property left beyond the Bug River drawn up at that time. This Catalogue included nearly 84 thousand requests and the value of claims not satisfied was estimated at PLN 13.9 billion. The next estimation was carried out by the Ministry of the State Treasury in the period September 2002 – January 2003. It determined that there were 82,744 requests pending and that the value of claims to be satisfied was PLN 10,453.7 million. Additionally, there were claims partially not satisfied, confirmed by 4,119 decisions and certificates of the value of PLN 3,015.5 million, of which 885 claims with the value

⁹ See judgement of the Supreme Administrative Court of 8 May 2019, file reference I OSK 1713/17, LEX no. 2681768.

¹⁰ This information has been obtained by queries sent to 16 governors within requests for making available public information under Article 2(1) in connection with Article 10(1) of the Act of 6 September 2001 on access to public information (Journal of Laws of 2019, item 1429).

¹¹ On 1 January 2017, the Act of 16 December 2016 provisions introducing the Act on rules of state property management entered into force (Journal of Laws of 2017, item 2260). On the basis of the provision of Article 53(1) of this Act, the minister in charge of public administration assumed the rights to which previously according to the Act of 8 July 2005 on compensation the Minister of the Treasury was entitled.

¹² Compare K. Michniewicz-Wanik, *Property Left beyond the Bug River. Legal Basis for the Implementation of Claims*, Wrocław 2008, p. 196.

of PLN 296.3 million were satisfied in part or in whole¹³. The next attempt to estimate claims concerning property left beyond the Bug River was undertaken by the Ministry of Infrastructure during works on the act which is currently in force. The value of claims as of 31 December 2004 was established by the Ministry at PLN 11,579,367,953¹⁴.

However, the obligation to create central and provincial databases allowing the satisfaction of the value of real estate left beyond the present borders of the Polish State had not existed until the entry into force of the first Bug River Scheme Act¹⁵. Unfortunately, at that time no entity created any information system for recording data on decisions or certificates stating the right to compensation (earlier: 'the right of claim satisfaction') of persons who were entitled to these rights, presenting especially the status and form of the fulfilment of these rights. The obligation to draw up such records was established again – in Article 19(3) of the Act of 8 July 2005. This time the records were established, although with some delay¹⁶. Lack of records caused delay in the Act implementation. It was not possible to submit complete data from records to Bank Gospodarstwa Krajowego¹⁷ (BGK) to make payments on account of the fulfilment of rights to compensation taking into account the 'right of claim satisfaction', which caused in turn that first compensations were not paid until the second half of December 2006, i.e. almost 14 months from the entry into force of the Act.

Additionally, lack of uniform country-wide record of persons entitled to the compensation did not allow current payments of compensations granted. Data of persons entitled to the compensation were not sent to BGK by the Ministry of the State Treasury at a pace allowing current payments of compensations¹⁸.

¹³ Information from the Division of the Supreme Audit Office in Wrocław on the Results of Inspection of the Satisfaction by the State Treasury of Claims regarding Property Left beyond the Bug River, Wrocław 2004, p. 16.

¹⁴ Justification of the draft act – Sejm paper no. 3793. Compare *Information on the Results of Inspection regarding the Performance of Tasks by the Minister of the State Treasury and Other Government Administration Authorities in the Scope of Reprivatisation*, Warsaw 2007, pp. 26–27.

¹⁵ See Article 6(3) of the Act of 12 December 2003 on setting off the value of the property left beyond the present borders of the Polish State against the sale price of property or the right of perpetual usufruct held by the State Treasury.

¹⁶ The regulation was adopted on 7 December 2005. See Regulation of the Minister of the State Treasury of 7 December 2005 on templates of records containing data concerning the exercise of the right to compensation for property left outside the present borders of the Republic of Poland (Journal of Laws of 2005, no. 248, item 2101).

¹⁷ The compensations are paid through this bank. Pursuant to Article 17(1) of the Bug River Scheme Act, the Minister of the State Treasury was obliged to make with BGK an agreement in order to allow the payment of cash benefits. The Ministry made this agreement on 20 April 2006, approx. 5.5 months after the entry into force of the Act. Such long negotiations had also impact on the extension of the process of payment of first compensations.

¹⁸ Response to question no. 6479 of 13 November 2008 on lengthy procedures of payments of compensations on account of leaving property outside the present borders of the Republic of Poland (the so-called zabużańskie property) lost in connection with war as well as lack of calculations and publications by the President of the Central Statistical Office of the real estate price change index.

