



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF ZWIĄZEK NAUCZYCIELSTWA POLSKIEGO v. POLAND

(Application no. 42049/98)

JUDGMENT

STRASBOURG

21 September 2004

FINAL

02/02/2005

In the case of Związek Nauczycielstwa Polskiego v. Poland,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI,

Mr L. GARLICKI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 December 2003 and 31 August 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42049/98) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish association, Związek Nauczycielstwa Polskiego (“the applicant association”), on 10 December 1997.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and, subsequently, Mr K. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant association alleged that it could not pursue its civil claim before the courts, in breach of Articles 6 and 13 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 9 December 2003, the Chamber declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1964 the administrative authorities handed over to the applicant association the management and use of a property that had been expropriated from a religious association by the State Treasury in 1962. The decision concerning the transfer stipulated *inter alia* that, on termination of the use of the property, the applicant association would be entitled to recuperate the outlays incurred in connection with any construction work carried out on the buildings, less the normal costs of upkeep.

8. On 20 October 1992 the Warsaw Property Commission (“the Property Commission”), set up pursuant to the Law on relations between the State and the Catholic Church in Poland, returned the property to the religious association. The Property Commission ordered the latter to reimburse the applicant association its outlay to the sum of 420,353,658 old zlotys (PLZ) (42,035 new zlotys (PLN))¹. That amount was based on a calculation prepared by experts. The applicant association challenged the amount and proposed its own calculation. However, the Property Commission declared that it lacked jurisdiction to examine further claims. Its decision contained a clause to the effect that the decision did not affect the applicant association’s right to make further claims relating to the 1964 decision in accordance with the general provisions of law.

9. The applicant association subsequently filed an action against the State Treasury with the Przemyśl Regional Court (*sąd wojewódzki*), in which it applied for reimbursement of the outstanding outlays, relying on the text of the 1964 decision in which the administrative authorities had established its right to those outlays. The applicant association also referred to the Property Commission’s decision of 20 October 1992.

10. On 15 December 1995 the court awarded the applicant association the sum of PLN 546,133.02² by way of reimbursement of its outlays. The court referred to the part of the 1964 decision which stated that the applicant association would be entitled to recover the outlays incurred in connection with any construction work carried out on the buildings, less the normal costs of upkeep.

Both parties to the proceedings appealed against this judgment.

11. On 13 June 1996 the Rzeszów Court of Appeal (*sąd apelacyjny*) decided to submit to the Supreme Court the question whether the 1989 Law on the relations between the State and the Catholic Church in Poland excluded the possibility of submitting to a civil court claims arising out of

1. An amount equivalent at that time to approximately 21,000 French francs (FRF).

2. An amount equivalent at that time to approximately FRF 273,066.

the use of a property that was returned to its original owner on the strength of a decision by a property commission.

12. On 27 June 1996 the Supreme Court replied in the affirmative to the Court of Appeal's question.

13. The Supreme Court observed that the 1989 Law was a statute which addressed, *inter alia*, an exceptional matter, namely the regularisation of property issues created by expropriations carried out in the past against the Catholic Church. It noted that the proceedings before a property commission involved the participation of all parties concerned. The decisions of those commissions were intended to settle all property claims arising out of past expropriations. Such claims – including claims concerning outlays incurred by a former user of a property – could be brought before a civil court only in those exceptional cases provided for in section 64 of the 1989 Law where a property commission was unable to restore a property to its original owner. The Supreme Court pointed out that, following the Property Commission's decision, the State Treasury had ceased to own the property. Accordingly, there were no grounds on which a claim against the Treasury could be brought before a civil court after that date.

14. The decision further read:

“The clause contained in the decision of the Property Commission to the effect that that decision ‘[did] not hinder the applicant association’s right to make further possible claims relating to the 1964 decision in accordance with the generally applicable provisions of law’ cannot be interpreted as allowing the plaintiff to vindicate its claims before a civil court. The application of generally applicable provisions of law [concerning financial settlements between the State Treasury as the owner of land and the users of land] is out of the question in the present case. The clause in question cannot be interpreted as an undertaking by the State Treasury to satisfy any possible and unspecified claims of the plaintiff association.”

