



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF SIERPIŃSKI v. POLAND

(Application no. 38016/07)

JUDGMENT
(Merits)

STRASBOURG

3 November 2009

FINAL

03/02/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sierpiński v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 October 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38016/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Wojciech Sierpiński (“the applicant”), on 21 August 2007.

2. The applicant, who had been granted legal aid, was represented by Ms M. Gąsiorowska, a lawyer practising in Warszawa. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he was deprived of a fair trial on account of the Supreme Court's refusal to examine his cassation complaint (Article 6); he also complained about the alleged breach of his property rights (Article 1 of Protocol No. 1).

4. On 11 December 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The applicant, but not the Government, filed observations on the admissibility and merits of the application (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. Background to the case

6. The applicant was born in 1933 and lives in Warszawa.

7. The applicant's family owned a plot of land situated in Warsaw. The applicant is the heir of the owners of that property.

8. By virtue of the Decree of 26 October 1945 on the Ownership and Use of Land in Warsaw (“the 1945 Decree”) the ownership of all private land was transferred to the City of Warsaw.

9. The applicant's predecessors requested to be granted the right of temporary ownership (*własność czasowa*) of the plot of land pursuant to section 7 of the 1945 Decree. On 27 December 1966 the Board of the Warsaw National Council (*Prezydium Rady Narodowej*) refused the request on the basis that the plot of land had been designated for public use (namely, an agricultural co-operative).

10. On 27 June 1967 the Warsaw-Mokotów District National Council (*Prezydium Dzielnicowej Rady Narodowej*) issued a decision granting the right of perpetual use of the plot of land to T. K.

11. On 23 January 1992 the applicant's predecessor Z.S. lodged an application with the Minister of Planning and Construction (*Minister Gospodarki Przestrzennej i Budownictwa*) for annulment of the administrative decision of 27 December 1966. On 10 February 1993 the Minister declared the decision null and void.

2. Proceedings in which the applicant sought to have the expropriation decision declared null and void

12. On 14 June 2000 the Local Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) declared that the decision of 27 June 1967 had been issued in breach of law. However, the Board refused to declare the decision null and void in view of its irreversible legal consequences – on the basis of the 1967 decision a civil contract had been concluded with the perpetual user of the land who, in 1990, had transferred the rights to the estate to his son.

13. On 3 March 2003 the Local Government Board of Appeal dismissed the applicant's claim for compensation in respect of the 1967 decision on the grounds that he had not proved “an actual loss” (see domestic law part below).

14. On 8 April 2003 the applicant lodged a compensation claim with the Warsaw Regional Court.

15. On 10 November 2004 the Regional Court delivered a judgment and awarded the applicant PLN 604,000. The court found that as a consequence of the unlawful 1967 decision the applicant had lost his property right and thus had suffered loss amounting to the value of that right. The court further considered that the State Treasury had the legal capacity to be sued for damages in this case.

16. The State Treasury, represented by the Mayor of Warsaw, appealed against the judgment, arguing that the municipality (*gmina*) should have been sued in this case.

17. On 14 July 2005 the Warsaw Court of Appeal allowed the appeal and dismissed the applicant's claim. The court, although it observed that the case-law had been divergent on the issue, inclined to the view expressed in a Supreme Court resolution of 16 November 2004, that the municipality – and not the State Treasury – had the legal capacity to be sued for damages resulting from an administrative decision issued before 27 May 1990, provided that the decision had been annulled or declared unlawful after that date (see domestic law part below).

18. The applicant lodged a cassation complaint. He submitted that the judgment was in breach of relevant substantive law on account of an erroneous interpretation of the Local Self-Government Act of 10 May 1990. He also invoked Articles 398⁴ § 1 (3) and 398⁹ of the Civil Procedure Code arguing that the examination of the cassation complaint was justified because there was a significant legal issue in the case and a need for an authoritative interpretation of provisions which had been interpreted differently in the courts' case-law. The applicant gave examples of divergent case-law of the Supreme Court and Courts of Appeal. He further pointed to the fact that the resolution invoked by the Warsaw Court of Appeal, amending the hitherto prevailing jurisprudence, had been delivered six days after the judgment of the Regional Court.

19. On 10 January 2006 the Supreme Court refused to entertain the cassation complaint. The decision was taken by a single judge sitting *in camera* and was not reasoned.

3. Proceedings in which the applicant sought to have the judgment of the Court of Appeal declared to be contrary to law

20. On 7 December 2006 a panel of seven judges of the Supreme Court adopted a resolution in other proceedings in which it concluded that the State Treasury had the legal capacity to be sued for damages caused by an administrative decision delivered before 27 May 1990, even if the decision had been annulled or declared null and void after that date.