The above problems were eliminated by the uniform country-wide IT System of Records launched in October 2008, which connected tasks of governors, the Minister of the State Treasury and BGK. The implementation of this system allowed the multiplication of the number of data of persons entitled to the compensation – submitted by the Ministry of the State Treasury to BGK – and, therefore, significant increase in the pace of the compensation payment. Within a few months the system allowed the reduction of waiting for the payment of compensations from 12 months to 1.5 months¹⁹. From the beginning of payments until the end of August 2020 BGK paid from the Compensation Fund 77,599 compensations for the amount of PLN 4,705,521,531.90²⁰.

3. Increase in the number of beneficiaries

The definitive settlement of the issue of claims concerning property left beyond the Bug River is still ahead of us also due to the extension of the group of persons entitled to the compensation, which results from legislative changes and court decisions.

Just one year after the adoption of the Act, i.e. on 8 September 2006²¹, the first amendment was introduced to it. It concerned the clarification of the scope of persons entitled to the compensation. Also persons²² who left real estate outside the present borders of the Republic of Poland in connection with the agreement made on 15 February 1951 between the Republic of Poland and the USSR on the change in sections of national territories became beneficiaries²³. Then the subjective scope was extended by the addition of persons who came back to Poland on the basis of the agreement of 25 March 1957.²⁴

¹⁹ *Report on the Work of the Ministry of the State Treasury 2007–2011*, November 2011, pp. 179–181.

²⁰ Announcement of the Ministry of the Interior and Administration no. 9/20 of 14 September 2020, www.mswia.gov.pl [access: 18/02/2021].

²¹ The Act of 8 September 2006 on the amendment of the act on the exercise of the right to compensation for property left outside the present borders of the Republic of Poland and some other acts (*Journal of Laws of 2006*, no. 195, item 1437).

²² Before the amendment, the right to compensation for property left outside the present borders of the Republic of Poland was granted to those owners/co-owners of property left outside the present borders who came back to Poland on the basis of four agreements enumerated in the act, the so-called 'Republican Agreements', and the agreement of 6 July 1945 between the Provisional Government of National Unity of the Republic of Poland and the Government of the Union of Soviet Socialist Republics on the right to change the Soviet citizenship of persons of Polish and Jewish nationality living in the USSR and their evacuation to Poland, and on the right to change the Polish citizenship of persons of Russian, Ukrainian, Belarusian, Ruthenian and Lithuanian nationality living in Poland and their evacuation to the USSR. In addition, this right was granted to persons 'who as a result of other circumstances connected with the war started in 1939 were forced to leave the former territory of the Republic of Poland' – see Article 1(1) of the Bug River Scheme Act of 8 July 2005.

²³ *Journal of Laws of 1951*, no. 11, item 63.

²⁴ This is the agreement of 25 March 1957 between the Government of the People's Republic of Poland and the Government of the Union of Soviet Socialist Republics on the date and mode of further repatriation from the

It resulted from the judgement of the Supreme Administrative Court which in the decision of 12 March 2014²⁵ *expressis verbis* stated that persons who came back to Poland in its new borders under the said agreement should be treated in the same way as persons who came back on the basis of the 'Republican Agreements'²⁶.

The number of beneficiaries of the Act also increased as a result of the judgement of the Constitutional Tribunal of 23 October 2012²⁷, in which the Tribunal ruled that Article 2(1) of the Act in the scope in which it makes the right to compensation dependant on residing on 1 September 1939 in the former territory of the Republic of Poland is non-compliant with the Constitution of the Republic of Poland. The position of the Tribunal was taken into account in the amendment to the Act on the exercise of the right to compensation for property left outside the present borders of the Republic of Poland adopted on 12 December 2013²⁸. It granted the right to compensation to persons who on the Eastern Borderlands had only an 'additional' place of residence. Requesters whose right to compensation was not confirmed due to non-fulfilment of the requirement of residing on 1 September 1939 in the former territory of the Republic of Poland were granted the right to submit the request for reopening the proceedings within 6 months from the date of entry into force of the amendment (i.e. as of 27 August 2014). Persons who until 31 December 2008 had not submitted the request for the confirmation of the right to compensation could do it within the same deadline if they proved that changes introduced by the above amendment had impact on the assessment of the fulfilment thereby of the requirement of residing on 1 September 1939 in the former territory of the Republic of Poland²⁹. It is difficult to indicate how the group of beneficiaries was extended as a result of this change made in 2013. In the course of works on the amendment it was estimated that the amount of compensations to be paid in connection with the proposed change in Article 2(1) of the Bug River Scheme Act – only within the scope of requests that have already been submitted – may amount to over PLN

USSR of persons of Polish nationality (Journal of Laws of 1957, no. 47, item 222).

