

JUDGMENT OF THE SUPREME COURT

Judgement OSNAP 2000/19/723

2001.01.11 Supreme Court judgement N I PKN 562/99
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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.