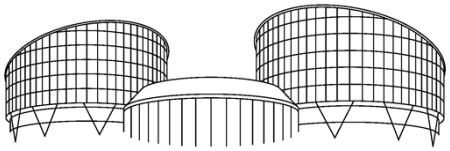

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CHRISTIAN BAPTIST CHURCH IN WROCŁAW v. POLAND

(Application no. 32045/10)

JUDGMENT

STRASBOURG

5 April 2018

FINAL

05/07/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Christian Baptist Church v. Poland,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 13 March 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32045/10) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Christian Baptist Church - II Local Community in Wrocław (*II Zbór Kościoła Chrześcijan Baptystów we Wrocławiu* – hereinafter "the applicant church"), on 9 June 2010.

2. The applicant church was represented by Ms D. Bober, and subsequently by Ms D. Przybylska-Fąfara, lawyers practising in Wrocław. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant church alleged, in particular, a violation of Articles 6 of the Convention and 1 of Protocol No. 1 to the Convention.

4. On 4 February 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a legal entity, a local community of the Christian Baptist Church in the Republic of Poland operating on the basis of the Act of 30 June 1995 on Relations Between the Republic of Poland and the Christian Baptist Church Act (*ustawa o stosunku Państwa Polskiego do*

Kościola Chrześcijan Baptystów w RP – hereinafter "the 1995 Act") with its seat in Wrocław.

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

A. Background to the case

7. The case concerns a property with a four-storey building and another building dedicated to sacral purposes in Wrocław. Before World War II the property was used by the Baptist Commune belonging to the *Bund Evangelisch-Freikirchlicher Gemeinden in Deutschland* operating on the territory of the German Reich. The property number was 1077/42. It measured 0.785 ha.

8. On 4 September 1946 the Wrocław Governor (*Wojewoda Wrocławski*) decided that the property in question should become subject to the applicant church's management *(przejęcie w zarząd)* on the basis of section 2(4) of the 1946 Decree on abandoned property (*dekret o majątkach opuszczonych i poniemieckich* – hereinafter "the 1946 Decree").

9. In 1956 the applicant church lodged a request to be registered in the land and mortgage register as the owner of the property and the request was granted. The property was registered under the number 945.

10. On 23 April 1959 the Minister of the Economy announced a new interpretation of section 2 (4) of the 1946 Decree.

11. On 23 June 1959 the District Residential Buildings Board for Wrocław-Krzyki (*Dzielnicowy Zarząd Budynków Mieszkalnych*) decided that all kinds of property which were subject to the church's management were to pass into the ownership of the State and ordered that the applicant church transfer the property in question to the State. The order did not concern the part of the property which was dedicated exclusively to sacral purposes.

12. On 19 August 1966 a new land-register entry 35905 was opened for the property no. 1077/42. The land-register entry 945 was however not closed.

13. In 1968 the property was registered under the land-register number 35905 was given a new plot number 9 and its area was recalculated. The new measurement was 0.371 ha. It appears that the plot number 9 constituted only a part of the previous property number 1077/42 and comprised only the building dedicated to sacral purposes.

14. The remaining part of the original property number 1077/42, which comprised the four-storey building, was given new plot numbers 39 and 33/5. It measured 0.325 ha and a new land-register entry 63650 was opened for it. In 1977 the State was registered as the owner of this property and, after the reform of the local governments of 1990, the property was transferred to the City of Wrocław.

15. The present application concerns the right to the property referred to above in paragraph 14.

B. Administrative proceedings

16. On 9 May 1996 the applicant church requested that the Wrocław Governor issue a decision confirming the applicant church's ownership of the property in question. It relied on the newly enacted 1995 Act (see paragraphs 47-50 below).

17. On 12 September 1996 the Wrocław Governor refused to issue a decision which would confirm that the property in question belonged to the applicant church. The Governor found that the applicant church had failed to satisfy a requirement laid down in section 39 of the 1995 Act, specifically that it had not possessed the property in question on the day of entry into force of the Act relied upon. The Governor further held that:

> "... in the circumstances of the case, section 40 of the Act likewise cannot be applied because the property in question is located on territory which was not part of Poland before 1 September 1939. The fact that the property was owned by an organisational unit of the Baptist Church operating in the German Reich does not constitute a basis to claim return of ownership because its ownership was transferred to the State under the [1946 Decree]."