21. On 5 February 2007 the applicant lodged a complaint with the Supreme Court seeking to have the judgment of the Court of Appeal of 14 July 2005 declared contrary to law (see the domestic law part).

22. On 15 June 2007 the Supreme Court rejected the complaint. The court concluded that the notion of the judgment “appealed from” within the meaning of Article 424¹ § 3 of the Code of Civil Procedure (preventing the examination of the complaint – see the domestic law part) required that a cassation complaint against a judgment had been lodged “effectively”, meaning it had not been rejected. In the court's view a cassation complaint which the Supreme Court had refused to entertain should be understood, for the purpose of this Article, as an “effectively lodged cassation complaint”, as well as a cassation complaint which had been examined on the merits. The Supreme Court in its decision of 10 January 2006 refused to examine the applicant's cassation complaint. The Supreme Court thus concluded that the judgment of the Court of Appeal had been appealed against effectively and the complaint under Article 424¹ was not available.¹

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Relevant provisions concerning a cassation complaint

23. On 6 February 2005 new provisions on a “cassation complaint” came into effect, replacing the provisions concerning the cassation appeal.

24. Article 398¹ of the Code of Civil Procedure provides that a party may lodge a cassation complaint against a final and valid judgment of a second-instance court. A party must be represented by an advocate or a legal adviser.

25. The relevant part of Article 398³ reads as follows:

“The cassation complaint may be based on the following grounds:

- 1) a breach of substantive law caused by its erroneous interpretation or wrongful application;
- 2) a breach of procedural provisions, if that defect could significantly affect the outcome of the case.”

¹ “Dokonując wykładni art. 424¹ § 3 k.p.c., w piśmiennictwie wyrażono trafny pogląd, że przez skargę kasacyjną „wniesioną” należy rozumieć skargę „wniesioną skutecznie”, tj. taką, która nie została odrzucona, a Sąd Najwyższy poddał ją co najmniej tzw. przedsądowi (art. 398⁹) albo rozpoznał po przyjęciu do rozpoznania. (...) Od wyroku Sądu Apelacyjnego zaskarżonego przez powoda rozpoznawaną skargą wniósł on wcześniej skutecznie skargę kasacyjną, której przyjęcia do rozpoznania odmówił jednak Sąd Najwyższy. Zgodnie zatem z powołanym art. 424¹ § 3 k.p.c., skarga o stwierdzenie niezgodności z prawem tego wyroku nie jest dopuszczalna.”

26. Article 398⁴ specifies the requirements of a cassation complaint. It reads in its relevant part:

“§ 1. A cassation complaint should include:

- 1) an indication of the decision under appeal together with information as to whether the appeal is lodged against this decision in its entirety or in part only;
- 2) an indication of the grounds for the cassation complaint;
- 3) arguments showing that its examination would be justified;
- 4) a motion to have the decision under appeal quashed or amended, specifying also the scope of the motion.”

27. Article 398⁹ provides:

1. The Supreme Court shall entertain the cassation complaint if:

- 1) there is a significant legal issue in the case,
- 2) there is a need for the interpretation of provisions raising serious doubts or causing discrepancies in the courts' case-law,
- 3) the proceedings are invalid at law,
- 4) the complaint is manifestly well-founded.

2. The Supreme Court shall decide to accept or refuse to entertain the cassation complaint during a sitting *in camera*; the decision shall not require written reasons.

28. According to Article 398¹⁰ a cassation is examined by a panel of three judges and in all other cases the Supreme Court takes decisions sitting in a single judge formation. As a rule, the cassation complaint is examined at a sitting *in camera* unless there is a significant legal issue in the case and the party lodging a complaint requested a hearing to be held, or the Supreme Court finds it appropriate to hold a hearing (Article 398¹¹).

29. Pursuant to Article 398¹⁵ the Supreme Court, having allowed a cassation complaint, may quash the challenged judgment in its entirety or in part and remit the case for re-examination. Where the Supreme Court fails to find non-conformity with the law, it dismisses the cassation complaint (Article 398¹⁴).

2. The complaint to declare a final and binding ruling to be contrary to law

30. An amendment of 22 December 2004 to the Code of Civil Procedure, which entered into force on 6 February 2005, introduced a new extraordinary remedy against a final judicial decision – a complaint to declare a final and binding ruling to be contrary to law (*skarga o stwierdzenie niezgodności z prawem prawomocnego orzeczenia*).

31. According to Article 424¹, a party to the proceedings may request the Supreme Court to declare a final decision of a second-instance court to be

contrary to law, provided that the party has suffered damage as a result of that decision and it has been impossible to have the decision reversed or quashed by way of remedies available to the party.