²⁵ Judgement of the Supreme Administrative Court of 12 March 2014, file reference I OSK 3015/13, LEX no. 1487801.

²⁶ *Ibidem*. See also judgement of the Supreme Administrative Court of 18 August 2016, file reference I OSK 2654/14, LEX no. 2142160.

²⁷ File reference SK 11/12, LEX no. 1222997.

²⁸ Journal of Laws of 2014, item 195.

²⁹ Compare J. Prokop, *Problematic Issues in the Implementation of Claims concerning Property Left beyond the Bug River - Attempt to Analyse the Practice*, 'Legal and Economic Studies' (Studia Prawno-Ekonomiczne) 2013, vol. 88, pp. 141-156.

158 million. This amount was estimated taking into account: the sum of compensations already paid, the average amount of compensation³⁰ and the ratio of 1% of cases, adopted without additional justification, to which the change in the legal status was to relate. Authors of the amendment were not able to estimate costs connected with the implementation of potential new requests submitted after the change in the legal status³¹. The number of persons who driven by the conviction that they did not fulfil the questioned prerequisite of residence did not submit the request for the confirmation of the right to compensation by 31 December 2008 was unknown.³²

It is also difficult to estimate how the resolution of seven judges of the Supreme Administrative Court of 9 October 2017³³ affected the extension of the group of persons entitled to compensation. The Supreme Administrative Court stated in this resolution that the 'co-owner or one of heirs, submitting the request for the confirmation of the right to compensation, causes the initiation of the proceedings within the meaning of Article 61(1) of the Administrative Procedure Code not only on their share in the right to compensation to which they are entitled in the realization phase, but also the initiation of the proceedings on the confirmation of the right to compensation to which all co-owners or all heirs are entitled³⁴.

It results from incomplete data obtained from governors that in the period 27 February to 27 August 2014 they registered approx. 300 requests³⁵. The vast majority of these requests was submitted by persons who

³⁰ As J. Wittlin states, the average amount of compensation in 2011 was PLN 42,000, and in 2014 – PLN 56,000. (J. Wittlin, *Property Left beyond the Bug River. Implementation of the Right to Compensation*, Warsaw 2019, p. 294). According to the information of the Ministry of the State Treasury, the lowest amount of benefit paid by 30 June 2016 was PLN 26.55, whereas the highest amount was PLN 40,741,853.18 (data obtained from the Ministry of the State Treasury, letter DPP.0123.17.2016.2.WP of 5 July 2016).

³¹ See Sejm paper no. 1685 of 9 September 2013, 7th term Sejm of the Republic of Poland.

³² According to the Ministry of the State Treasury, approx. 200 final decisions rejecting the right to compensation due to non-fulfilment of the residence prerequisite were issued. Information from: J. Forystek, *Commentary to the Bug River Scheme Act. Historical and Legal Study*, Kraków 2020, p. 198

³³ Resolution of seven judges of the Supreme Administrative Court of 9 October 2017, file reference I OPS 3/17, LEX no. 2365254.

³⁴ J. Wittlin, *Property Left beyond the Bug River...*, op. cit., p. 295.

³⁵ It is impossible to indicate a specific number as some governors presented the number of cases registered in this period, not the number of requests for the confirmation of the right to compensation, while one such case could include many requests from individual requesters. To the question: 'How many requests for the confirmation of the right to compensation were submitted in the period 27 February 2014 to 27 August 2014?' the governors replied: governor of the Podlaskie Province – 8 requests, governor of the Łódź Province – 24, governor of the Lesser Poland Province – 79, governor of the Lublin Province – 19, governor of the Silesia Province – 29, governor of the Świętokrzyskie Province – 0, governor of the Podkarpackie Province – 16, governor of the Mazovia Province – 49, governor of the Lubuskie Province – 6, governor of the Warmia-Masuria Province – 12, governor of the Lower Silesia Province – 45, governor of the Kujawy and Pomerania Province – 5, governor of the Opole Province – 8, governor of the Greater Poland Province – 11. The question was not answered by the governors of the Pomerania Province and the Western Pomerania Province.

by 31 December 2008 had not filed the requests for the confirmation of the right to compensation.