18. On 23 September 1996 the applicant church appealed against this decision to the Minister of the Interior and Administration.

19. On 18 February 1998 the applicant church sent a letter to the Minister, specifying that the time-limits laid down in the Code of Administrative Proceedings had been exceeded and requested that the Minister issue a decision.

20. On 1 July 1998 the Minister replied that the length of the proceedings was attributable to amendments of the 1995 Act and informed the applicant church that the relevant decision would be issued by 15 August 1998.

21. This time-limit was not respected and therefore, on 12 January 1999, the applicant church lodged with the Supreme Administrative Court a complaint in respect of the alleged inactivity of the administrative authority.

22. On 5 March 1999, before examination of the applicant church's complaint, the Minister of the Interior and Administration issued a decision, annulling the challenged decision and ordering the return of the case to the Governor. The Minister ordered that, when re-examining the case, the Governor should take into account the amended section 4 of the 1995 Act.

23. In view of the fact that the Minister had issued a decision, on 28 April 1999 the applicant church withdrew the complaint of 12 January 1999 concerning the inactivity of the administrative authority.

24. After remittal of the case, on 24 March 1999, the Governor of Lower Silesia *(Wojewoda Dolnośląski)* asked the Wrocław Commune whether

there was any property available which could be granted to the applicant church in return for the property in question. It appears that the Governor's letter was left without reply.

25. On 29 May 1999 the Governor requested from the Minister of the Interior and Administration an official interpretation of the amended section 4 of the 1995 Act "in view of the many doubts as regards the proper interpretation of this provision".

26. On 20 June 2000 the Minister replied that, since the administrative authorities were bound by provisions of law binding on the day of decision, it was irrelevant that the applicant church's original request had been lodged when section 4 of the 1995 Act had had different wording.

27. On 21 July 2000 the applicant church asked the Governor to issue a decision in its case, pointing out that the time-limits laid down in the Code of Administrative Proceedings had been exceeded.

28. On 20 October 2000 the applicant church lodged a complaint (*zażalenie*) with the Minister of the Interior and Administration that the Governor had exceeded the statutory time-limits and had failed to issue a decision on the merits or to justify the delay in the proceedings.

29. On 7 December 2000 the applicant church lodged a complaint with the Supreme Administrative Court about the alleged inactivity of the Governor.

30. On 1 March 2001 the Minister of the Interior and Administration found the applicant church's complaint of 20 October 2000 well founded and ordered the Governor to issue a decision on the merits before 30 April 2001.

31. On 30 April 2001 the Governor stayed the proceedings.

32. On 7 July 2001 the applicant church appealed against the decision to stay the proceedings.

33. On 17 December 2001 the Minister of the Interior and Administration allowed the appeal, finding that the proceedings should not have been stayed, annulled the challenged decision and returned the case to the Governor.

34. On 12 March 2002 the Supreme Administrative Court examined the applicant church's complaint against the inactivity of the administrative authority and ordered the Governor of Lower Silesia to issue a decision on the merits within the time-limit of thirty days.

35. On 21 June 2002 the Governor's office gave a decision and refused to return the property in question to the applicant church. It found that the applicant church, although registered as owner under the land-register number 945 and treated in the past by the administrative authorities as owner, had never in fact owned the property, which had only been left under the applicant church's administration (*oddane w zarząd*).

36. On 12 July 2002 the applicant church appealed.

37. On 23 September 2002 the Minister of the Interior and Administration annulled the challenged decision and returned the case for re-examination to the Governor. The Minister found, among other things, that the Governor had had no right to question the validity of the entry in the land register.

38. On 23 February 2003 the applicant church complained to the Governor about the delay in the proceedings.

39. On 8 February 2007 the Governor's office gave a procedural decision in which it held that owing to the particularly complicated nature of the case, the decision on the merits could not be issued within the statutory time-limits and set a new deadline for decision of 30 June 2007.