32. Pursuant to § 3 of that Article a party cannot lodge a complaint against a second-instance decision which had already been challenged by way of a cassation, or against a decision issued by the Supreme Court.

3. The judgment of the Constitutional Court

33. The new regulations have been challenged before the Constitutional Court. In a judgment of 30 May 2007 (SK 68/06) the Constitutional Court found the new Article 398⁹ incompatible with the Constitution, but only insofar as it allowed the Supreme Court to refrain from giving reasons for its decisions.

34. In this respect the Constitutional Court referred, *inter alia*, to its judgment of 16 January 2006 (SK 30/05), in which it had already examined the possibility of the Supreme Court under the Criminal Procedure Code (Article 535 § 2) to dismiss an “evidently groundless” cassation appeal in a criminal case at a sitting without the participation of the parties and without giving written reasons for the judgment. The court found in this respect that “there is the accumulation at a single trial of three factors excluding the court's obligations as regards the provision of information (i.e. the informational obligation of the court). These are: secrecy of the proceedings; the use of the ambiguous term “evidently groundless” by the legislator; and the absence of an obligation that reasons be provided.”

4. The individual constitutional complaint

35. Article 79 § 1 of the Constitution, which entered into force on 17 October 1997, provides as follows:

“In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of a statute or another normative act on the basis of which a court or an administrative authority has issued a final decision on his freedoms or rights or on his obligations specified in the Constitution.”

36. Article 190 of the Constitution, insofar as relevant, provides as follows:

“1. Judgments of the Constitutional Court shall be universally binding and final.

2. Judgments of the Constitutional Court, ... shall be published without delay.

3. A judgment of the Constitutional Court shall take effect from the day of its publication; however, the Constitutional Court may specify another date for the end of

the binding force of a normative act. Such time-limit may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. ...

4. A judgment of the Constitutional Court on the non-conformity with the Constitution, an international agreement or statute, of a normative act on the basis of which a final and enforceable judicial decision or a final administrative decision ... was given, shall be a basis for re-opening of the proceedings, or for quashing the decision ... in a manner and on principles specified in provisions applicable to the given proceedings.”

37. Article 39 of the Constitutional Court Act reads:

“1. The Court shall, at a sitting in camera, discontinue the proceedings:

1) if the pronouncement of a judicial decision would not serve any purpose or is inadmissible;

2) in consequence of the withdrawal of the application, question of law or constitutional complaint;

3) if the normative act has ceased to have effect ... prior to the delivery of a judicial decision by the Tribunal.

2. If these circumstances come to light at the hearing, the Tribunal shall take a decision to discontinue the proceedings.

3. Item 1 (3) of the present Article does not apply if giving a decision on the compatibility with the Constitution of a normative act which has already lost its validity is necessary for the protection of the constitutional freedoms and rights.”

5. Re-opening of civil proceedings following a judgment of the Constitutional Court

38. Article 401¹ of the Code of Civil Procedure provides that a party to civil proceedings which have ended with a final judgment on the merits can request that these proceedings be re-opened, if the Constitutional Court has found that the legal provision on the basis of which the judgment was given was incompatible with the Constitution. Such a request can be lodged with the competent court within one month from the date of the judgment of the Constitutional Court.

6. The 1945 Decree on real property in Warsaw and the Local Self-Government Act of 10 May 1990

39. The Decree of 26 October 1945 on real property in Warsaw expropriated real property situated in Warsaw and transferred ownership to the municipality of Warsaw.

40. Pursuant to section 33(2) of the Local State Administration Act of 20 March 1950, ownership of property situated in Warsaw was assigned to the State Treasury.

41. A very significant reduction in the State Treasury's land resources was brought about by legislative measures aimed at reforming the administrative structure of the State.

42. The Local Self-Government Act (introductory provisions) of 10 May 1990 (*Przepisy wprowadzające ustawę o samorządzie terytorialnym i ustawę o pracownikach samorządowych* – “the 1990 Act”), which came into force on 27 May 1990, and other related statutes enacted at that time, re-established local self-government and municipalities and transferred to them powers that had previously been exercised solely by the local State administration. Pursuant to section 5(1), ownership of land which had previously been held by the State Treasury and which had been within the administrative territory of municipalities at the relevant time was transferred to the municipality.

43. Section 36 § 3 (3) of the Act provides:

“The State Treasury takes over:

3) obligations and receivables of local bodies of state administration (...) resulting from final and binding court rulings and administrative decisions delivered before 27 May 1990 (...).”

