

## Application of Foreign Law Before the Polish Courts

Judgment of the Supreme Court of 23 May 2013, II CSK 250/12, OSNC [Supr. Court Rep. in Civil Cases] 2014/1/8

### Facts of the case

The plaintiff was a Polish sailor employed by the Bermuda company as the chief engineer in the vessel registered in Liberian ship registry. On the 30th of October 2000, while inspecting the engine valve during the stay in the roadstead by Escravos, Nigeria, the plaintiff fell down from the platform placed more than 10 meters over the low deck. He survived but with severe breakdown of his spinal cord causing him to be wholly paralyzed from the waist down. The plaintiff sued in Poland against the Norwegian tanker operator for damages. His claim succeeded first but then, after establishing the applicability of the law of Liberia as the state under whose flag the ship was sailing at the time of the damage, the courts found against the applicant. The case had been remanded for the re-examination by the Court of Appeal for various reasons twice; finally it was the Supreme Court which overturned the judgment delivered in favor of the defendant with the following motives.

### Excerpts from the SC opinion

[...]

*The accident giving rise to the claim took place while the ship [...] was staying in the port Escravos in the Federal Republic of Nigeria, which has the maritime territory. It is well known that physically uniform marine areas are not uniform in terms of their legal status. Generally speaking, maritime waters can be divided into the waters belonging to the territory of the country, otherwise called the maritime territory of the country, and the high seas, also called the open sea. The territory of the country consists of the internal waters and the territorial sea, whereas the internal waters include, among others, port waters (see. Art. 2, 8, 11 and 86 of the UN Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, Journal of Laws 2002 No. 59, issue 543; Article 1 of the Convention on the High Seas done at Geneva on 29 April 1958, Journal of Laws 1963 No. 33, issue 187). As the part of the land territory, internal waters are subject to the absolute sovereignty of the coastal State. This means that the accident giving rise to the present dispute, which took place on the deck of the ship MT "K.S." during its stay in port Escravos, as the matter of fact occurred on Nigerian territory, and this is why under Article 31 (1) of the Act on Private International Law of 1965 the merits of the case asserted should have been adjudicated according the substantive law of the Federal Republic of Nigeria. We must therefore conclude that the Court of Appeal assessed the claims submitted to it in the light of legal rules of the wrong legal system.*

*Application of an improper substantive law makes it necessary to set aside the attacked judgment under appeal and to remand the case for reconsideration. [...] There were also no reasons for giving any desired effect to the argument that the applicant had no opportunity to defend his rights because of preventing him from being acquainted with the text of the Liberian law.*

[...]

*When amending the wording of Article 1143 (1) of the Code of Civil Procedure [CCP] as from 1 July 2009, the lawgiver clearly indicated that the foreign applicable law shall be established and applied sua sponte by the court itself (see Article 1 (63) of the Act of 5 December 2008 on the amendment of the Code of Civil*

*Procedure, Journal of Laws No. 234, issue 1571). [...] Prior to the amendment, both the case law and the scholarly writings similarly assumed that the foreign law should be applied by a Polish court ex officio, regardless of whether the parties relied on such a need in the particular case [...]. Article 1143 CCP clearly indicates two ways in which the content of foreign law may be determined; there is no doubt, however, that the court may make use also of other means. This results clearly from the Article 1143 (3) CCP in its revised wording, yet even according to Article 1143 prior to its amendment it was well established that also other means may be used to determine the content of the foreign law. The court may e.g. refer to the foreign official journals, other similar collections of legal texts, and scientific publications. Similarly the use of expert opinions or websites containing the text of laws allowed. Anyway, the court is under the obligation of its best endeavors to determine the actual content of foreign law in a form in which it is really applied abroad (see. judgments of the Supreme Court of 11 August 2004, II CK 489/03, unpublished, of 9 May 2007, II CSK 60/07, OSNC 2008/5/53 and of 11 January 2008, V CSK 372/07, unpublished).*

*[...]*

*For the above stated reasons the Supreme Court revoked the attacked judgment and remanded the case for the re-examination under Article 398<sup>15</sup> (1) CCP.*

Corresponding legal literature see [W. Popiołek/M. Zachariasiewicz, Country Report: Poland, in C. Esplugues Mota et al., APPLICATION OF FOREIGN LAW, Sellier: Munich 2011, 275 ff.](#)