40. On 18 June 2007 the Governor of Lower Silesia gave a decision on the merits and refused to return to the applicant church the property in question. The Governor relied on the amended 1995 Act and found that the applicant church had failed to satisfy the requirements laid down in section 4 of the Act, namely that it could not be a legal successor of the Church which had not operated on the territory of Poland before 1 September 1939.

41. On 11 July 2007 the applicant church appealed.

42. On 6 February 2008 the Minister of the Interior and Administration upheld the challenged decision.

43. On 11 March 2008 the applicant church lodged a complaint with the Warsaw Regional Administrative Court.

44. On 12 September 2008 the Warsaw Regional Administrative Court dismissed the applicant church's complaint.

45. On 10 November 2008 the applicant church lodged a complaint against the Regional Administrative Court's judgment with the Supreme Administrative Court.

46. On 13 October 2009 the Supreme Administrative Court dismissed the applicant church's complaint. The judgment was served on the applicant church's lawyer on 6 January 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relations Between the Republic of Poland and the Christian Baptist Church Act of 30 June 1995 (*ustawa o stosunku Państwa Polskiego do Kościoła Chrześcijan Baptystów w RP* – hereinafter "the 1995 Act")

47. At the time the applicant church lodged the first request for return of the property, section 4 of the 1995 Act provided as follows:

> "The [Baptist] Church and its legal entities are the legal successors of Baptist local communities [*zbór*] and organisations operating on the current territory of the Republic of Poland before 1 September 1939."

48. On 30 May 1998 a new version of Article 4 of the 1995 Act came into force. Section 4 after amendments provides as follows:

> "The (Baptist) Church and its legal entities are the legal successors of Baptist local communities and organisations operating on the territory of the Republic of Poland before 1 September 1939."

49. Section 39 of the 1995 Act, in so far as relevant, provides as follows:

> "1. Properties or parts thereof which on the day of entry into force of this Act are in the possession of the Church or its legal entities become *ipso iure* their property if:
>
> 1) they were in the possession of the legal entities referred to in section 4 of the Act;
>
> ..."

50. Section 40 of the 1995 Act provides, in so far as relevant, as follows:

> "1. Proceedings for the return of the nationalised property or parts thereof, which is not in the possession of the Church or its legal entities referred to in section 39 paragraph 1, (1) are instituted upon the request of the Church or its legal entities notwithstanding the legal basis and method of nationalisation; the above does not concern property nationalised after 1945 for which compensation was paid ..."

B. Decree of 8 March 1946 on abandoned property (*dekret o majątkach opuszczonych i poniemieckich* – "the 1946 Decree")

51. Article 2(4) of the 1946 Decree provided that the ownership of the abandoned property of German and Gdańsk public legal entities was transferred *ex lege* to the "relevant Polish legal entities".

C. Resolution of the Supreme Court of 19 December 1959

52. On 19 December 1959 the Supreme Court issued a resolution of seven judges (I CO 42/59) in which it held that organisational units of religious communities operating on the territory of the People's Republic of Poland (*Polska Rzeczpospolita Ludowa*) could not be considered "relevant legal entities" within the meaning of Article 2 § 4 of the 1946 Decree, because in the Polish legal system they had no "public" nature.

D. Constitutional Court's judgment of 8 November 2005

53. Following a constitutional complaint lodged by the Christian Baptist Church in Gdańsk, on 8 November 2005, the Constitutional Court issued a judgment in which it found that section 7(1) of the Act of 26 June 1997 amending the 1995 Act was consistent with Articles 2 and 64 § 2 of the Polish Constitution and was not inconsistent with Article 25 §§ 3 and 5 of the Constitution. This judgment was issued in identical circumstances to those in the applicant church's case. The Constitutional Court found among

other things that even though section 4 of the 1995 Act had been amended in the course of the administrative proceedings for return of property, the amendment had had no influence on the outcome of the proceedings.