7. Temporary ownership and perpetual use

44. Under Article 7 of the 1945 Decree, former owners had the right to lodge an application for temporary ownership of his plots (*własność czasowa*). The authorities competent to deal with such applications first had to examine whether the plots concerned had not been designated for public use. If he considered that granting temporary ownership to former owners would not be incompatible with public use, a decision could be made in favour of the former owner.

45. Article 40 of the Law of 14 July 1961 on Administration of Land in Towns and Estates (*ustawa o gospodarce terenami w miastach i osiedlach*) replaced temporary ownership with perpetual use (*użytkowanie wieczyste*).

46. The right to perpetual use is regulated by the Civil Code. An individual or a legal entity may be granted such a right over land owned by the State or a local authority. The right comprises a right to use the land to the exclusion of others for ninety-nine years, on payment of a yearly fee. The person entitled to the right can dispose of it.

8. Compensation for damages caused by an administrative decision subsequently annulled or declared null and void

47. Article 155 of the Code of Administrative Procedure permits the amendment or annulment of any final administrative decision at any time where necessary in the general or individual interest, if this is not prohibited

by specific legal provisions. In particular, pursuant to Article 156, a final administrative decision is subject to annulment if it has been issued by an authority which had no jurisdiction, or if it is without a legal basis or contrary to the applicable laws.

48. Article 160 of the Code of Administrative Procedure, as applicable at the material time, read in its relevant part:

“A person who has suffered loss on account of the issuing of a decision in a manner contrary to Article 156 § 1 or on account of the annulment of such a decision shall have a claim for compensation for actual loss, unless he has been responsible for the circumstances mentioned in this provision.”

49. An administrative decision in respect of the compensation claim could be appealed against in a civil court.

9. Resolutions of the Supreme Court concerning the capacity to be sued for damages caused by an administrative decision

50. Section 36 § 3 (3) of the 1990 Act raised doubts as to which legal entity was liable for damages caused by an unlawful administrative decision issued before the administrative reform. The problem was subject to divergent judicial interpretation.

51. On 16 November 2004 a panel of three judges of the Supreme Court adopted a resolution (no. III CZP 64/04), finding that the municipality – and not the State Treasury – had the legal capacity to be sued for damages resulting from an administrative decision issued before 27 May 1990, provided that the decision had been annulled or declared unlawful after that date.

52. In its resolution of 7 December 2006 (no. III CZP 99/06), adopted by a panel of seven judges, the Supreme Court concluded that the State Treasury had the capacity to be sued for damages caused by an administrative decision delivered before 27 May 1990, even if the decision had been annulled or declared null and void after that date. The resolution was adopted following a legal question referred to the Supreme Court by another Court of Appeal having a similar case before it.

53. The Supreme Court confirmed this stance in several subsequent judgments, delivered in cases similar to the present one (see below).

10. Examples of subsequent jurisprudence of the domestic courts

a. Judgment of the Supreme Court of 25 January 2007, ref no. V CSK 425/06

54. On 21 March 2001 the Opolskie Governor declared that the decision of 1983 of the Head of municipality D. had been adopted in breach of law.

The plaintiff's claim for compensation against the State Treasury (Opolskie Governor) was dismissed by the first- and second-instance courts. In particular, the Court of Appeal, invoking the resolution of the Supreme Court of 16 November 2004 (ref no. III CZP 64/04), considered that the State Treasury did not have the legal capacity to be sued in that case since municipality D. had taken over its obligations under Article 36 § 1 of the 1990 Introductory Provisions Act.

The Supreme Court quashed the appellate judgment and remitted the case, relying on the above-mentioned resolution of 7 December 2006.

b. Judgment of the Supreme Court of 14 March 2007, ref no. I CSK 247/06

55. In 1951 the Presidium of the Warsaw National Council refused to grant the right of perpetual use of land covered by the operation of the 1945 Decree. Subsequently, the State Treasury sold three flats in the building. On 22 September 1994 the Minister of Construction declared that the decision of 1951 had been adopted in breach of law.

The plaintiffs lodged a civil action for compensation against the State Treasury. The Warsaw Regional Court allowed his claim in part and awarded compensation from the State Treasury.

On 31 January 2006 the Warsaw Court of Appeal amended the first-instance judgment and dismissed the claim against the State Treasury finding that it lacked legal capacity to be sued in the case.

On 14 March 2007 the Supreme Court quashed the appellate judgment and remitted the case, invoking the resolution of 7 December 2006.

11. Resolution and judgment of the Supreme Court concerning the character of the compensation claim

56. In its judgment of 27 November 2002 (no. I CKN 1215/00), the Supreme Court ruled that there was a causal link between an administrative decision, taken under the 1945 Decree, refusing to grant the previous owner of a real property (a land with a building) the right of temporary ownership (perpetual use) of that property and the sale of apartments in the building by the State Treasury.

