



A company's inability to challenge the Roman Catholic Church's entry in the land register relating to property previously registered by the company violated its ownership rights

In today's **Chamber judgment**¹ in the case of [Sociedad Anónima del Ucieza v. Spain](#) (application no. 38963/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, and held by a majority, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention.

The case concerned a dispute over ownership of a medieval church between the applicant company, which had purchased and registered in the land register a plot of land in which the church had formed an enclave, and the Diocese of Palencia, which had registered the same church in its own name in the land register sixteen years later. The applicant company therefore considered that it had been unfairly deprived of part of its property for no reason of public interest and without any compensation.

Civil proceedings brought by the applicant company to cancel the registration of the church and its annexes effected by the Diocese in 1994 were unsuccessful. The domestic courts held that for historical reasons the church in question had not been included among the items of property purchased by the successive owners of the plot of land in question and its annexes since their initial purchase in 1841.

The Court found in particular that the applicant company had suffered because of the exercise of the right of registration granted by domestic legislation to the Roman Catholic Church, without any apparent justification and without the Diocese having challenged its ownership at the time the property had been registered in the land register in 1979. Consequently, the applicant company had borne an individual and excessive burden which could only have been legitimised by the possibility of effectively challenging the measure taken against it, taking into account the applicable provisions of mortgage law.

Principal facts

The applicant, Sociedad Anónima del Ucieza, is a Spanish limited company which was set up in 1978 and is based in Ribas de Campos (Palencia).

In July 1978 the applicant company purchased land at Ribas de Campos. The entry in the land register mentioned that a church, a house, a number of norias, a poultry yard and a mill formed an enclave within the plot of land. The land had belonged to the former Premonstratensian monastery of Santa Cruz de la Zarza, which had been part of the Santa Cruz Priory, founded in the 12th century.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In December 1994, the Diocese of Palencia entered in the land register, in its own name, a plot of land comprising a Cistercian-style church, a sacristy and a capitular chamber which had once formed part of the old Premonstratensian monastery of Santa Cruz, and which were located on the land owned, according to the land register, by the applicant company. The entry was made on the basis of a certificate issued by the Diocese itself. Even though its name appeared in the register as the owner of the land in question, the applicant company was neither informed of nor asked about this new entry in the register. Having been informed after the event, it submitted complaints to the Diocese, which replied that the property in question had always belonged *de facto* to the Diocese of Palencia under the Law of 2 September 1841 on the sale of church property, which excluded churches and cathedrals and their annexes from the *desamortización* (sale of church lands) process.

The applicant company brought an action against the Diocese of Palencia to declare void the entry concerning the church and its annexes in the land register as effected by the Diocese in 1994. The court of first instance dismissed the company's action. The court noted that the plot of land and the buildings at issue had been the subject of laws concerning *desamortización* (sale of church lands), and had subsequently been auctioned off in 1835 and 1841, but that the church had been a parish church before *desamortización* and so had not been affected by the latter process, but had continued to function for as long as its physical state of repair had so permitted. The Diocese had then undertaken to carry out the requisite conservation work. The court also pointed out that since the Code of Canon Law was applicable, the church at issue could not have been purchased by the applicant company through adverse possession inasmuch as the latter could only be used in such a context for the benefit of ecclesiastical entities.

On 5 February 2001 the Palencia *Audiencia Provincial* dismissed an appeal by the applicant company and upheld the judgment. The *Audiencia Provincial* stressed that the church in question was not part of the real estate present on the plot of land in question which had been transferred to successive owners since its initial purchase by a certain M. in 1841.

The applicant company lodged an appeal on points of law, pointing out that the property was "invaluable", while agreeing that the dispute concerned an amount of over 36,000 euros (EUR) – the minimum value required at the time to lodge an appeal on points of law. On 8 March 2005 the Supreme Court invited the applicant company to prove that the amount in issue in the dispute exceeded EUR 150,000, the new threshold applicable to appeals on points of law under the Code of Civil Procedure which had since come into force. The applicant company replied that it was difficult to assess the value of an historic building, but stated that the Diocese had estimated the value of the property at EUR 600,000.

On 14 June 2005 the Supreme Court declared the applicant company's appeal on points of law inadmissible on the ground that the legal requirements for using this remedy had not been satisfied. The applicant company then lodged an *amparo* appeal with the Constitutional Court, which declared the appeal inadmissible as lacking any constitutional basis.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant company submitted that it had been deprived on unduly formalistic grounds of its right of access to an appeal on points of law before the Supreme Court. Relying on Article 1 of Protocol No. 1 (protection of property), it complained that it had been deprived of part of its property for no reason of public interest and without any compensation on the basis of a law predating the Constitution. Relying on Article 14 (prohibition of discrimination), it submitted that the situation amounted to an infringement of the principle of non-discrimination, inasmuch as the Roman Catholic Church had been able to register the building in issue in the land register on the basis of unjustified privileges.

The application was lodged with the European Court of Human Rights on 4 August 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
 Alvina **Gyulumyan** (Armenia),
 Ján **Šikuta** (Slovakia),
 Luis **López Guerra** (Spain),
 Johannes **Silvis** (the Netherlands),
 Valeriu **Grițco** (the Republic of Moldova),
 Iulia Antoanella **Motoc** (Romania),

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that the Supreme Court had declared inadmissible the appeal on points of law lodged by the applicant company. The Supreme Court had held that the estimated value of the property, namely 600,000 euros (EUR), was insufficient to contradict the initial description of the property in issue by the applicant company as “invaluable”. The Supreme Court had concluded that the applicant company had merely managed to establish that the sum at stake in the proceedings had exceeded the amount of EUR 36,000 previously required for proceedings to be initiated, but that it had not succeeded in demonstrating that the new threshold for lodging an appeal on points of law based on the sum at stake had been attained.

The Court held that this was no mere problem of interpretation of the law, but rather an issue of interpreting a procedural requirement which had prevented the consideration of the merits of the case. This particularly strict interpretation of a procedural rule had deprived the applicant company of its right of access to the court having jurisdiction to consider its appeal on points of law. There had therefore been a violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1

The Court noted that despite its registration in the land register in 1979, the ownership rights claimed by the applicant company had been rendered nugatory. The Diocese of Palencia had managed, 16 years later, to register the same property as that already registered in the name of the applicant company. This new registration had deprived the applicant company of its rights under the previous registration of the building in its name.

The Court first of all noted that Spanish law provided that no other deed of property could be asserted against a deed entered in the land register, and that the rights *in rem* included in this register were deemed to exist and to appertain to the holder of such rights. Secondly, it observed that under Spanish law, ownership of property which was not entered in the land register could only be registered by one of the means set out in the Mortgages Act, including that laid down in section 206 of this Act, consisting in presenting a certificate drawn up by the Diocesan Bishop. The provisions of section 206 applied only where there had been no previous entry in the land register. Inasmuch as there had been a previous land register entry dating from 1979 relating to the same property, the registration in the name of the Diocese in 1994 had entailed the loss of the rights derived by the applicant company from the 1979 registration.

The Court considered that the land registry official should have refused to register the church in the name of the Diocese, as the mortgage regulations provided that such officials could not allow the coexistence of two apparently conflicting entries concerning the same property.

The civil proceedings brought by the applicant company to set aside the registration of the church and its annexes as effected by the diocese in 1994 had been unsuccessful. The domestic courts had held that for historical reasons the church in question had not been included among the items of property purchased by the successive owners of the plot of land in question and its annexes since their initial purchase in 1841. The Court held that the registration of the church in the name of the Diocese by the land register official on the sole strength of the certificate issued by the Diocese itself had been arbitrary and more or less unforeseeable, and had failed to provide the applicant company with the basic procedural safeguards for defending its interests. The applicant company had found itself unable to defend itself against the effect of the registration at issue, which made this latter measure in itself disproportionate.

Furthermore, the Court pointed out that the domestic courts had interpreted national legislation as authorising the Diocese of Palencia to use its right of registration on the basis of general historical considerations. The Court found it surprising that a certificate issued by the Diocese should have the same value as certificates issued by State officials exercising public authority, and also wondered why section 206 of the Mortgages Act only referred to diocesan bishops of the Roman Catholic Church, to the exclusion of representatives of other denominations.

Lastly, the Court found that the church in issue, because of its status as a parish church, had been regarded by the domestic courts as having always belonged to the Diocese of Palencia, but that the applicant company had found it impossible to obtain any kind of redress.

The Court concluded that the applicant company had been a victim of the exercise of the right of registration granted by the Roman Catholic Church's internal legislation without any apparent justification, and without the Diocese having challenged its ownership rights, at the time the property had been registered in the land register in 1979. Consequently, the applicant company had borne an individual and excessive burden which could only have been legitimised by the possibility of effectively challenging the measure taken against it, taking into account the applicable provisions of mortgage law. There had therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

[Article 14 in conjunction with Article 1 of Protocol No. 1](#)

Under the circumstances, the Court considered that the unequal treatment of which the applicant company had complained had been sufficiently taken into account in the reasoning leading it to find a violation of Article 1 of Protocol No. 1. Although this complaint was admissible, no separate issue arose under Article 14 in conjunction with Article 1 of Protocol No. 1.

[Just satisfaction \(Article 41\)](#)

The Court held that the question of compensation for the damage suffered was not ready for decision and reserved that question, having regard to a possible agreement between the respondent State and the applicant company.

Separate opinion

Judge Motoc expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.