The relevant parts of the Constitutional Court's judgment read as follows:

> "Pursuant to the amended section 4 of the 1995 Act the [Baptist] Church and its legal entities are the legal successors of Baptist churches [*zbory*], local communities and organisations operating on the territory of the Republic of Poland before 1 September 1939.
>
> ...
>
> The complainant – the Christian Baptist Church in Gdańsk is indeed a legal entity, but in the light of documents and the hearing held it is indisputable that the property in question was owned by the *Bund Evangelisch Freikirschlicher Gemeinden in Deutschland* ["the Union"] and not by the Christian Baptist Church or its legal entities (including the Baptist community). During the hearing the complainant made a statement that the Union referred to above was a legal entity of corporate nature which owned properties like churches and other immovable properties including the property which is the subject matter of the present proceedings. This Union continues to operate on the territory of the German Federal Republic. The complainant – the Christian Baptist Church in Gdańsk – said that before 1 September 1939 the Union did not have (as such) a legal personality. Likewise, the claimant was not able to prove itself to be a legal successor of the Union referred to above."

54. The Constitutional Court concluded this part of its reasoning with a statement that:

> "Even assuming that on the basis of section 4 of the amended 1995 Act the property has been acquired *ex lege* (although the Constitutional Court does not share this opinion), acquiring the property in question *ex lege* is excluded because of the lack of the legal succession. It follows that the [Constitutional] Court does not share the complainant's view presented at the hearing that there were statutory conditions for return of the property."

55. The Constitutional Court further held that it was indisputable that the property in question had been taken over by the State on the basis of the 1946 Decree (see paragraph 51 above) and had not been in the possession of the Baptist Church or its legal entities. The Constitutional Court noted the resolution of the Supreme Court of 19 December 1959 (see paragraph 52 above) in which the Supreme Court held that that organisational units of religious communities operating on the territory of the People's Republic of Poland could not be considered "relevant legal entities" within the meaning of Article 2 § 4 of the 1946 Decree and therefore the property of these organisational units had become the property of the State. The Constitutional Court concluded this part of its reasoning by a statement that "the claimant likewise did not acquire the property in question on the basis of the [1946 Decree]."

56. Subsequently the Constitutional Court examined the issue whether the claimant had a "legitimate expectation" to acquire the rights to the

property in question and found that it was not the case. The relevant parts of its reasoning read as follows:

> "The legal construction of return of nationalised property provided for in the [1995] Act consists of several steps ...; the governor [*Wojewoda*] has a wide range of assessment of factual circumstances and methods of [restoring] of property. The sole fact of being a legal successor within the meaning of section 4 of the 1995 Act constitutes only a basis for a request for the return of property, but does not oblige the governor to issue a positive decision. In the Constitutional Court's view, a legitimate expectation to acquire property does not always appear on the final step of the proceedings consisting of several steps. Consequently, it must be found that although the [Baptist] Church might expect a favourable decision, that expectation could not be classified as "legitimate", which [would thus] enjoy legal protection.
>
> In the present case however the most important and decisive argument is the lack of status of legal successor on the part of the complainant. As found above, the complainant does not fulfill the basic statutory condition allowing it to claim return of property ... It follows that even on the basis of section 4 [of the 1995 Act] in its version before the amendment the complainant had no basis to reasonably expect to be granted the property. The amendment of section 4 had therefore no decisive [*zasadniczy*] impact on the complainant's legal situation. To explain the issue in simple words: the complainant commenced proceedings to be granted rights to property that neither the complainant nor its legal predecessors ever owned."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

57. The applicant church maintained that the situation in issue infringed its right to the peaceful enjoyment of its possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, which 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."

A. Exhaustion of domestic remedies

58. The Government raised a preliminary objection that the applicant church had not exhausted all the remedies afforded by Polish law in that it had failed to lodge a constitutional complaint under Article 79 § 1 of the Constitution questioning the compatibility with the Constitution of the

provisions on which the decisions in its case were based. They admitted however that the constitutionality of the relevant provision had been already examined in the Constitutional Court's judgment of 8 November 2005 (see paragraph 53 above) after a constitutional complaint lodged by the Baptist Church of the Gdańsk Community in an identical factual situation. The Government concluded that had the applicant church lodged an identical constitutional complaint, the proceedings would most probably have been discontinued in view of the fact that the matter had already been examined.