4. Interpretation of provisions

The interoperation of the provisions of the Act also causes considerable difficulties in its application³⁶. It is particularly visible in the case of the application of law by governors as authorities of first instance. Governors differently treated, for example, the deadline indicated in the Act for the submission of the request for the confirmation of the right to compensation, i.e. 31 December 2008. Some of them considered it as the date on which the request should be submitted by all co-owners/co-heirs³⁷, but other governors did not treat this date as the final date³⁸. The issues of the possibility to confirm the right to compensation for real estate taken to collective farms³⁹ and the above mentioned place of residence in the former territory of the Republic of Poland were problematic⁴⁰.

Governors indicated the following issues as those causing particular difficulties in the interpretation process: the term 'other circumstances connected with the war'⁴¹, expression from Article 1(2) of the Act 'forced to leave the former territory of the Republic of Poland'⁴², expression used in Article 6(1)(1) of the Act 'proving that real estate was left outside the present borders of the Republic

³⁶ Due to the limited frameworks of this article, it does not contain the interpretation of the provisions of the Act, but only indicates the provisions which on the basis of studies were considered by governors as provisions causing the largest interpretation problems. The exegesis of these provisions, with reference to the position of the judiciary and doctrine, was carried out by A. Korzeniewska-Lasota in her monograph *State, Owners and Their Heirs...*, *op. cit.*, pp. 356–435.

³⁷ For example governors of: the Łódź Province, the Podkarpackie Province, the Warmia-Masuria Province and the Lower Silesia Province.

³⁸ For example governors of: the Podlaskie Province and the Greater Poland Province.

³⁹ The position on this case was harmonised by the Resolution of seven judges of the Supreme Administrative Court of 16 December 2013, file reference I OPS 11/13, LEX no. 1404014. The Supreme Administrative Court rightly supported such interpretation of Article 2 in connection with Article 1 of the Act on compensations, according to which including real estate in collective farms or nationalisation or real estate does not exclude the right to compensation.

⁴⁰ A. Korzeniewska-Lasota writes more about the residence requirements and interpretation problems connected therewith in *State, Owners and Their Heirs...*, *op. cit.*, pp. 381–387.

⁴¹ Compare comments of J. Forystek, *Commentary to the Bug...*, *op. cit.*, pp. 149–152. Different interpretations of the term 'other circumstances connected with the war' can be found in A. Korzeniewska-Lasota, *State, Owners and Their Heirs...*, *op. cit.*, pp. 358–363.

⁴² While at the beginning the authorities applying the Bug River Scheme Act (administration authorities and courts) unanimously concluded that the coercion under which Polish citizens leaving the territory of the former Republic of Poland acted must remain in direct and adequate cause and effect relationship with the war started in 1939, and they differ when it came to the assessment whether the given situation (e.g. desire to join children) was direct or indirect cause resulting from the war, over time administrative courts have started to interpret the 'coercion' broader than administration authorities. They have stated that 'coercion' should be understood also as circumstances connected with physical and mental torment applied not only directly towards the owner of the real estate, but also indirectly through the creation by the USSR authorities of life and legal situation unfavourable for them and their families. As factors 'forcing' the owner of real estate to leave the former territory of the Republic of Poland, courts rightly considered for example: impossibility to obtain means of subsistence, desire to join family that had to leave the former territory of Poland, fear for life and fact of the change in borders.

of Poland for reasons referred to in Article 1⁴³, as well as lack of clear indication whether the compensation is due for buildings damaged or burnt during the war.

Problems also occurred in the case of the application of Article 3 of the Act in the scope concerning the statement on the indication of a person entitled to compensation: its character, time when it produces effects and its revocability⁴⁴. Doubts arise also as regards Article 3(1) and (2) in connection with Article 28 of the Administrative Procedure Code in the scope of necessity to cover all co-owners or heirs by the same proceedings and one administrative decision – especially in relation to persons who did not submit the request for the confirmation of the right to compensation. It was unclear for governors whether the request concerning real estate left outside the present borders of the Republic of Poland submitted by one of persons entitled to compensation causes the necessity to initiate proceedings in relation to the other entitled persons⁴⁵, as well as whether the administration authority in the case of the requester's inaction is obliged ex officio to undertake activities in order to obtain evidence of circumstances being the basis for obtaining the right to compensation, e.g. ownership title to property left⁴⁶.