15. The relevant section of the operative part of the decision read:

“A decision by the Property Commission, set up under the provisions of the Law on relations between the State and the Catholic Church in Poland, to the effect that the ownership of real property was returned to its original owner, a church entity, and which contains a ruling on the obligation to reimburse the outlays to the entity which has used such property hitherto, also rules out any possibility of bringing [before a civil court] any claims between the user and the State Treasury.”

16. On 5 December 1996 the Court of Appeal, having regard to the Supreme Court's decision, quashed the judgment of the Regional Court and dismissed the applicant association's action. Both parties to the proceedings appealed.

17. On 20 June 1997 the Supreme Court dismissed both parties' cassation appeals. It noted that the applicant association's cassation appeal was in fact directed against the Supreme Court's decision of 27 June 1996, whereas that decision was binding on all the courts dealing with the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant part of the Law of 17 May 1989 on relations between the State and the Catholic Church in Poland provides:

Section 61

“(1) At the request of church entities, proceedings (hereinafter called ‘regularisation proceedings’) shall be instituted with regard to the restitution of the ownership of nationalised properties.

...”

Section 62

“(1) Regularisation proceedings shall be conducted by the property commission ... composed of representatives designated in equal numbers by the Office for Religions [*Urząd do Spraw Wyznań*] and the Secretariat to the Conference of the Episcopate of Poland [*Sekretariat Konferencji Episkopatu Polski*].

(2) Apart from the applicant, all State and church entities concerned shall be participants in the regularisation proceedings. ...

...

(5) The Commission examines cases in adjudicating groups, composed of members designated by the Office for Religions and the Secretariat to the Conference of the Episcopate of Poland, each of which shall nominate two members, and representatives of the hierarchical bodies of the participants in the proceedings, namely one representative of each body.”

Section 63.1

“The regularisation may consist of:

1. restitution of the ownership of properties ... to church entities;
2. the grant of an alternative property ...
3. the award of compensation, if neither of the solutions provided for under 1 and 2 above is possible.

...”

Under section 64, if a property commission is unable to reach a conclusion and give a ruling on a request for the restoration of property, the parties to the case may bring their claims to a civil court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. The parties' submissions

19. The Government were of the opinion that the applicant association had been able to enjoy all the guarantees of a fair hearing in the proceedings concerned. Its case was examined by courts at three levels of jurisdiction and it was able to participate in the proceedings on an equal footing with its opponent.

20. The Government agreed that the applicant association's right of access to a court had been restricted. They pointed out, however, that the Supreme Court's ruling had prevented it from filing a civil action only against the State Treasury.

21. Admittedly, the 1964 decision had stipulated that, on termination of the use of the property, the applicant association would be entitled to recover its outlays incurred in connection with the development and maintenance of the property. However, the validity of that decision had expired in 1992 with the intervention of circumstances which could not have been envisaged at the time when the decision was made, namely the collapse of the communist regime.

22. The Government argued finally that the limitation of the State Treasury's liability in cases similar to the applicant association's pursued the legitimate aim of protecting the State from claims arising out of acts carried out decades previously under an entirely different legal system.

23. The applicant association first observed that, contrary to the Government's statement, its case had not been examined by courts at three levels of jurisdiction, since only the first-instance court had examined the merits of the case.

24. The applicant association further observed that only a fraction of the expenditure that it had incurred in developing and maintaining the property concerned had been reimbursed. The restriction on its access to a court had made it impossible for it to be reimbursed in full.

25. The applicant association emphasised that the Property Commission's decision had unequivocally indicated that the parties could pursue any other civil claims before a civil court.

26. The applicant association further stressed that the 1989 Law was silent on the issue of financial settlements between a primary owner and a subsequent user. The only conclusion that could be drawn from this was that claims could be pursued in proceedings against the State Treasury. However, access to such proceedings had been denied on account of the

Supreme Court's decision. It pointed out in this connection that the Supreme Court had ruled out the possibility of making any claims "also ... between the user and the State Treasury" and noted that the word "also" made it clear that any court action was excluded, regardless of whether it was directed against the State Treasury or the original – and current – owner of the property concerned.