57. On 21 March 2003 the Supreme Court adopted a resolution (no. III CZP 6/03) in which it found that financial loss resulting from a decision under the 1945 Decree refusing to grant the right of perpetual use, which had been issued in breach of law, constituted a loss within the meaning of Article 361 § 2 of the Civil Code and an actual damage within the meaning of Article 160 of CAP.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLES 6 AND 13 OF THE CONVENTION WITH REGARD TO THE PROCEEDINGS FOR COMPENSATION

58. The applicant complained under Article 1 of Protocol No. 1 and under Article 6 of the Convention that as a result of the shortcomings in the decisions of the domestic courts and the lack of legal certainty, he was deprived of compensation for damage caused by an unlawful administrative decision.

59. The applicant also complained under Articles 6 and 13 of Convention that he was deprived of a fair hearing (in particular that he was denied access to a court) and an effective remedy in respect of his allegations under Article 1 of Protocol No. 1 in that the Supreme Court had refused to entertain his cassation complaint without giving reasons.

60. These provisions provide in the relevant part:

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 13

“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.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

61. The Government refrained from submitting observations on the admissibility and merits of these complaints.

A. Admissibility

62. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 1 of Protocol No. 1

a. The parties' submissions

63. The applicant complained that as a result of the shortcomings in the decisions of the domestic courts and the lack of legal certainty, he was deprived of compensation to which he was entitled under domestic law.

He alleged that the Court of Appeal unfairly dismissed his claim on the grounds that he had not sued the right legal entity, without giving proper consideration to the case-law invoked by him and despite a favourable judgment of the first-instance court.

The applicant further submitted that the Supreme Court had refused to entertain his cassation complaint although the applicant had indicated that all statutory requirements justifying the examination of the cassation complaint on the merits had been met, in particular that there was a need for interpretation of a significant legal issue causing discrepancies in the courts' case-law.

64. The Government did not comment.

b. The Court's assessment

i. Existence of possessions within the meaning of Article 1 of Protocol No. 1

65. The Court reiterates that the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law. Accordingly, as well as physical goods, certain rights and interests constituting assets may also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II, and *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). The concept of “possessions” is not limited to “existing possessions” but may also cover assets, including claims, in respect of which the applicant can argue that he has at least a “legitimate expectation” of obtaining effective enjoyment of a

property right (see, for example, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII).

Where the proprietary interest is in the nature of a claim it may be regarded as an “asset” only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (*Kopecký v. Slovakia* [GC], no. 44912/98, §§ 52, ECHR 2004-IX; *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, 11 January 2007).

Where that has been established, the concept of “legitimate expectation” can come into play, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a final judicial decision (see *Draon*, cited above, § 65, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 73, ECHR 2002-VII).

66. Turning to the circumstances of the present case the Court observes that in the 2000 ruling the Local Government Board of Appeal established that the 1967 decision had been issued in breach of law and this fact entitled the applicant to seek compensation for damage. The Court notes that the entitlement was expressly provided for in domestic law and the domestic courts' established case-law confirmed the existence of a causal link between a flawed administrative decision and loss sustained in result thereof (see paragraphs 56-57 above). Only the extent of the alleged loss and the amount of compensation remained to be established in judicial proceedings.

Furthermore, in its judgment of 10 November 2004 the Regional Court confirmed the applicant's entitlement and awarded him PLN 604,000. The court found that as a consequence of the unlawful 1967 decision the applicant had lost his property right and thus had suffered loss amounting to the value of that right.

Therefore, in the Court's view, the applicant could be considered to have a “legitimate expectation” that his claim would be dealt with in accordance with the applicable laws and, consequently, upheld (see *Plechanow v. Poland*, no. 22279/04, § 84-85, 7 July 2009 with references to *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, § 31 and *S.A. Dangeville v. France*, no. 36677/97, § 46-48, ECHR 2002-III).

67. Accordingly, the applicant had a pecuniary interest which was recognised under Polish law and which was subject to the protection of Article 1 of Protocol No. 1.

ii. Compliance with Article 1 of Protocol No. 1

68. The Court reiterates that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may give rise to positive obligations (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII, and

Broniowski v. Poland [GC], no. 31443/96, § 143, ECHR 2004-V; *Blumberga v. Latvia*, no. 70930/01, § 65, 14 October 2008).

69. Such positive obligations may entail the taking of measures necessary to protect the right to property, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions, even in cases involving litigation between private entities. This means, in particular, that States are under an obligation to provide a judicial mechanism for settling effectively property disputes and to ensure compliance of those mechanisms with the procedural and material safeguards enshrined in the Convention. This principle applies with all the more force when it is the State itself which is in dispute with an individual.