Governors were not sure whether in the case of the requester's inaction they are obliged ex officio to undertake activities in order to obtain evidence of circumstances being the basis for obtaining the right to compensation, e.g. ownership title to property left⁴⁷. Therefore, they acted in various ways.

Ambiguities concerning the interpretation of the provisions of the Act result not only in lack of uniformity of proceedings before first instance authorities

⁴³ The determination of the date on which the owner should hold the ownership title to real estate: on 1 September 1939 or on the date of leaving the property was also unclear. Compare J. Wittlin, *Current Legislative and Jurisprudence Issues concerning Property Left beyond the Bug River*, 'Criticism of Law' (Krytyka Prawa) 2014, vol. 6, no. 1, p. 491.

⁴⁴ The issue of legal character of the 'indication' – determined in Article 3 of the Bug River Scheme Act – is still open. See e.g. judgement of the Supreme Administrative Court of 24 September 2019, file reference I OSK 2008/17, LEX no. 2728983. Compare A. Korzeniewska-Lasota, *Gloss to the Judgement of the Supreme Administrative Court of 24 September 2019*, I OSK 2808/17, LEX no. 2728983, 'Nieruchomości@' 2020, no. 2, pp. 102–110.

⁴⁵ Discrepancies also occurred in case law. Some courts were decisively in favour of the individualisation of the entitled person's request, not for the concept of the extension of effects of the request submitted by one entitled person to all other entitled entities. The problem proved to be so crucial that the Supreme Administrative Court by judgement of 17 January 2017 (file reference I OSK 1825/15, LEX no. 2291601) submitted it to be resolved as a legal question by a panel of seven judges of the Supreme Administrative Court. Replying to the legal question, in the resolution issued on 9 October 2017 (file reference I OPS 3/17, LEX no. 2365254) the Supreme Administrative Court rightly stated that the submission of the request for the confirmation of the right to compensation by the entitled person within the deadline determined in Article 5(1) of the Bug River Scheme Act results in the initiation of administrative proceedings also in relation to all other entitled entities.

⁴⁶ Information from governors provided in response to requests for making available public information concerning the implementation of the Act of 8 July 2005.

⁴⁷ Information about active participation in the proceedings may be found, for example, in comments of H. Knysiak-Molczyk and T. Kielkowski, *Proceedings regarding the Confirmation of the Right to Compensation for Property Left beyond the Bug River*, 'Review of Public Law' (Przegląd Prawa Publicznego) 2007, no. 12, p. 46.

(governors), but also in the extension of the proceedings regarding the confirmation of the right to compensation. Noticing differences in the governors' approach to the same issue, requesters appeal to second instance authorities – the minister⁴⁸ (previously the Minister of the State Treasury, currently the Minister of the Internal Affairs and Administration) – and then they submit complaints to the court. All these factors result in the extension of the process of compensation payments.

5. Length of proceedings

The implementation of the Act was and is hindered by long time limits for the examination of cases. The average time of the request examination by governors being first instance authorities is from 1 to even 8 years⁴⁹. The time of the request examination generally depends on the time within which the party is able to deliver documents required by the Act. If all documents are attached to the request, the first stage of the proceedings is closed even within one month. In such a case the party receives the decision in which the governor states that the requester meets the requirements of the Act and requests them to indicate the form of the fulfilment of the right to compensation⁵⁰ and to submit to the files the appraisal report determining the value of real estate left. Then, after the completion of these documents, the party often within one month may receive the decision on granting the right to compensation. However, if the request is not complete and some required documents are missing, the proceedings is extended even to several years.

⁴⁸ For example in the period 1 January to 31 December 2017, 443 appeals against governors' decisions were submitted to the Minister of the Internal Affairs and Administration (in this period governors issued 1,921 decisions confirming the right to compensation for leaving real estate outside the present borders of the Republic of Poland and 2,098 decisions rejecting the conformation of this right). In 2017 the Minister issued 432 decisions. The number of appeals submitted to the Ministry of the Interior and Administration in 2017, although similar to the number of decisions issued, is not of an equivalent nature – it results from the fact that in 2017 the Minister reviewed appeals submitted in previous periods, e.g. in 2016, but also appeals from 2014 or 2015. It is the consequence of the resumption of proceedings previously suspended. In turn, some appeals submitted in late 2017 were not processed due to the submission by the parties of requests for suspension of pending appeal proceedings, e.g. in order to complete documentation in the given case. There were cases of the parties' failure to meet the deadline for the submission of the appeal – therefore, the Ministry of the Interior and Administration does not process the appeal, but states in the decision the above mentioned failure. Appeal proceedings are also dismissed for formal reasons. As a result, the number of decisions issued is not equivalent to the number of appeals submitted. In approx. 55% of cases the Minister considered appeals submitted by the parties as valid.