27. The applicant association concluded that the very essence of its right of access to a court had therefore been impaired.

B. The Court's assessment

1. Principles established in the Court's case-law

28. Article 6 § 1 of the Convention guarantees the right of access to a court to an applicant who has, at least on arguable grounds, claims concerning a civil right or obligation (see, among many other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, p. 20, § 44; *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 18, § 40; and *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 91-92, ECHR 2001-V). This provision applies to disputes of a "genuine and serious nature" concerning the actual existence of a right as well as to the scope or manner in which it is exercised (see *Bentham v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, pp. 14-15, § 32).

29. The right of access to a court is not, however, absolute. It may be subject to legitimate restrictions, for example, statutory time-limits or prescription periods, security for costs orders, regulations concerning minors and persons of unsound mind, etc. (see *Stubbings and Others v. the United Kingdom*, judgment of 22 October 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1502-03, §§ 51-52, and *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 62-67). Where the individual's access is limited either by operation of law or in fact, the Court will examine whether the limitation imposed impaired the essence of the right and, in particular, whether it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57).

2. Application of the above principles to the present case

30. In the present case, the applicant association participated in the proceedings before the Warsaw Property Commission. Under section 61 of the Law on relations between the State and the Catholic Church in Poland,

property commissions were established essentially to examine requests by church entities to have properties expropriated by the communist regime restored to them. The Court notes that a dispute arose during the proceedings before the Property Commission as to the amount that should be awarded to the applicant association for its expenditure on maintenance of the property. As the parties could not agree on the amount to be paid, the Property Commission assigned two experts who assessed it at PLZ 420,353,658 (PLN 42,035)¹. However, the applicant association challenged this finding and proposed its own calculation of the amount which should be awarded. The Property Commission, in a decision which, under the provisions of the 1989 Law, could not be appealed to a higher administrative authority, ordered the religious association to pay the applicant association PLZ 420,353,658 (PLN 42,035), that is to say, the amount estimated in accordance with the experts' opinion.

31. The Property Commission was therefore aware that the amount to be awarded for outlays was in dispute between the parties. It is true that this issue was in part settled by the Property Commission's decision. However, the Court sees no grounds on which it could have been reasonably assumed at that time that this decision settled the dispute in a manner which was acceptable to the applicant association, or that there were no outstanding claims on the part of the applicant association. It notes in this connection that the said decision contained an express clause to the effect that it did not deprive the applicant association of the right to make further claims relating to the 1964 decision "in accordance with generally applicable provisions of law".

32. The Court observes that, in the ordinary meaning of the text, this clause could clearly be understood as referring to the generally applicable provisions of law governing the settlement of outlays between, on the one hand, the State Treasury as the owner, and, on the other hand, the user of its property. In the Court's view, the applicant association was therefore justified in assuming that it was open to it to bring a claim against the State Treasury before a civil court.

33. The Court further notes that such a reading was also accepted by the domestic court at first instance. The Przemyśl Regional Court, in its judgment of 15 December 1995, had no doubts that the applicant association enjoyed standing to bring a civil case to a court and ordered the reimbursement of outlays in the applicant association's favour in the amount of PLN 546,133.02².

34. In the light of the disagreement which arose before the Property Commission and having regard in particular to the judgment of 15 December 1995, the Court is satisfied that the dispute was "serious and

1. An amount equivalent at that time to approximately FRF 21,000.

2. An amount equivalent at that time to approximately FRF 273,066.

genuine”. It only has to note in this connection that the amount awarded for the outlays by the first-instance civil court was far higher than the sum awarded by the decision of the Property Commission.

35. The Court further notes that it was only in the proceedings before the appellate court that doubts arose as to whether, in the light of the special character of the procedure for the regularisation of property rights provided for in the 1989 Law, it had indeed been the intention of the legislator to give former users of expropriated properties access to a civil court. The Supreme Court, however, ruled that no such access was available to the parties to a property regularisation procedure that had been terminated by a decision of a property commission.

