

November 2005

POLAND

(a)	Registration no.	PL/1
(b)	Date	26 September 1990
(c)	Authority	Supreme Court
(d)	Parties	Polish citizens against Embassy of Foreign State
(e)	Points of law	The Supreme Court of Poland stated that the unit of the branch office of the Embassy of the Russian Federation in the Republic of Poland is outside the scope of jurisdiction of the Polish court. In the explanation of the ruling there was expressed the opinion that none of the sovereign States is subject to the law of the other State. It undoubtedly gave voice to the theory of absolute jurisdictional immunity of the State.
(f)	Classification no.	1.a/0.a/
(g)	Source	OSNCP 1991/2-3/17.- III PZP 9/90
(h)	Additional information	
(i)	Summaries	in English

September 26, 1990; Supreme Court resolution SN III PZP 9/90
OSNC 1991/2 3/17 – with grounds therefor

1990.09.26 Supreme Court III PZP 9/90 OSNC 1991/2-3/17

7 judges

Presiding judge: Supreme Court President J. Wasilewski

Supreme Court Judges: J. Iwulski, A. Józefowicz, J. Łętowski, W. Masewicz
(reporting judge), W. Santera, J. Skibińska-Adamowicz.

The Supreme Court, with the participation of I.Kaszczyszyn, a public prosecutor at the Ministry of Justice, in the civil suit case filed by Andrzej B. and Wiesław B. against the Motor Vehicles Technology Centre (Centrum Techniki Samochodowej) (...) in W. for payment, after having examined at an open session the following legal problem as transmitted by the bench of three Supreme Court judges by virtue of the order of 20 March 1990:

"Does the jurisdictional immunity enjoyed by the Commercial Representation (Przedstawicielstwo Handlowe), which constitutes an integral part of the Soviet Union Embassy, cover also the organisational units subordinated to, financed by and acting at that Commercial Representation ?"

has adopted the following resolution:

The Motor Vehicles Technology Centre (...), being an organisational unit of the Commercial Representation at the Embassy of the Soviet Union in Poland, is not subject to the jurisdiction of the Polish courts.

When examining different aspects of the legal problem as submitted for resolution to the bench of seven judges, the Supreme Court considered the following:

1. The granting of immunity from civil jurisdiction to a foreign subject of rights depends on its legal status in the receiving state. In the case under consideration, the Motor Vehicles Technology Centre was established in the implementation of the arrangements provided for in the appendix to the agreement between the Polish Government and the Soviet Union of 18 July 1974 on cooperation in improving technical machines, equipment and apparatus supplied within the framework of mutual commercial exchange. In paragraph 3 of that appendix, the contracting parties have agreed, *inter alia*, to establish at the Commercial Representation of the Soviet Union in Poland three technical centres which would cooperate in the maintenance of motor vehicles, metal and plastic working machines, construction and road building machines, cranes, excavators, wheeled loaders, agricultural machines and tractors.

The phrase used in the above mentioned appendix to the intergovernmental agreement which says that the technological centres in question are to operate at "the Commercial Representation of the Soviet Union" was understood by the competent representatives of both parties in the following manner: the Commercial Representation of the Soviet Union in Warsaw, in the letter addressed to the District Court for Warszawa-Praga of 7 December 1987 designates the Motor Vehicles Technological Centre as "one of the divisions of the Commercial Representation of the Soviet Union in the People's Republic of Poland (...)". The Ministry of Foreign Affairs, in the letter of 14 December 1989, expressed the opinion that "(...) the Motor Vehicles Technology Centre (...) is an organisational unit of the Commercial Representation of the Soviet Union, which, in turn, constitutes an integral part of the Embassy of the Soviet Union in Warsaw (...)".

