

JUDGMENT OF THE SUPREME COURT

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.Kaszczyński, 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.