⁴⁹ Governors asked by way of access to public information provided the following information concerning the average time of the examination of the request for granting the right to compensation: governor of the Świętokrzyskie Province – 3 years and 8 months, governor of the Podkarpackie Province – 2 years, governor of the Lower Silesia Province – 7 years and 9 months, governor of the Kujawy and Pomerania Province – 3 years, governor of the Opole Province – 4 years, governor of the Pomerania Province – 5 years, governor of the Greater Poland Province – 1.5 years, governor of the Podlaskie Province – up to 8 years.

⁵⁰ From information provided by the Ministry of the Interior and Administration it results that 99.99% of persons exercising their rights on the basis of the Act of 8 July 2005 chooses cash benefit as the form of the request fulfilment.

It should be reminded that proceedings regarding the confirmation of the right to compensation concern legal and factual statuses that were a few decades ago, which causes that as a rule they are complex and multi-stage. Documenting the legitimacy of claims causes the necessity to gather evidence from Polish and foreign archive units. Obtaining such documents is complex and takes a long time, and is often impossible. It also happens that even if the person entitled to compensation has documents required by the Act, in many cases information included in these documents, e.g. descriptions of property left, is very brief (it does not contain e.g. data necessary to estimate its value: area parameters, cubic measurements, description of forest stand)⁵¹.

Partial solution to the above problem is the use of evidence in the form of statements of witnesses. However, despite theoretically great flexibility and possibility to use this evidence, strict requirements which must be met by witnesses⁵² lead in practice to organisational and judicial difficulties. A considerable lapse of time from the end of the Second World War causes that most eye witnesses are no longer alive. In turn those that could give evidence are currently elderly persons and persons who were very young, often in their tens, at the time when events about which they give evidence happened. Therefore, very often authorities issuing decisions in cases of granting the right to compensation do not consider statements of such witnesses as sufficiently reliable⁵³.

The reason for the extension of proceedings sometimes lies with administration authorities⁵⁴. Proceedings are sometimes hindered by even several-year unjustified inaction of authorities⁵⁵, for example in such cases as request for the completion of missing documents⁵⁶. In this last case it happened that governors

⁵¹ See B. Szykulska, *Property Appraisal in the Implementation of the Bug River Scheme Act*, 'Bulletin' (Biuletyn) 2011 no. 2, p. 284.

⁵² In the case of lack of documents in the form of official description of property or certificate issued by the State Repatriation Office, evidence confirming the fulfilment of the ownership title requirement may be statements of two witnesses made under pain of criminal liability for submitting a false statement before a notary or authority conducting the proceedings or in a Polish consular post in the country of the witness residence that: 1) lived in the city/town in which the real estate left outside the present borders of the Republic of Poland is located or in the neighbouring city/town; 2) is not a person close to the owners or heirs applying for the confirmation of the right to compensation.

⁵³ See e.g. judgement of the Supreme Administrative Court of 5 February 2020, file reference I OSK 2614/18, LEX no. 2783175.

⁵⁴ Compare J. Wittlin, *Property Left beyond the Bug River...*, *op. cit.*, p. 298.

⁵⁵ Compare *Implementation of Post-Audit Conclusions of the Supreme Audit Office Formulated after the Audit of Administrative Proceedings regarding the Exercise of the Right to Compensation for Property Left outside the Present Borders of the Republic of Poland (S/13/008)*, Lublin 2014, www.nik.gov.pl [access: 18/02/2021]. Compare judgement of the Provincial Administrative Court in Gorzów Wielkopolski of 22 June 2017, file reference II SAB/Go 69/16, LEX no. 2311915; judgement of the Provincial Administrative Court in Wrocław of 2 February 2017, file reference II SAB/Wr 57/16, LEX no. 2241914.