59. The applicant church argued that it should not be required to lodge a constitutional complaint and to challenge the constitutionality of section 4(2) of the 1995 Act since the matter had already been examined by the Constitutional Court in the judgment relied on by the Government.

60. The Court notes that the constitutionality of section 4(2) of the 1995 Act was indeed a subject matter of the Constitutional Court's examination. The Constitutional Court found that section 4(2) of the 1995 was consistent with Articles 2 and 64 of the Constitution.

61. In these circumstances the Court holds that it would be unreasonable to require the applicant church to lodge a constitutional complaint alleging the incompatibility of the same legal provisions with the same constitutional provisions in similar factual circumstances.

62. It follows that the Government's plea of inadmissibility on the grounds of non-exhaustion of domestic remedies must be dismissed.

B. Applicability of Article 1 of Protocol No. 1 to the Convention

63. The Government further contended that Article 1 of Protocol No. 1 was not applicable to the present case. They maintained that the applicant church had no existing possessions that would be protected under this provision. Likewise, in the Government's opinion the applicant church had no "legitimate expectation" to be granted the property in question.

64. The applicant church maintained that it had possessions within the meaning of Article 1 of Protocol 1. In this connection it submitted that the State had treated it as the owner of the impugned property for several years after 1946 and that in 1959 the property had been nationalised in violation of the law in force at that time. The 1995 Act was passed with a view to compensating the loss suffered by churches. According to the applicant church the 1995 Act in its original wording had granted it the right to compensation and it had lodged its application at the relevant time. The further amendments to the 1995 Act had deprived the applicant church of its ability to obtain the compensation sought. The applicant church concluded that it had an asset protected under Article 1 of Protocol No. 1.

1. General principles

65. Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

66. An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his or her "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfillment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

67. Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no.39050/97, § 34, 4 March 2003).

68. The hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfill the condition. In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlements. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see *Gratzinger and Gratzingerova*, cited above, §§ 69-74).

69. However, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of

domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50).

2. Application of the above principles to the present case

70. The Court notes that on 9 May 1996 the applicant church, which claimed to be a legal successor of the Baptist communities which had operated before 1 September 1939 on the current territory of Poland, lodged a request to be issued with a decision confirming its ownership of property and a building situated in Wrocław on the basis of sections 39, 40 and 4(2) of the 1995 Act (see paragraph 16 above). On 12 September 1996 the administrative authority of first instance dismissed the applicant church's request, holding that the applicant church had failed to satisfy the statutory requirements to be granted property (see paragraph 17 above). The applicant church appealed and, before the appeal was examined, the relevant provisions of the 1995 Act were amended (see paragraph 48 above). The applicant church consequently claimed that it was the amendment referred to above which had played a decisive role in the dismissal of its request.

71. In this respect the Court notes that a constitutional complaint concerning identical circumstances was examined by the Constitutional Court, which in its judgment of 8 November 2005 found that the complainant – the Christian Baptist Church in Gdańsk – could not claim to have had a legitimate expectation to be granted property because (i) the legal construction of return of property required a governor to issue a decision of constitutive nature; lodging a request did not in any way guarantee a positive outcome to a case and (ii) the complainant could not be granted property because it did not fulfill the basic legal requirement laid down in the relevant provisions, that is to say it was not a legal successor of the previous owner. The Constitutional Court added that the amendment of section 4(2) of the 1995 Act had not significantly changed the situation of the complainant since it lacked the necessary feature authorising it to claim property both before and after the 1997 amendment (see paragraph 56 above).