36. In this connection, the Court observes that the Supreme Court had regard to the exceptional nature of the property regularisation procedure. According to the Supreme Court, that procedure was intended to settle all claims arising out of past expropriations. The Supreme Court also observed that it was “out of the question” that the generally applicable provisions of law governing the settlement of disputes over outlays could be relied on.

37. The Court notes that, in view of the Supreme Court’s decision, it was not open to the applicant association, the former user of an expropriated property, to file a claim against the State Treasury with a civil court. It further observes that it has not been shown by the Government that the applicant association would have been able to file a claim with a court against the original – and now also current – owner of the property, the religious association. In sum, the Supreme Court’s decision left the applicant association without any procedural means of vindicating its rights, either against the State Treasury or against the religious association.

38. The Court would add that the Government have not persuaded it that the aim of protecting the State from financial claims arising out of past expropriations could justify such a significant limitation of the applicant association’s right to have its claims examined by a court.

39. The Court observes that the applicant association had incurred considerable expenditure in respect of the property in issue, given that it had been using and maintaining it for twenty-five years. In the Court’s view, and bearing in mind what was at stake for the applicant association, further to restrict access to a court in respect of claims concerning outlays for maintenance and renovation of the property must be considered disproportionate.

40. The Court would also observe that in the proceedings before the Property Commission the applicant association was misled as to the possibility of pursuing its civil claims before a court. Had it been made clear to the applicant association from the outset that it was not entitled to sue in a civil court to recover its outstanding claims, it may reasonably be assumed that the applicant association would have argued its claim before that

commission even more vigorously and, consequently, may have stood a better chance of recouping a greater proportion of its pecuniary claims.

41. In these circumstances, the Court concludes that the applicant association was denied the right of access to a court in respect of its claim for reimbursement of the outlays it had incurred. There has, accordingly, been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant association complained that the circumstances of the case also gave rise to a violation of Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

43. Having regard to its above conclusion as to the complaint under Article 6 § 1, the Court considers that it is not necessary to examine the case under Article 13 since its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, for example, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 31-32, § 88).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

45. The applicant association claimed compensation in respect of damage which, it alleged, resulted from its loss of opportunity to secure a determination of its claims. As to pecuniary damage, relying on the estimates prepared by a property expert, it quantified the value of the outlays which have not been reimbursed at 373,640 euros (EUR) inclusive of statutory interest, calculated from 15 December 1995, the day on which the first-instance court allowed its claim for outlays, until 31 December 2003.

46. The Government disputed the sums claimed in respect of damage, contending that they were inordinate. In their view, a finding of a violation

of Article 6 § 1 of the Convention would constitute in itself sufficient just satisfaction.

47. The Court considers that an award of just satisfaction in the present case must be based on the fact that the applicant association did not have the benefit of the right of access to a court. The Court cannot speculate as to what would have been the final outcome of the proceedings concerning the outlays. It is true that the first-instance court, in its judgment of 15 December 1995, assessed the outlays to be reimbursed to the applicant association at PLN 546,133.02. However, this judgment was not final. It cannot therefore be assumed that, had the merits of its case been determined by a final judgment, the applicant association would have received the same amount. Nonetheless, the Court does not find it unreasonable to regard the applicant association as having suffered a loss of opportunity in that it could not obtain a ruling on the merits of its claim (see *Tinnelly & Sons Limited and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, Reports 1998-IV, p. 1665, § 93). Deciding on an equitable basis, it awards the applicant association EUR 10,000.

B. Costs and expenses

48. The applicant association claimed EUR 916.47 for the legal fees and translation costs incurred in the proceedings before the Court and submitted relevant bills in support of this claim.

49. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. They relied on *Zimmerman and Steiner v. Switzerland* (judgment of 13 July 1983, Series A no. 66, p. 14, § 36).

50. The Court considers that the amounts claimed by the applicant association are not unreasonable as regards either the rate and number of hours charged or the overall amount claimed. It therefore awards EUR 916 for legal costs and expenses, together with any tax that may be chargeable.

C. Default interest

51. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that it is not necessary to examine the applicant association's complaint under Article 13 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, together with any tax that may be chargeable, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 916 (nine hundred and sixteen euros) in respect of costs and expenses, these sums to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant association's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President