⁵⁶ See judgement of the Provincial Administrative Court in Wrocław of 9 December 2016, file reference II SAB/Wr 38/16, LEX no. 2349928; judgement of the Provincial Administrative Court in Wrocław of 21 March 2017,

sent requests for the completion of missing documents within time limits from one month to even 6-7 years⁵⁷ or did not request for their completion at all. Additionally, no activities were undertaken in order to gather evidence, despite the existence of such an obligation on the basis of Article 77 of the Administrative Procedure Code. The only thing that was done was the assessment of evidence submitted by the parties to the proceedings⁵⁸. Cases submitted to the second instance authorities were examined quite efficiently, usually within 2–12 months. If the parties to the proceedings took legal action and the administrative court repealed decisions of the administration authority and the case was examined again, cases regarding the confirmation of the right to compensation ended even several years after the submission of the request to the governor⁵⁹.

6. Conclusions

All the above difficulties cause that there is still a significant group of persons waiting for the compensation. According to information of the Ministry of the Interior and Administration, as at 30 June 2017 in individual provincial offices there were 42,756 requests for granting the right to compensation for property left outside the present borders of the Republic of Poland waiting for the examination⁶⁰. As at 31 December 2018 there were 38,690 requests⁶¹, and 6 months later –

file reference II SAB/Wr 1/17, LEX no. 2303997; judgement of the Provincial Administrative Court in Wrocław of 22 February 2017, file reference II SAB/Wr 53/16, LEX no. 2261480; judgement of the Provincial Administrative Court in Wrocław of 22 February 2017, file reference II SAB/Wr 60/16, LEX no. 2255787.

⁵⁷ As it results from information provided by the Supreme Audit Office, e.g. in the Lublin Provincial Office in 13 out of 15 examined cases the requests for the completion of missing documents were sent within the following time limits: up to one month – in three cases; from 1 month to 1 year – in two cases; from 1 year to 3 years – in four cases; from 3 to 6 years – in three cases; above 6 years – in one case. See *Conducting Administrative Proceedings regarding the Exercise of the Right to Compensation for Property Left outside the Present Borders of the Republic of Poland (S/13/008)*, Lublin 2013, www.nik.gov.pl [access: 18/02/2021]. In turn, in the Lower Silesian Provincial Office the request for the completion of missing documents was sent by the authority after 7 years from the submission of the request. (See the justification of the judgement of the Provincial Administrative Court in Wrocław of 25 January 2017, file reference II SAB/Wr 54/16, LEX no. 2204748).

⁵⁸ As an example, it may be indicated that in the period 1 January 2016 to 30 June 2017 the number of complaints regarding non-examination of the case within the deadline was 196. From 1 January to 31 December 2017 the Ministry of the Interior and Administration received 130 complaints regarding non-examination of the case within the deadline. These complaints concerned both the inaction within initiated proceedings as well as their lengthy conduct. In approx. 40% of cases the Minister considered complaints submitted by the parties as valid. (Information from the Ministry of the Interior and Administration, letter DBI-WODOUIP-0667-5-8/2018 of 1 February 2018).

⁵⁹ *Conducting Administrative Proceedings regarding the Exercise of the Right to Compensation for Property Left outside the Present Borders of the Republic of Poland (S/13/008)*, Lublin 2013, *op. cit.*

⁶⁰ Data obtained from the Ministry of the Interior and Administration, letter DBI-WODOUIP-0667-5-8/2018 of 1 February 2018.

⁶¹ Data obtained from the Ministry of the Interior and Administration, letter DBI-WODO-0667-1-18/2019 of 18 March 2019.

37,299 requests⁶². Six months later, i.e. as at 30 June 2020, there were 36,205 requests⁶³. It means that on average approx. 3,000 requests are examined annually. Therefore, if this pace of the examination of requests is maintained⁶⁴, the expected deadline for the completion of proceedings confirming the right to compensation, estimated by the Ministry of the Interior and Administration for 2030, may be real. It is to be hoped that this deadline, although distant, will be met and the process of the implementation of claims concerning property left beyond the Bug River will be finally completed..

⁶²Data obtained from the Ministry of the Interior and Administration, letter DBI-WODO-0667-3-231/2019 of 10 September 2019.

⁶³Information granted by the Ministry of the Interior and Administration, letter DBI-WODO-0667-5-82/2020 of 28 September 2020.

⁶⁴From 1 January 2020 to 30 June 2020, governors issued 321 decisions confirming the right to compensation for property left outside the present borders of the Republic of Poland and BGK paid in this period from the Compensation Fund 965 compensations.

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