72. The Court considers that this reasoning made by the Constitutional Court following a constitutional complaint filed by the Christian Baptist Church in Gdańsk may also be applied to the present case. Indeed, similarly to the case of the Christian Baptist Church in Gdańsk, the applicant church failed to show either in the proceedings before the domestic authorities or before this Court that the property in question had been owned before 1 September 1939 by an entity referred to in section 4 of the 1995 Act in its original wording. The Court notes in this connection that the applicant church could have lodged a separate constitutional complaint if it considered that its legal situation differed significantly from that of the Christian Baptist Church in Gdańsk. However, the applicant church chose not to do it. On the contrary, it submitted that the matter had already been

examined by the Constitutional Court and it would not have been reasonable to expect that it to lodge an identical constitutional complaint.

73. For these reasons and in view of the decisions of the domestic administrative authorities referred to above and the Constitutional Court's finding that the provisions of the 1995 Act either in its original wording or after the 1997 amendment could not constitute for the Christian Baptist Church in Gdańsk a basis for its legitimate expectation to be granted the property requested (see paragraph 56 above), the Court finds that similarly to the Christian Baptist Church in Gdańsk also the applicant church in the circumstances of the present case did not have any "existing possessions" or "legitimate expectation" within the meaning of Article 1 of Protocol No. 1 to the Convention and that, therefore, this provision is not applicable to the present case (see *Nadbiskupija Zagrebacka v. Slovenia* (dec.) no. 60376/00, 27 May 2004).

74. It follows that the applicant church's complaint under Article 1 of Protocol No. 1 must be rejected, in accordance with Article 35 § 3 of the Convention, as incompatible *ratione materiae* with the Convention and protocols thereto.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED UNFAIRNESS OF THE PROCEEDINGS

75. The applicant church complained that the prolonged examination of its request had led to a situation in which the final decision had been given after the amendment to the 1995 Act, which had had to be applied retroactively and had deprived it of the right to claim restoration of its property. It relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

76. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

77. The applicant church complained that the proceedings in its case had been unfair because in their course the relevant law had been amended

which had resulted in an unfavourable decision refusing the applicant church a right to claim back the property in question.

78. The Government submitted that the amendment of the 1995 Act had been a direct consequence of entry into force of the Polish Constitution of 2 April 1997 which stipulates that all churches and other religious organisations have equal rights. The amendment had therefore been necessary and proportionate because it had aimed at equalising the situation of all churches in Poland. Without the amendment the applicant church would have been placed in a more favourable position *vis-à-vis* other churches and religious organisations in Poland. They further submitted that in order to counterbalance that amendment, churches had been given the possibility to be restored property which had served sacral purposes and property to extend their farm holdings. The Government further argued that the first administrative decision in the applicant church's case had been issued before the amendment of the 1995 Act and already by that time the administrative authority had found that the applicant church could not be considered a legal successor of the previous owner of the property in question. Thus, the amendment to the 1995 Act had not deprived the applicant church of any "assets". They concluded that the administrative decisions had been subsequently examined by the administrative courts which had not found unlawfulness in the decisions given by the Governor of Lower Silesia and the Minister of the Interior and Administration.

79. The Court reiterates that it has previously found that applicability to current awards of compensation and to pending proceedings cannot in itself give rise to a problem under the Convention since the legislature is not, in theory, prevented from intervening in civil cases to amend the existing legal position by means of an immediately applicable law (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII, *Scordino v. Italy (n° 1)* [GC], no. 36813/97, § 131 CEDH 2006-V, *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 61, 27 May 2004). It has constantly held that, under Article 6 of the Convention, the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws in so far as there appear to be compelling grounds in the general interest (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, Reports of Judgments and Decisions 1997-VII).

