

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

FIRST SECTION

DECISION

Applications nos. 39942/18 and 41347/18
Helena SAK against Poland
and Kazimierz GIEBUŁTOWICZ against Poland

The European Court of Human Rights (First Section), sitting on 17 January 2023 as a Chamber composed of:

Péter Paczolay*, President*,
Krzysztof Wojtyczek,
Alena Poláčková,
Lətif Hüseynov,
Ivana Jelić,
Gilberto Felici,
Raffaele Sabato*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above applications both lodged on 14 August 2018,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant in the first case, Ms Helena Sak, is a Polish national, who was born in 1928 and lives in Katowice. She is represented before the Court by Mr T. Rytlewski and Mr M. Serwa, lawyers practising in Cracow.

2. The applicant in the second case, Mr Kazimierz Giebułtowicz, is a Polish national, who was born in 1935 and lives in Katowice. He was granted leave to represent himself before the Court (Rule 36 § 2 *in fine* of the Rules of Court).

3. The Polish Government ("the Government") were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

## The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. Background to the case*

5. The applicants are siblings whose father owned property in the so-called "territories beyond the Bug River". The property in question comprised forty-six hectares of land, a brick one-storey house and two farm buildings.

6. As a result of boundary changes following the Second World War, those territories no longer formed part of Poland and the applicants' father was repatriated elsewhere. After the war the Polish State undertook to compensate persons such as the applicants' father in respect of property which they had been forced to abandon. Such persons were entitled to have the value of the abandoned property deducted from the price of immovable property purchased from the State (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 10-12, ECHR 2004 V).

7. In 1989 the value of the property in question was estimated, according to an official valuation, to be the current equivalent of 2,234.40 Polish zlotys (PLN).

8. In 1990 each applicant, together with their brother who is not an applicant in the present case, inherited one-third of their late father's Bug River compensation entitlement. Such compensation was not payable in cash and had to be offset against the value of any property newly purchased from the State.

9. For the purposes of compensation, on 10 August 1998 the Katowice District Office (*Urząd Rejonowy*) issued a certificate stating that the value of the abandoned property had been set at PLN 8,095,908, that is, PLN 17 per square metre. The certificate in question was based on a valuation made in 1997 by a professional property valuer (*biegły*). The valuer was a certified court expert. As per the applicable procedure, he had been commissioned by the persons seeking compensation, in this instance the applicants' brother.

10. The applicants then purchased – jointly with their brother – six properties from the State. They paid for each of them by offsetting the necessary amounts against the value of the abandoned property as certified in 1998. The total amount of those transactions was PLN 3,130,208 (the equivalent of EUR 782,552).

11. In addition to the above-mentioned transactions, on 4 March 2002 the applicants and their brother purchased a recreation centre from State Forests, a governmental organisation managing State-owned Polish forests on behalf of the State Treasury. The property in question comprised, among other things, 1,165 hectares of land. The applicants bought the property for PLN 1,400,000 (the equivalent of EUR 350,000) and that amount, except for

a deposit of PLN 40,000 (EUR 10,000), was offset against the applicants' remaining Bug River compensation entitlement. For this transaction, the applicants paid PLN 18,927.68 in notary fees and taxes and PLN 45,000 in commission (equivalent to a total of EUR 16,000).

12. On 19 March 2002 the three siblings sold that property on the open market for PLN 450,000 (the equivalent of EUR 87,500).

13. In 2004 an audit that was carried out at the local branch of State Forests by the Supreme Audit Office (*Najwyższa Izba Kontroli*) revealed that the value of the Bug River property belonging to the applicants' father as certified in 1998 had been disproportionately higher than the market value of similar properties. The professional property valuer who had prepared the 1997 valuation of the Bug River property belonging to the applicants' father explained that, in his original valuation, he had mistakenly omitted a dot in between the numbers, writing PLN 17 instead of PLN 1.7 per square metre (see paragraph 9 above). The audit concluded that the valuer had wrongly valued one square metre of agricultural land at the market price normally obtained for urbanised land with technical infrastructure intended for housing and services. The Supreme Audit Office thus established that the real value of that property would in fact have been a maximum of PLN 287,320 (the equivalent of EUR 71,830).

