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

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ECHR 321 (2017)
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Complaint about lack of compensation for nationalisation of companies declared inadmissible

The case of **Lubelska Fabryka Maszyn i Narzędzi Rolniczych 'PLON' and Others v. Poland** (application nos. 1680/08, 3117/08 and 46309/13) concerned complaints by two companies and two individuals, the legal successors to companies nationalised during the communist era, that they had been denied compensation for the State's takeover of their property. The two companies also alleged a breach of the right to a fair trial.

In its decision in the case the European Court of Human Rights has unanimously declared the applicants' complaints inadmissible. The decision is final.

The Court found that the applicants did not have a claim under domestic law that could be considered a "possession" protected by Article 1 of Protocol No. 1 (protection of property). The domestic decisions to dismiss the applicants' claims had not been arbitrary or manifestly unreasonable and the Court saw no need to substitute its view for that of the domestic courts. The Court also found the complaints under Article 6 (right to a fair trial) to be manifestly ill-founded.

Principal facts

The applicants are: Lubelska Fabryka Maszyn i Narzędzi Rolniczych 'PLON'; Przedsiębiorstwo Naftowe 'OTERNA'; Iwonna Świątnicka and Michal Ostojski. Lubelska Fabryka Maszyn i Narzędzi Rolniczych 'PLON' and Przedsiębiorstwo Naftowe 'OTERNA' are limited liability companies based in Warsaw. Ms Świątnicka and Mr Ostojski are Polish nationals born in 1949 and 1974 respectively, who live in Łódź (Poland).

All four applicants are the legal heirs of companies which were taken over by the State under a law passed in 1946. Under that legislation, the owners of companies whose property was nationalised were to receive compensation, which was to be calculated under the provisions of a cabinet ordinance. However, the necessary ordinance was never enacted.

After the collapse of communism, the applicants sought to have the nationalisation decisions overturned, but the courts ruled that the original decisions had been lawful.

The first company subsequently lodged a compensation claim in 2004 on the grounds of legislative omission because the State had failed to pass the required ordinance. However, the courts found against the applicant company, in particular because Polish legislation to make the State liable for legislative omission had not come into force until 1 September 2004 and had specifically stated that it was not retroactive.

The second company also sought compensation for legislative omission in 2007, but the case eventually lapsed. The company submitted that its claim lacked any prospect of success given the judgment in the first company's case and the Supreme Court's case-law.

The remaining two applicants originally began proceedings in 1992 to overturn a 1948 nationalisation decision in respect of a textile mill which their predecessor had owned. They also complained about not receiving any compensation. The Supreme Administrative Court handed down a final decision in 2013, rejecting their claims.

Complaints, procedure and composition of the Court

The three applications were lodged with the European Court of Human Rights on 7 and 21 December 2007 and 8 July 2013 respectively.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complained about not being able to obtain compensation for the nationalisation of their property under the 1946 legislation. Under Article 6 § 1 (access to court), the two companies also alleged a breach of their right of access to a court because their claim for compensation had been unsuccessful or lacked any prospect of success.

Decision was given by a Chamber, composed as follows:

Linos-Alexandre Sicilianos (Greece), *President*,
Kristina Pardalos (San Marino),
Aleš Pejchal (Czech Republic),
Krzysztof Wojtyczek (Poland),
Armen Harutyunyan (Armenia),
Tim Eicke (United Kingdom),
Jovan Ilievski ("the former Yugoslav Republic of Macedonia), *judges*,

and also Abel Campos, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1

The Court found that the applicants' complaint under Article 1 of Protocol No. 1 was incompatible *ratione materiae* with the provisions of the Convention. It was therefore to be rejected as inadmissible.

The Court found that the applicants did not have any claim under domestic law that could be described as a possession protected by Article 1 of Protocol No. 1 because of the way the domestic courts had interpreted the legal provisions in question. In addition, the Court considered that the courts had not interpreted the domestic law in an arbitrary or manifestly unreasonable way. Given the Court's limited jurisdiction to interpret domestic provisions, it did not find it necessary to substitute its view for those of the domestic courts.

The Court noted that the domestic courts, including the Supreme Court and the Constitutional Court, had consistently rejected the existence of a right to compensation in national law for legislative omission for failure to enact the ordinance under the 1946 nationalisation legislation, or any other claims for compensation for former owners of nationalised property. In particular, the Supreme Court had held that until the passing of an Amendment Act in 2004 it had not been possible to base a claim on the State's failure to issue the ordinance. That court had also explained that the Civil Code provisions allowing for claims for legislative omission had not come into force until 1 September 2004 and that they were not retroactive. Finally, the Constitutional Court had found that the compensation provision of the 1946 Act had no legal effect in terms of the constitution and that only a statute could regulate compensation for nationalised property.

Article 6 § 1

The first company complained that it had been denied access to a court as its compensation claim had been unsuccessful. The second company alleged that its claim had lacked any prospect of success. The Court found that overall it could not be said that they had been denied or in any way unduly hindered in the exercise of their right of access to a court. It thus rejected those complaints as manifestly unfounded.

The decision 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.