80. Turning to the circumstances of the present case, the Court notes that the first decision was indeed given by the administrative authority on 12 September 1996, that is to say before the amendment to section 4 of the 1995 Act came into force. By that decision the applicant church's request to be granted the property was refused, because, according to the Wrocław

Governor, it did not satisfy the requirements laid down in sections 39 and 40 of the 1995 Act (see paragraphs 49 and 50 above). The Court considers that the legislative change was justified by the compelling grounds since it was aimed at harmonisation of the legal situation of all churches (see paragraph 78 above). What is more, it was made at the early stage of the proceedings (see, by contrast, *Papageorgiou v. Greece*, 22 October 1997, § 38, Reports 1997-VI) which distinguishes the case from other cases dealt with by the Court in which the legislative changes altered the course of proceedings which had been pending for years and in which an enforceable judgment had been adopted (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B; and *Tarbuk v. Croatia*, no. 31360/10, § 54, 11 December 2012). Furthermore, as noted above (see paragraph 72), the legislative amendment did not deprive the applicant church of any "legitimate expectation" to acquire property, because that expectation had not been generated even under the original wording of the 1995 Act. The present case must be distinguished from the circumstances in the case of *Scordino v. Italy (n° 1)* (cited above) where the legislative amendment extinguished, with retrospective effect, an essential part of claims for compensation, in very large amounts, that owners of expropriated land could have claimed from the expropriating authorities. The Court agrees with the Government's submission that in these circumstances the applicant church was not deprived of any "assets".

81. The foregoing considerations are sufficient to enable the Court to conclude that the applicant church was not deprived of its right to fair trial.

It follows that in the present case there was no violation of Article 6 of the Convention on account of the alleged unfairness of the proceedings.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF PROCEEDINGS

82. The applicant church further complained of excessive length of the proceedings for return of property. It relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time ..."

83. The Government submitted that they wished to refrain from expressing their opinion on the merits of this complaint. They added however that the proceedings in question had been very complex since they had concerned a difficult legal problem.

A. Admissibility

84. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

85. The Court first notes that the period to be taken into consideration started with the appeal lodged by the applicant church on 23 September 1996 (see paragraph 18 above) (see *König v. Germany*, 28 June 1978, § 98, Series A no. 27, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001, and *Mitkova v. the former Yugoslav Republic of Macedonia*, no. 48386/09, § 49, 15 October 2015). It ended on 13 October 2009 when the Supreme Administrative Court gave its judgment dismissing the applicant church's complaint (see paragraph 46 above). It therefore lasted over thirteen years, in the course of which the case was examined several times by administrative authorities on different levels and by two instances of the administrative courts.

86. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no.30979/96, § 43, ECHR 2000-VII).

87. The Court accepts that the case might have presented some difficulties for the domestic administrative authorities particularly in view of the fact that it involved complicated issues and concerned property which before 1 September 1939 had been located outside of the territory of Poland. Also, the introduction of legislative changes to the relevant provisions in the course of the proceedings might have influenced their overall length. In the Court's view, these reasons are however not capable of explaining such lengthy proceedings. Given that the Government did not provide any other reason to that effect and the fact that the applicant church did not in any way contribute to the length of these proceedings, the Court cannot but find that the applicant church was deprived of its right to a "hearing within a reasonable time".

88. Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of proceedings.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

90. The applicant church claimed 2,786,202.04 Polish zlotys (PLN) in respect of pecuniary damage and PLN 300,000 in respect of non-pecuniary damage.

91. The Government considered these amounts excessive

92. The Court does not discern any causal link between the violation found – that concerns the excessive length of proceedings only – and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant church EUR 5,200 in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant church also claimed PLN 16,000 for the costs and expenses, including PLN 8,000 incurred before the domestic courts. It further submitted that the costs of proceedings before the Court had amounted to PLN 3,978.30.

94. The Government, relying on the Court's case-law (*Zimmermann and Steiner v. Switzerland*, 13 July 1983, § 36, Series A no. 66), recalled that a party seeking reimbursement of costs and expenses must prove that they were necessarily incurred and that they were reasonable as to quantum.

95. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,850 covering costs under all heads.

C. Default interest

96. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 6 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 of the Convention on account of the alleged unfairness of the proceedings;

3. *Holds* that there has been a violation of Article 6 of the Convention on account of excessive length of proceedings;

4. *Holds*

(a) that the respondent State is to pay the applicant church, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,200 (five thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,850 (one thousand eight hundred and fifty euros), plus any tax that may be chargeable to the applicant church, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant church's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Linos-Alexandre Sicilianos President