14. In 2005 the valuer in question was convicted of perjury by a criminal court.

15. As established by the domestic court in the course of the civil proceedings (see paragraph 22 below), according to a valuation report drawn up in 2005, the property in question was in fact worth PLN 364,000 (approximately EUR 91,000).

16. On 24 February 2009 the Governor (*Wojewoda*) of the Śląski Region declared the certificate of 10 August 1998 null and void because the property in question had been incorrectly valued. On 25 August 2009 the Minister for the State Treasury (*Minister Skarbu Państwa*) overruled that decision, holding that although the impugned certificate had been issued in flagrant violation of the law, it could not be declared null and void because it had produced irreversible legal consequences.

### *2. Action against the applicants for repayment*

17. On 28 February 2012 the State Treasury brought a civil action against the applicants, seeking payment of the sum of PLN 1,360,000 (approximately EUR 340,000) under the head of the return of unjust gains made at the expense of the State Treasury.

18. That action was based on section 1(1) of the Act of 21 June 1990 on the return of benefits unjustly obtained to the detriment of the State Treasury (*Ustawa o zwrocie korzyści uzyskanych niesłusznie kosztem Skarbu Państwa lub innych państwowych osób prawnych*, hereinafter "the 1990 Act" – see paragraphs 35-37 below).

19. On 29 July 2013 the Katowice Regional Court (*Sąd Okręgowy*) dismissed the action.

20. On 23 January 2014 the Katowice Court of Appeal (*Sąd Apelacyjny*) dismissed an appeal lodged by the State Treasury. On 23 October 2015 the Supreme Court (*Sąd Najwyższy*), upon a cassation appeal lodged by the State Treasury, quashed the latter judgment and remitted the case to the Katowice Court of Appeal.

21. On 16 February 2017 the Katowice Court of Appeal found partly in the plaintiff's favour and ordered each applicant to repay PLN 115,357 (approximately EUR 28,840), plus interest. Each applicant was also ordered to pay various court fees and costs adding up to a total of PLN 16,233 (approximately EUR 4,058).

22. The Katowice Court of Appeal estimated the actual value of the Bug River property belonging to the applicants' father on the basis of the three valuations obtained in earlier years (see paragraphs 7, 9 and 13 above). The court considered that the official valuations had not been contested by the applicants before the civil court. The applicants had also not provided any proof of a different valuation. The court thus observed that, at most, the property in question was worth PLN 364,000 (approximately EUR 91,000 – see paragraph 15 above).

The first applicant, in her submission to the Court, stated that she had objected to the valuations in question before the civil court. She did not provide any documents to that effect. She also asserted that presenting a counter-valuation would have been costly, and in fact futile, as, under Polish law, privately commissioned valuations were not binding on the courts.

23. The court then established that the applicants had sold the properties that they had purchased from the State prior to 4 March 2002 (see paragraph 10 above) for a total amount of PLN 375,702 (approximately EUR 94,000).

24. Given these elements, the appellate court concluded that the applicants had used up their equivalent compensation entitlement prior to the above-mentioned transaction with State Forests (see paragraph 11 above).

25. Consequently, offsetting that transaction with the outstanding amount of the equivalent compensation entitlement had generated an "unjust gain" for the applicants and a loss for the State in so far as the property had been paid for with "defective Bug River money". On that basis the 1990 Act was applicable to the case.

26. The court held that issuing an erroneous certificate of equivalent compensation could not deprive the State Treasury of the right to claim the return of an unjust gain. The obligation to return such a gain, which rested on the other party to the transaction, was not contrary to the principle of coexistence in society.

27. The Katowice Court of Appeal observed that the applicants had claimed to have acted in good faith, trusting that the administrative authorities had issued a correct certificate of compensation (see paragraph 9 above). In

the applicants' view, the fact that, in the course of the subsequent transactions with the State, the impugned valuation had not been reviewed or revoked only reinforced the certificate's legitimacy. The court accepted that the applicants had had the same confidence in the validity of the impugned certificate when they had sold the property in question.

28. The court therefore concluded that the applicants could not be ordered to repay to the State a higher amount than the benefit which they had derived.

