



State's "monopolised" school textbook distribution market caused a violation of companies' property rights

In today's **Chamber** judgment¹ in the case of [Könyv-Tár Kft and Others v. Hungary](#) (application no. 21623/13) the European Court of Human Rights held, by a majority of **six votes to one**, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned the applicant companies' complaint that they had been deprived of their business as distributors of school text books by new legislation which introduced a single State purchasing and distribution body.

The Court found that the Government measures had imposed an unfair burden on the companies, which had been deprived of their clientele – schools – by the new rules. The changes had led effectively to a monopolised market in school book distribution.

In particular, the Court held that the transition period to the new system had only been 18 months, the distribution companies had not been asked to take part in any of the new, closed tenders run by the State school book distribution body, and no measures had been put in place to compensate the companies for their loss of business.

Principal facts

The applicant companies, Könyv-Tár Kft, Suli-Könyv Kft and Tankönyv-Ker Bt, are Hungarian companies which were active in the sale and distribution of text books to schools.

In 2011 and 2012 Parliament passed legislation to centralise the management of schools, which had been under the control of the local authorities. New laws also introduced a new system for buying and distributing school text books via a central body, Könyvtárellátó Kiemelten Közhasznú Nonprofit Kft (the Non-profit Library Supplier Limited Liability Company; "Könyvtárellátó").

The way the applicant companies had operated previously was to strike agreements directly with schools, acting as intermediaries for publishers. They provided the logistics, processed orders, managed billing and dealt with returns. There were six large and 30 medium-sized distributors. The market was regulated with maximum prices and the Government decided what qualified as a text book.

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.

After the new system was introduced, the Könyvtárellátó company took over the procurement and distribution of the books. The reasoning for the change, according to the draft Parliament bill, was to strengthen the position of the buyer, the State, and to make distribution more transparent.

The applicant companies submitted that the laws had centralised and monopolised the school book distribution market. It had also given Könyvtárellátó a 20% margin, compared with their margins of 3-5%, without providing compensation to former participants. The applicant companies and others had effectively been barred from a market which had been either their exclusive or main field of activity.

The applicant companies filed a constitutional complaint to have the new laws repealed, but the Constitutional Court terminated the proceedings in 2014 without an examination on the merits. It found that further legislation, which had come into force in 2014, had introduced a system for the supply of school books which was completely State organised, removing any free-market element. The applicants' complaints, based on the previous legislation, had therefore become redundant.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property), the applicants complained that the creation of a State monopoly in the schoolbook distribution market had deprived them of the peaceful enjoyment of their possessions.

The applicant companies also raised complaints under Article 13 (right to a remedy) in conjunction with Article 1 of Protocol No.1, under Article 6 (right to a fair trial), and under Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No.1.

The application was lodged with the European Court of Human Rights on 26 March 2013.

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

Vincent A. **De Gaetano** (Malta), *President*,
András **Sajó** (Hungary),
Paulo **Pinto de Albuquerque** (Portugal),
Krzysztof **Wojtyczek** (Poland),
Egidijus **Kūris** (Lithuania),
Gabriele **Kucsko-Stadlmayer** (Austria),
Marko **Bošnjak** (Slovenia),

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

Decision of the Court

[Article 1 of Protocol No. 1](#)

The Court, responding to an argument made by the Government that the case was inadmissible, first dealt with the question of whether the applicant companies could claim to have “possessions” within the meaning of the European Convention.

The Government argued that the Convention did not guarantee the right to acquire property and that future income was not generally regarded as a possession. Furthermore, the companies' market share and future income had been affected by changes which came within the powers of discretion of Governments (“margin of appreciation”), namely changes in the organisation of education.

However, the Court, noting the case of [Van Marle and Others v. the Netherlands](#), found that the companies had lost their clientele, the schools, in the legislative changes and that lost clientele could be considered as a possession under the Convention.

On the merits, the Court noted the Government's argument that the changes had aimed at making budget spending more efficient. However, it doubted that the interests of the end-users, the parents and pupils, had been protected, given that prices had remained regulated. Furthermore, the new book distribution company's profit margin of 20% was higher than that of the applicant companies.

The Court held that the applicant companies had not had a special or privileged place such as to warrant State intervention. It was also not convinced by the Government's argument that the measures had not led to a monopolisation: in fact the companies had lost their former clientele and it had been transferred to Könyvtárellátó.

It had in theory been possible for the companies to tender for contracts with the State company, but in practice, according to a submission by the companies which the Government had not denied, such tenders had been limited in scope and open only to invited companies. They therefore had not offered realistic prospects for the companies to continue their business and maintain their clientele.

The Court noted that there had been a transition period of only 18 months to the new system and that the companies had never been invited to Könyvtárellátó's tenders. Furthermore, they had been *de facto* excluded from school book distribution contracts from 2013/2014; no measures had been put in place to protect them from arbitrariness or to offer redress via compensation; and they could not continue or rebuild their businesses outside the school book market. Lastly, there had been no real benefits for either parents or pupils from the new system.

Overall, it found a violation as the interference with the applicant companies' possessions had been disproportionate to the aim pursued and they had had to bear an individual and excessive burden.

Other articles

The Court declared the complaint under Article 13 inadmissible and saw no need for a separate examination of the complaints under Article 6 and Article 14 given its findings in the case.

Just satisfaction (Article 41)

The Court held that the question of just satisfaction was not yet ready for decision and reserved the matter.

Separate opinions

Judge Wojtyczek expressed a dissenting opinion. Judges Pinto de Albuquerque and Kūris each expressed a concurring opinion.

The judgment is available only in English.

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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.