Accordingly, serious deficiencies in the handling of such disputes may raise an issue under Article 1 of Protocol No. 1.

70. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. It must look behind appearances and investigate the realities of the situation complained of.

71. While they have a wide margin of appreciation in assessing the existence of a problem of public concern warranting specific measures and in implementing social and economic policies (see *Kopecký*, cited above, § 37), where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler*, cited above, §§ 110 *in fine*, 114 and 120 *in fine*; *Broniowski*, cited above, § 151; *Sovtransavto Holding v. Ukraine*, no. 48553/99, §§ 97-98, ECHR 2002-VII; *Novoseletskiy v. Ukraine*, no. 47148/99, § 102, ECHR 2005-II; *Blücher v. the Czech Republic*, no. 58580/00, § 57, 11 January 2005; and *O.B. Heller, a.s., v. the Czech Republic* (dec.), no. 55631/00, 9 November 2004).

72. The Court reiterates that the Convention imposes no specific obligation on States to right injustices or harm caused before they ratified the Convention. However, once such a solution has been adopted by a State, it must be implemented with reasonable clarity and coherence, in order to avoid, in so far as possible, legal uncertainty and ambiguity for the persons concerned by the implementing measures.

In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is an important factor to be taken into account in assessing the State's conduct (see *Broniowski*, cited above, § 151).

73. Turning to the circumstances of the present case, the Court notes that the applicant's claim failed because, in the Court of Appeal's view, he sued the wrong defendant. The applicant lodged his claim against the State Treasury (and was successful at first instance) on the basis of the hitherto

prevailing case-law, which the Court of Appeal considered later to be obsolete. However, although the applicant's cassation complaint was not admitted, his challenge proved to be in accordance with the latest jurisprudence of the Supreme Court

74. The Court further observes in this context that numerous court actions, such as those instituted by the applicant, have been brought before the domestic courts. Due to several major administrative reforms which had been implemented in Poland during the past fifty years, the courts have been required to determine the authority responsible for taking over the competencies of bodies which had existed previously. The interpretation of provisions of relevant laws introducing the administrative reforms has constantly changed, which has led to varying judicial rulings by different domestic courts on the same legal question (see paragraphs 50-55 above). As a result, the case-law at the domestic level, including the Supreme Court judgments and resolutions, has often been contradictory.

75. The examples of the subsequent case-law in this matter show that the question of liability for damages resulting from flawed administrative decisions was by no means clear at the time the applicant's claim was examined and the divergences in the case-law continued several years later (see paragraphs 54-55 above).

76. The Court has already held that divergences in case-law are an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of its territorial jurisdiction, and that the role of a supreme court is precisely to resolve conflicts between decisions of the courts below (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII). In the instant case, however, even the Supreme Court failed to have a uniform case-law on the legal questions in issue (see paragraphs 51-53 above).

77. The Court does not deny the complexity of the problems with which the courts were faced as a result of the fundamental changes in the competencies of all the various authorities at the local and State administrative levels. It considers, however, that shifting the duty of identifying the competent authority to be sued to the applicant and depriving him of compensation on that basis was a disproportionate requirement and failed to strike a fair balance between the public interest and the applicant's rights (see *Plechanow v. Poland*, cited above, § 108).

78. In the Court's view, when a public entity is liable for damages, the State's positive obligation to facilitate identification of the correct defendant is all the more important.

79. In the Court's opinion, the applicant seems to have fallen victim of the administrative reforms, the inconsistency of the case-law and the lack of legal certainty and coherence in this respect. As a result, the applicant was unable to obtain due compensation to which he was entitled.

80. In the light of the foregoing, the Court considers that the State has failed to comply with its positive obligation to provide measures safeguarding the applicant's right to the effective enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1, thus upsetting the “fair balance” between the demands of the public interest and the need to protect the applicant's right (see *Plechanow v. Poland*, cited above, §§ 99-112 and, *mutatis mutandis*, *Sovtransavto Holding*, cited above, § 96).

81. Consequently, there has been a violation of Article 1 of Protocol No. 1.

2. Articles 6 and 13 of Convention

82. Having regard to the particular circumstances of the present case and to the reasoning which led the Court to find a violation of Article 1 of Protocol No. 1, the Court considers that a separate examination of the merits of the case under Articles 6 and 13 of Convention is not necessary.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION WITH REGARD TO THE ACTION TO HAVE A FINAL JUDGMENT DECLARED CONTRARY TO LAW

83. The applicant further complained, relying on Article 13 of Convention, that his request to have the judgment of the Court of Appeal declared contrary to law was rejected by the Supreme Court on the grounds that he had already availed himself of a cassation complaint, although his cassation complaint had not been examined on the merits (see domestic law under 2.)