29. The court thus deducted from the amount of PLN 450,000, obtained from the sale of the recreation centre which the applicants had bought from State Forests (see paragraph 12 above), their deposit (PLN 40,000), as well as the notary fees, taxes (PLN 18,927.68) and commission (PLN 45,000) paid by the applicants in respect of that transaction (see paragraph 11 above). The remaining amount of PLN 346,072 (approximately EUR 86,518) was thus considered to be the gain which they had derived from the transaction. The domestic court ordered each applicant to return one-third of the above amount, with interest.

30. On 14 February 2018 the Supreme Court refused to entertain the cassation appeal lodged by the applicants, holding that the applicants had failed to show that the case raised novel and important legal issues.

### *3. Constitutional complaint*

31. On 12 April 2018 the Constitutional Court (*Trybunał Konstytucyjny*) refused to examine a constitutional complaint lodged by the applicants on the grounds that the applicants' lawyer had incorrectly formulated the complaint. On 18 June 2018 the Constitutional Court dismissed an interlocutory appeal against that decision.

32. In their constitutional complaint, the applicants had argued that section 1(1) of the 1990 Act was contrary to Article 2 of the Constitution (rule of law and principles of social justice).

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

33. The Constitution of the Republic of Poland of 2 April 1997 reads, in so far as relevant, as follows:

**Article 2**

"The Republic of Poland shall be a democratic State ruled by law and implementing the principles of social justice."

**Article 32**

"All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

..."

34. Polish civil law offered at the relevant time (and still does) various remedies for claiming the return of benefits unjustly obtained by legal or natural persons to the detriment of the State Treasury. Actions can thus be brought for: (i) unjust enrichment (*bezpodstawne wzbogacenie*) under Article 405 of the Civil Code; (ii) defects in consent (*wadliwość oświadczenia woli*) under Articles 84-88 of the Civil Code; and (iii) annulment of a legal act contrary to the principles of coexistence in society (*nieważność czynności prawnej sprzecznej z zasadami współżycia społecznego*) under Article 58 § 2 of the Civil Code.

35. In addition to the above-mentioned provisions of the Civil Code, the 1990 Act regulates situations in which the State Treasury has suffered a loss on account of an "unjust gain" (*niesłuszna korzyść*) made by a legal or natural person which directly results from a legal act or an administrative decision transferring title to a State-owned property to them.

36. Pursuant to section 1(1) of the 1990 Act, a court is to order redress or dissolve the contract when deciding on the settlement between the parties.

37. The 1990 Act has been in force, with amendments, since 23 July 1990.

38. On 8 July 2008 the Constitutional Court ruled on a legal question which had arisen in a case concerning the sale of a significantly undervalued, insolvent State-owned company (case ID: 103/6/A/2008, case no. P 36/07).

39. The Constitutional Court held that section 1(1) of the 1990 Act did not breach Article 2 of the Constitution. Firstly, judicial practice had sufficiently clarified the meaning of the "unjust gain" clause. Secondly, the regulation was proportionate because protecting State property was a legitimate aim and the decision to provide an alternative remedy to those already existing under the Civil Code lay within the legislature's discretion.

40. The Constitutional Court found that the impugned provision did not breach Article 32 of the Constitution, as it could not be said that it placed the State Treasury in a privileged position vis-à-vis legal and natural persons who entered into transactions with the State. The purpose of this regulation was to eliminate the unwanted phenomenon of legal or natural persons making unjust gains from State property.

41. Article 417 § 1 of the Civil Code lays down a general rule on State liability for damage caused by a public authority. The relevant part of this provision, as worded at the material time, read as follows:

> "The State Treasury shall be liable for damage [*szkoda*] caused by an agent of the State in carrying out acts entrusted to him or her."

Following a 2004 amendment, Article 417 § 1 now reads as follows:

> "The State Treasury ... shall be liable for any damage caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

42. Article $417^1$ § 2 of the Civil Code reads as follows:

> "Where damage has been caused by the delivery of a final ruling or final decision, compensation for the damage may be sought after the unlawfulness [of the ruling or

> decision] has been established in the relevant proceedings, except as otherwise provided by law."

43. In the current practice of the domestic courts, a claim under Article 417[1] of the Civil Code does not arise unless the act or omission resulting in damage has been declared unlawful in separate proceedings (*prejudykat*) (see the Słupsk Regional Court's judgment of 2 February 2017, IC 342/16).