The Supreme Court is of the opinion that the above described legal status of the Motor Vehicles Technology Centre (...) is justified not only by the obvious right of the diplomatic mission of the Soviet Union in the Republic of Poland to freely shape the organisational structure of that mission and to determine the placement of its constituent elements, but also by other circumstances disclosed in the case. The Motor Vehicles Technology Centre is not an agency of a foreign company or a company under commercial or civil law, or a foreign employing establishment which – according to the Polish law – would have the status of a separate organisational unit with legal personality. The Centre does not conduct any manufacturing or trading activity in the territory of Poland. Its statutory tasks are limited to the promotion of the Soviet technology supplied to Poland. The statutory bodies of the Motor Vehicles Technology Centre did not have the right to submit declarations of will on behalf of the Centre, since the contracts of employment concluded with the plaintiffs in this case required "approval" to be granted by the Commercial Representative of the Soviet Union in Poland. Without considering the question whether or not the Motor Vehicles Technology Centre, within the framework of legal relations in the territory of the Republic of Poland, enjoyed a limited, i.e. special legal capacity granted to some legal persons, which extends beyond the scope of the legal problem as presented to the bench the seven judges, the Supreme Court has determined that the Centre, being an organisational unit of the Commercial Representation of the Soviet Union, did not fall within the national jurisdiction in the meaning of art. 64 § 1 of the Code of Criminal Procedure, and could not appear in the case as the defendant.

2. The Commercial Treaty concluded between the Republic of Poland and the Soviet Union on 7 July 1945 stipulates in art. 8 that the USSR will have a Commercial Representation within the Embassy structure, its legal status having been specified in an appendix to the treaty. The appendix, according to the text of art. 8 of the treaty referred to above, constitutes an integral part of the treaty. It has been stipulated in the appendix that the commercial

representative and his deputies are part of the diplomatic personnel and enjoy all the rights and privileges vested in the members of diplomatic missions. The premises occupied by the Commercial Representation and its Branches enjoy extraterritorial status and, pursuant to paragraph 5 of the appendix, persons who constitute the personnel of the Commercial Representation – citizens of the USSR are not subject to the jurisdiction of the Polish courts in matters which fall within the scope of their internal official relationship.

The commercial treaty specifies, in an unambiguous manner, the legal status of the Commercial Representation of the USSR in Poland, including its Branches or Divisions which constitute part of the Representation's organisational structure.

3. Having recognised the Motor Vehicles Technology Centre as an organisational unit of the Commercial Representation of the USSR, it is justified to conclude that in this case a suit has been filed against a diplomatic representation of a foreign state which enjoys immunity from the jurisdiction (civil, administrative) of the receiving state. This principle, being recognised and respected by the civilised international community, has been consolidated *inter alia* in art. 31, paragraph 1 of the Vienna Convention on diplomatic relations, ratified by Poland by virtue of the governmental declaration of 13 August 1965 (Journal of Laws – Dz.U. No 37, item 235). Earlier, diplomatic privileges in the bilateral relations between the Republic of Poland and the Union of Soviet Socialist Republics had been granted to the Commercial Representation of the USSR by virtue of the Commercial Treaty of 7 July 1945.

The fundamental premise to justify the exclusion of a diplomatic representation from the jurisdiction of the Polish courts is the sovereignty of the sending state, since there exists an obvious and undeniable link between the jurisdictional immunity of a state and the privileges and immunities of its organs. No sovereign and independent state which is a subject of international law can be subordinated to the law of another state.

4. Being guided by the above described premises, the Supreme Court, pursuant to art. 301, paragraph 1 of the Code of Civil Procedure, has adopted the resolution as specified in its conclusion.

(a)	Registration no.	PL/2
(b)	Date	11 January 2000
(c)	Author(ity)	Supreme Court
(d)	Parties	Polish citizen against the Embassy of foreign State
(e)	Points of law	the Supreme Court stated that the jurisdictional immunity of the State can be derived from the principle of state's equality. But that immunity can be only applied to the acts of foreign State as regards the acts of public authorities. Whereas it is impossible to link the State immunity to the acts of its bodies within the scope of civil law transactions. In that decision the Supreme Court stated that Polish labor court has jurisdiction in the case brought by the Polish citizen against foreign embassy concerning the ineffectiveness of giving the notice terminating of the employment. It means that the Supreme Court of Poland first time departed from the concept of the absolute immunity of the State in favor of the concept of limited/functional/jurisdictional immunity of the State
(f)	Classification no.	1.b/0.b/.
(g)	Source	Published on OSNAP 2000/19/723 - IPN 562/99.
(h)	Additional information	
(i)	Summaries	In English

Judgement OSNAP 2000/19/723

2001.01.11 Supreme Court judgement N I PKN 562/99
OSNAP 2000/19/723

gloss of approval: J. Ciszewski OSP 2000/11/175

The Polish courts do have national jurisdiction over a case involving a suit filed by a Polish citizen against the embassy of a foreign state to recognise the termination of an employment contract as being ineffective (suit for reinstatement in job).

Presiding judge: President of the Supreme Court Jan Wasilkowski

Supreme Court judges: Józef Iwulski (reporting judge), Jerzy Kwaśniewski

The Supreme Court, after having examined at a closed session on 11 January 2000 the case filed by Maciej K. against the Embassy [...] C. in W. for reinstatement in job, as a result of the plaintiff's cassation motion against the decision of the Provincial Labour and Social Security Court in Warsaw of 27 March 1998 [...]

has resolved:

to revoke the appealed decision and the decision of the District Labour Court for Warszawa Praga of 8 December 1997 [...]

Plaintiff Maciej K. filed a suit against the Embassy [...] C. in W. for the recognition of the termination notice he received on 22 October 1997 as being ineffective.

The District Labour Court for Warszawa-Praga, by virtue of its decision of 8 December 1997, dismissed the suit. The District Court determined that the case does not fall within the national jurisdiction, which prevents the case against the diplomatic mission of a foreign state from being examined by the Polish court.

The plaintiff filed an appeal against that decision in which he argued that when starting work at the Embassy [...] C., he entered into a contract with an employing establishment, since under art. 6, paragraph 2 of the Labour Code, the representation of a foreign state in Poland is such an establishment. Therefore the Embassy [...] C. is a party of thus established legal relationship, and may be sued before the Polish court. He claimed that the absence of national jurisdiction referred to by the District Court concerns foreigners, i.e. heads of diplomatic representations of foreign countries accredited in the Republic of Poland as specified in art. 1111, paragraph 1, subparagraph 1 of the Code of Civil Procedure. None of the provisions concerning exemption from the national jurisdiction makes use of the term diplomatic mission of a foreign state.

By virtue of the decision of 27 March 1998 [...], the Provincial Labour and Social Security Court in Warsaw dismissed the appeal. The court of second instance determined that art. 6, paragraph 2 of the Labour Code and the provisions of the employment contract do not lift the jurisdictional immunity under art. 1111, paragraph 1, subparagraph 1 of the Code of Criminal Procedure.

The plaintiff filed a cassation motion against that decision. He claimed that article 1111 paragraph 1, subparagraph 1 was infringed by its improper application. He argued that it is not the ambassador or any other representative of the diplomatic mission of a foreign state who is the defendant, but the representation of a foreign state as indicated in art. 6 paragraph 2 of the Labour Code, which, being the employer, has capacity to appear before court and be a party to proceedings (art. 460 of the Code of Civil Procedure), and therefore may be sued in labour law cases.

The Supreme court has determined as follows:

The cassation is justified, since article 1111 paragraph 1, subparagraph 1 of the Code of Civil Procedure had been applied mistakenly. It is because that provision concerns the immunity of a diplomatic representative and not the immunity of a foreign state. It was the Embassy [...] C., as the plaintiff's employer in the meaning of art. 3 and 6, paragraph 2 of the Labour Code, that was the defendant in the case. The Code of Civil Procedure does not regulate in any way the jurisdictional immunity of a foreign state which may be derived from the principle of equality of states. However, such immunity may only cover the activities of a foreign state in the execution of acts of public authority. The immunity of a foreign state may not apply to the activities of that state's authorities in the field of civil law (commercial) transactions in the territory of another state. The Embassy [...] appears in the case under consideration as an employer. i.e. an entity which is a party to civil law transactions. In this capacity, it does not execute acts of public authority of a foreign state, and therefore the jurisdictional immunity enjoyed by that state does not apply to it. Nor are there any grounds to assume that the Embassy [...] C. is covered by the diplomatic immunity of the Ambassador as the diplomatic representative. As has been indicated above, it is the employer (Embassy) which is the defendant party in the case, and the diplomatic representative may only be considered to be the person who manages the organisational unit of the employer (art. 3¹, paragraph 1 of the Labour Code). It is for those reasons that the Supreme Court, in the panel of judges examining the case in question, does not share the interpretation included in the decision of 18 March 1998, I PKN 26/98 (OSNAPIUS 1999 No 5, item 172) and agrees with the critical assessment of it as expressed in the literature (PIP 1999 No 10, p. 108, a gloss by J. Skrzydło, and Palestra 1999 No 9-10, p. 202, a gloss by J. Ciszewski).

For those reasons, pursuant to art. 393¹⁰ of the Code of Civil Procedure, it was legitimate to revoke the appealed decision and the decision of the court of first instance.