84. The Government refrained from submitting observations on the admissibility and merits of the complaint.

85. The Court considers the instant complaint concerns an alleged denial of access to a court and should therefore be examined under Article 6 of the Convention.

A. Admissibility

1. Applicability of Article 6

86. The Court must first examine whether Article 6 of the Convention was applicable to the proceedings concerned.

87. The Court recalls that Article 6 applies under its “civil head” if there was a “dispute” (“contestation”) over a “right” which can be said, at least on arguable grounds, to be recognised under domestic law. That dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise. The Court must also be

satisfied that the result of the proceedings at issue was directly decisive for the right asserted (see, *mutatis mutandis*, *Georgiadis v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 958-959, § 30, and *Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1160, § 38).

Finally, the right must be civil in character (see, for example, *Allan Jacobsson v. Sweden* (no. 2), 19 February 1998, § 38, *Reports* 1998-I). In this context, Article 6 § 1 of the Convention is applicable where an action is “pecuniary” in nature and is founded on an alleged infringement of rights which are likewise pecuniary rights, notwithstanding the origin of the dispute (see, for example, *Beaumartin v. France*, judgment of 24 November 1994, Series A no. 296-B, p. 60-61, § 28).

88. In the present case, the Court has found that the domestic courts' decisions had the effect of depriving the applicant of his right to claim compensation to which he was entitled. The Court has further established that the applicant's claim “constituted an asset” and therefore amounted to a “possession” within the meaning of the first sentence of Article 1 of Protocol No. 1.

89. The Court reiterates that there is no necessary interrelation between the existence of claims covered by the notion of “possessions” within the meaning of Article 1 of Protocol No. 1 and the applicability of Article 6 § 1 (see *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX; *J.S. and A.S. v. Poland*, no. 40732/98, § 51, 24 May 2005). However, the fact that the applicant had a legitimate expectation to obtain compensation confirms the existence of a genuine and serious dispute.

90. The Court observes that the remedy in question is provided for in the Code of Civil Procedure. Pursuant to Article 424¹¹ of the Code, when the Supreme Court allows the complaint, it declares the decision complained of to be contrary to law. Such a declaration does not result in the annulment of the decision, which continues to have legal effects, nor does it open the possibility of re-opening the proceedings terminated by a final judicial decision (see, *a contrario*, *Wierciszewska v. Poland*, no. 41431/98, § 35, 25 November 2003). However, it does give rise to a compensation claim against the State.

Consequently, the pecuniary and thus “civil” character of the dispute cannot be denied.

91. The Court notes in this connection that it has found Article 6 applicable to an action instituted under Article 155 of the Code of Administrative Procedure (see domestic law, paragraphs 47-49 above) challenging a final administrative decision (see *J.S. and A.S. v. Poland*, cited above), a remedy similar to the remedy in question in that it may lead (besides the annulment of the impugned administrative decision) to a

declaration - giving rise to a compensation claim - that the decision was issued in breach of law.

92. In the present case, the applicant sought to have the judgment of the Court of Appeal of 15 July 2005, in which the court dismissed his claim, declared contrary to law. He argued that the judgment was against the law, as it was contrary to the resolution of seven judges of the Supreme Court of 7 December 2006, which represented a binding interpretation of the relevant law. According to the resolution, the State Treasury had the legal capacity to be sued for damages caused by an administrative decision, whereas the Court of Appeal dismissed the applicant's claim on the ground that he should have sued the municipality and not the State Treasury.

93. The Court notes that a party may lodge a complaint under Article 424¹ only if no other remedy is available against an impugned judicial decision. In the present case, a cassation complaint had been available, and the applicant availed himself of it. However, his cassation complaint had not been examined on the merits. The applicant argued, therefore, that it could not be regarded as an effectively lodged cassation complaint within the meaning of § 3 of Article 424¹.

Had the Supreme Court accepted his argument, it could have admitted his complaint and declared the 2005 judgment of the Court of Appeal contrary to law, thus creating for the applicant a legally enforceable claim to obtain compensation for damage suffered in consequence of the judgment. Although the Supreme Court eventually held that the applicant had no *locus standi*, in effect it determined a civil dispute (cf. *Serghides and Christoforou v. Cyprus*, (dec.) no. 44730/98, 22 May 2001).

94. In the light of the above, the Court concludes that Article 6 of the Convention is applicable to the proceedings concerned.

95. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

96. The Supreme Court rejected the applicant's complaint under Article 424¹ of the Code of Civil Procedure concluding that a cassation complaint, which the Supreme Court had refused to entertain, qualified as an "effectively lodged cassation" in the same way as a cassation, which had been examined on its merits.

97. The applicant contested the conclusion. He disagreed with the presumption that the Supreme Court's refusal to entertain a cassation complaint is equivalent to its finding that the impugned judgment was issued in accordance with law. He argued that had the Supreme Court admitted his cassation complaint, he would not have to seek another

possibility to challenge the erroneous judgment of the Court of Appeal. By rejecting his complaint under Article 424¹ the Supreme Court deprived him of all remedies capable of redressing the alleged violation of his property rights.

98. The Court reiterates that Article 6 does not guarantee a right of appeal and does not compel the Contracting States to set up courts of appeal or of cassation. Although where a right of appeal is provided in domestic law Article 6 § 1 applies to such appellate procedures, the right of access to an appeal court is not absolute and the State, which is permitted to place limitations on the right of appeal, enjoys a certain margin of appreciation in relation to such limitations (*Delcourt v. Belgium* judgment of 17 January 1970, Series A no. 11, § 25; *De Ponte Nascimento v. the United Kingdom*, (dec.), no. 55331/00, 31 January 2002).

However, the limitations applied cannot restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see, *inter alia*, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001-VIII). Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, *inter alia*, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, 12 July 2001, to be published in ECHR 2001-VII).

It is for the Contracting States to decide how they should comply with the obligations arising under the Convention. The Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention.

99. The compatibility of the limitations permitted under domestic law with the right of access to a court set forth in Article 6 § 1 of the Convention depends on the special features of the proceedings in issue, and it is necessary to take into account the whole of the trial conducted according to the rules of the domestic legal system and the role played in that trial by the highest court, since the conditions of admissibility of an appeal on points of law or to a superior appeal courts may be more rigorous than those for an ordinary appeal (*Delcourt*, cited above, p. 15, § 26; *Wells v. the United Kingdom*, (dec.) no. 37794/05, 16 January 2007).

100. The Court first notes that the applicant's case was examined on the merits by two judicial instances with full jurisdiction as to the facts and law. The Supreme Court subsequently refused to entertain his cassation complaint.

101. The Court further observes that the applicant's right of access to a court was subject to certain limitations in so far as his action for a declaration that a final judicial decision was contrary to law was rejected by the Supreme Court on the ground that he had already availed himself of a cassation complaint.

102. The Court notes, in this connection, that according to the relevant provisions, the complaint is not available against a judgment that was or could have been challenged by way of other available remedies. The aim of this limitation is to avoid a double examination of the same case by the Supreme Court under a different but substantially similar legal basis. The Court finds this aim legitimate.

103. With regard to the interpretation of the relevant provisions of the Code of Civil Procedure, which was disputed in the present case by the applicant, the Court reiterates that such interpretation lies within the margin of appreciation which the Court must leave to the State to allow it to organise a given remedy in a manner consistent with its own legal system, in this case the conditions of admissibility of a complaint to the superior court.

Having regard to the abovementioned aim of the relevant legislation, it does not seem *per se* unreasonable or arbitrary to reject a case which had already been examined by the Supreme Court and which (in that court's view) had not disclosed any indication of being contrary to law. Otherwise, the Supreme Court would have to call into question its own decision, which would be against the principle of legal certainty.

104. In view of the above, the Court considers that in the circumstances of this case there is no appearance of an unreasonable or disproportionate restriction on access to court for the purposes of Article 6 of the Convention. Consequently, it cannot be maintained that the very essence of the applicant's right to a court was impaired.

105. There has been, therefore, no violation of Article 6 of Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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.”

107. The applicant claimed PLN 604,000 (approx. EUR 140,480) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

108. The applicant also claimed PLN 3,660 (approx. EUR 350) for the costs and expenses incurred before the Court in addition to the amount already received by the applicant as legal aid from the Council of Europe.

109. The Government did not comment.

110. In the circumstances of the case and having regard to the parties' submissions, the Court considers that the question of the application of Article 41 of the Convention as regards pecuniary and non-pecuniary damage and costs and expenses is not ready for decision and reserves it, due

regard being had to the possibility that an agreement between the respondent State and the applicant may be reached (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No 1 to the Convention;
3. *Holds* that there is no need to examine separately the applicant's complaints under Articles 6 and 13 of the Convention with regard to the proceedings for compensation;
4. *Holds* that there has been no violation of Article 6 of the Convention with regard to the action for a declaration that the final judgment in the applicant's case was contrary to law;
5. *Holds* that the question of the application of Article 41 is not ready for decision and accordingly;
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 3 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President