## COMPLAINT

44. The applicants complained that obliging them to refund the State for compensation miscalculated a decade earlier in an official certificate that remained in force breached Article 1 of Protocol No. 1 to the Convention.

## THE LAW

### A. Joinder of the applications

45. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

46. The applicants complained that their rights guaranteed under Article 1 of Protocol No. 1 to the Convention had been breached in so far as they had had to bear the excessive negative financial consequences of an error that had been made more than a decade earlier by the State.

47. In particular, they argued that they had not been responsible for the miscalculation of the amount of their equivalent compensation by the property valuer. For that reason, they should not have been ordered to refund the State under the principle of "unjust gain".

Article 1 of Protocol No. 1 to the Convention reads as follows:

> "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."

#### *1. The parties' submissions*

48. The Government raised a series of preliminary objections.

49. Firstly, they argued that the applicants had failed to exhaust the domestic remedies in that they had not lodged a civil claim for damages under

Articles 417 et seq. of the Civil Code. They also argued that, during the proceedings for repayment instituted by the State Treasury, the applicants had not raised the argument that their property rights protected by Article 1 of Protocol No. 1 to the Convention had been violated. Moreover, the Government argued that the applicants had made procedural mistakes in lodging their cassation appeal and constitutional complaint, making it impossible for the competent courts to examine the merits of their case.

50. Secondly, the Government argued that the applicants were not victims of a violation, as they had only lost amounts resulting from their unjust enrichment. Thirdly, they asserted that the applicants had not suffered a significant disadvantage.

51. In the alternative, the Government argued that the application was manifestly ill-founded. They essentially submitted that the interference with the applicants' property rights had been lawful and proportionate for the purposes of Article 1 of Protocol No. 1.

52. The first applicant submitted that she and her brothers had availed themselves of the first ordinary remedy available, that is to say, the appeal against the judgment of the Katowice Regional Court delivered on 29 July 2013. Their subsequent cassation appeal and constitutional complaint had been lodged without any procedural mistake on the applicants' part, but the respective courts had essentially considered that the case did not warrant an examination. In any event, serious doubts existed as to the effectiveness of the constitutional remedy, given that the Constitutional Court had already dealt with the matter in question (see paragraphs 38-40 above) and in the light of the Court's well-established case-law pursuant to which a constitutional complaint was not an effective remedy. The first applicant also explained that it had been sufficient for her to present the essential content of her Convention grievance to the domestic court, as she had done. The first applicant also argued that an action under Articles 417 et seq. of the Civil Code had not been available to her because, among other reasons, she had not yet sustained a "loss" within the meaning of the applicable law, her debt to the State not having been repaid in its entirety (the debt in question was being repaid in instalments from her old-age pension).

53. Regarding the Government's objection as to the applicants' victim status, the first applicant argued that she had suffered an infringement of her right to be properly compensated for her father's property and her right not to return the part of the compensation revoked by the authorities because of an error and a lack of diligence on their part. The first applicant stressed that the certificate awarding equivalent compensation to her and to her siblings had not been changed or revoked and was still valid. She therefore had an acquired right to compensation. The proceedings brought against the applicant by the State had directly concerned her in the sense that she had been ordered to return the money even though she had acted in good faith and it was the State which had been negligent.

54. As to the alleged lack of significant disadvantage, the first applicant noted that she and her brothers had each had to return the amount of PLN 115,357.44 (approximately EUR 28,800). This amount had been further increased by the statutory interest calculated from 25 March 2021, court fees and the costs of the debt enforcement. Those sums were objectively significant and did not constitute a trivial matter. As to the subjective element of assessment, the first applicant was a 93-year-old pensioner without any assets. A significant portion of her old-age pension was being deducted to pay off the debt. As a result, the first applicant was financially dependent on her relatives.

55. As to proportionality, the first applicant argued that she and her siblings had acted in good faith, having based their transactions on a valid certificate by virtue of which the administrative authorities had determined the amount of equivalent compensation due for the applicants' father's Bug River property. The first applicant also submitted that the authorities could have, under Article 156 of the Code of Administrative Procedure, invalidated that certificate within the first ten years from the date of the relevant decision, as long as the decision had not produced irreversible effects. This regulation was based on the principle of the legal certainty of administrative decisions, even those issued in error, for the sake of maintaining public trust in the State and the law. Having recourse to the remedy under the 1990 Act fourteen years afterwards, when the certificate had already produced irreversible effects, had therefore been unfair.

56. The second applicant did not make any comments on the Government's observations in respect of the applications.

*2. The Court's assessment*

57. The Court does not find it necessary to examine the Government's preliminary objections of non-exhaustion of domestic remedies, the applicants' loss of victim status or the lack of significant disadvantage because the applications are in any event inadmissible for the following reasons.

58. The general principles pertinent to the present case are set out in the judgments in *Grozdanić and Gršković-Grozdanić v. Croatia* (no. 43326/13, §§ 95, 100, 104 and 106, 28 January 2021) and *Bugajny and Others v. Poland* (no. 22531/05, §§ 56, 62 and 64-65, 6 November 2007).

59. The Court firstly notes that the measure depriving the applicants of their possession was based on section 1(1) of the 1990 Act and must be perceived as having been in accordance with the law (see paragraphs 18 and 35-40 above).

60. Secondly, the Court observes that the legitimate aim of the above-mentioned law was to redress any loss that the State Treasury had suffered on account of an unjust gain resulting from, among other things, the transfer of

title to State property to natural persons, even where they had acted in good faith, as had the applicants in the present case (see paragraphs 27 and 55 above).

61. The Court must now examine whether the interference with the applicants' right to the peaceful enjoyment of their possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposed a disproportionate and excessive burden on them (see *Bugajny and Others*, cited above, § 67, with further references). The Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V, and, *mutatis mutandis*, *Broniowski,* cited above, § 149).

62. The applicants claimed that they had acted in good faith, trusting that the administrative authorities had issued a correct certificate of compensation (see paragraph 27 above). The fact remains, however, that the gain they made was unjust and caused the State Treasury significant loss (see paragraphs 25 and 26 above).

63. Using their equivalent compensation entitlement, the applicants and their brother purchased six properties from the State (see paragraph 10 above). The applicants then sold those properties on the open market for a total amount of PLN 375,702 (the equivalent of EUR 94,000 – see paragraph 23 above). These transactions and the resulting gains were not contested by the authorities even though the domestic court ultimately established that the Bug River property belonging to the applicants' father should have been valued at PLN 364,000 (see paragraph 22 above).

64. Concluding that the equivalent compensation entitlement in question had thus been used up, the domestic court effectively invalidated the offsetting of the applicants' next purchase, namely the recreational centre, which the applicants had sold on the open market for PLN 450,000 (the equivalent of EUR 87,500 – see paragraphs 11 and 12 above). To calculate the refund owed to the State on account of the applicants' "unjust gain", the court deducted from that amount the applicants' cash payments totalling PLN 103,928. In the end, the domestic court ordered each applicant to return one-third of the remaining amount, that is to say, PLN 115,357 (approximately EUR 28,800) each (see paragraphs 29 and 54 above). This amount was further increased by statutory interest, court fees and the costs of the debt enforcement (see paragraph 54 above).

65. It follows that the applicants were ultimately left with the gains from the six initial transactions that constituted the equivalent of their father's Bug River property. The fact that the first applicant did not save the money from her sale of the recreational centre and that the refund of the "unjust gain" had to be paid in small portions from her retirement pension does not change the fact that the applicants have, in fact, not sustained any material loss as a result

of the civil proceedings brought against them (compare, for illustrative purposes, *Falkowska v. Poland* (dec.) [Committee], no. 70286/12, § 45, 21 May 2021).

66. In the Court's view, in the present case the public authorities did not commit a manifest error of judgment in regulating property transactions between natural persons and the State with the aim of protecting the latter from unjustified losses, especially in the wider context of the transformation of the country's entire system from a totalitarian regime. Moreover, the ruling of the domestic court in respect of the applicants' individual situation was not marked by any arbitrariness. The applicants had made an unjust gain from their last transaction, causing the State Treasury significant loss (see paragraph 62 above). In calculating the refund owed by the applicants, the domestic court was thorough and considerate of the cash payments that the applicants made to complete the transaction, as well of their individual financial situation (see paragraph 64 and above).

67. In view of these considerations, the Court finds that the domestic authorities struck a fair balance between the general interest of the community and the applicants' individual interest, without placing an excessive burden on them.

68. Accordingly, the applications are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 16 February 2023.

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| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |