



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

THIRD SECTION

CASE OF VARGA v. SLOVAKIA

(Application no. 36931/08)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

19/11/2012

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

In the case of Varga v. Slovakia,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Ineta Ziemeļe,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 36931/08) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovak nationals, Mr Oliver Varga and Mr Barnabáš Varga (“the applicants”), on 21 July 2008.

2. The applicants were represented by Mr R. Belanský, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged a breach of their right to a fair hearing in proceedings concerning their claim for restitution of a plot of land.

4. On 6 September 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Oliver Varga (the first applicant), is a Slovakian national who was born in 1959 and lives in Veľké Kapušany. He is the brother of Mr Barnabáš Varga (the second applicant), a Slovakian national who was born in 1954 and died on 19 May 2009. After his death the first applicant, as his brother’s sole heir, expressed the wish to pursue the application in the second applicant’s stead.

6. In 1981 several plots of land situated in Veľké Kapušany were expropriated from the applicants' family. Their ownership was later transferred to the Veľké Kapušany municipality. Under a contract of 25 July 1991 that municipality transferred the ownership of the plots to a gas distribution company. The applicants' mother, and, after her death in 1993 the applicants, claimed restitution of the plots.

A. The first set of restitution proceedings

7. The municipality refused to restore one of the plots to the applicants' mother under the Extra-Judicial Rehabilitations Act 1991, on the ground that it had been transferred to a legal person. She therefore brought an action with the Trebišov District Court.

8. On 24 April 1995 the District Court ordered the Veľké Kapušany municipality to conclude a contract with the applicants under which the plot in issue would be restored to them. The judgment transferred to the applicants ownership rights in respect of the plot with effect from the date it became final.

9. The District Court established that the municipality possessed the plot at the time of the entry into force of the Extra-Judicial Rehabilitations Act 1991, on 1 April 1991. The subsequent transfer of the plot to a company was void, as section 9(1) of the Extra-Judicial Rehabilitations Act 1991 prohibited transfer of property falling under that Act to third parties after its entry into force.

10. On 27 June 1996 the Košice Regional Court upheld the District Court's judgment.

11. As a result, the plot was restored to the applicants.

B. The second set of restitution proceedings

12. On 16 March 2004 the applicants claimed restitution of a different plot of land with a surface area of 593 square metres by virtue of Law no. 503/2003 on Restoration of Land Ownership ("the 2003 Act").

13. On 27 July 2005 the District Land Office in Michalovce found, with reference to section 6(1)(a) of the 2003 Act, that ownership of the plot could not be restored to the applicants, as it was owned by a legal person. The decision acknowledged that under section 6(2) of the 2003 Act, the applicants were entitled either to have an alternative plot of land owned by the State transferred to them or to financial compensation. The redress was to be provided by the Slovak Land Fund.

14. The first applicant sought judicial review of the administrative decision. He argued that the administrative authority had not decided within the time-limit laid down in section 49 of the Administrative Proceedings Act 1967, and that section 6(1)(a) of the 2003 Act, excluding restitution of

the plot on the ground that it was owned by a legal person, was enacted with effect from 1 May 2004, that is after the proceedings had been brought. That provision should not, therefore, have been applied to his claim with retroactive effect. Finally, the first applicant argued that the expropriation of the land in 1981 and its transfer to a company in 1991 had been unlawful.

15. On 21 February 2006 the Košice Regional Court upheld the administrative decision of 27 July 2005. It held that the Land Office had decided in accordance with the law as in force at the material time. The Regional Court considered the argument that the plot was not being used for the purpose for which it had been expropriated irrelevant, as it was uncontested that the applicants were entitled to redress pursuant to the relevant provisions of the 2003 Act.

16. On 17 January 2007 the Supreme Court upheld the first-instance judgment. It held that the Regional Court had established all relevant facts and had applied the relevant law correctly. The judgment indicated that the thirty-day period set out in section 49 of the Administrative Proceedings Act 1967 was of a procedural nature. A failure by an administrative authority to respect it did not affect the legal position of parties to the proceedings. It was nevertheless open to parties who considered themselves affected to claim compensation in accordance with special law. The Supreme Court further confirmed the conclusion that, since the applicants were clearly entitled to redress under the 2003 Act, it was superfluous to take further evidence or to examine the lawfulness of the expropriation of the property in 1981 and its subsequent transfer to a different person in 1991.

17. The decision on the applicants' claim became final on 21 February 2007.

18. On 23 April 2007 the applicants lodged a complaint with the Constitutional Court. They alleged a breach of their constitutional right to judicial protection in the proceedings on their restitution claim of 16 March 2004. They claimed that the transfer of their land in the same area to a gas distribution company on 25 July 1991 had been found contrary to the Extra-Judicial Rehabilitations Act 1991. The courts, dealing with their first restitution claim, had declared that transfer void on that ground. The courts dealing with their second restitution claim had disregarded their argument in that respect. They further argued that the ordinary courts' conclusion, that the newly enacted section 6(1)(a) of the 2003 Act was to be applied to their case, was contrary to the constitutional principle of legal certainty and prohibition of laws having retroactive effects.

19. On 6 December 2007 the Constitutional Court dismissed the applicants' complaint. It found no appearance of unlawfulness or arbitrariness in the proceedings leading to the Supreme Court's judgment. Reference by the applicants to the fact that the transfer of their land to a company had been found unlawful in the context of a different set of proceedings under the Extra-Judicial Rehabilitations Act 1991 was not

capable of undermining the conclusion the Supreme Court had reached in the proceedings under consideration governed by a different piece of legislation. The administrative authority and ordinary courts had decided in accordance with the relevant law then in force. In the context of the proceedings introduced by the applicants the Constitutional Court lacked the power to examine whether that law was in conformity with the Constitution.

20. The Constitutional Court's decision became final on 19 February 2008.

21. The applicants' right to claim either an alternative plot of land or financial compensation from the Slovak Land Fund as foreseen by section 6(2) and (8) of the 2003 Act lapsed on 21 February 2010, as they had not availed themselves of that right before that date.

II. RELEVANT DOMESTIC LAW

A. The 2003 Act

22. Law no. 503/2003 on Restoration of Land Ownership ("the Land Ownership Restoration Act 2003", "the 2003 Act") governs restitution of agricultural and forest land which was not restored under earlier legislation.

23. Section 4(1) specifies that the obligation to restore land covered by that law extends to legal persons who, at the moment of its entry into force, use or administer land in the ownership of the Slovak Republic, and to agricultural cooperatives.

24. Until 30 April 2004 section 6(1)(a) provided that where the land in issue was owned by a natural person it could not be restored to the person entitled to claim it. With effect from 1 May 2004 that provision was amended, in that the exemption from the obligation to restore land extended also to cases where the land was in the ownership of legal persons who were different from those referred to in section 4(1).

25. Pursuant to section 6(2), in cases where land cannot be restored for reasons set out in sub-section 1, alternative land in State ownership of an appropriate area and quality should be transferred free of charge to the person concerned, where possible within the area of the same municipality. Where the person concerned disagrees with such a transfer, he or she is entitled to financial compensation. Its amount is to be determined in accordance with the Ministry of Justice Regulation 576/2003 on determination of general value of property.

26. Section 6(8), amended with effect from 1 January 2008, allowed for a request for an alternative plot or compensation to be lodged with the Slovak Land Fund before 1 January 2009 as regards decisions which became final before 1 January 2008, but in all cases at least three years from the date the relevant decision takes effect.

B. The Administrative Proceedings Act 1967

27. Section 49(1) obliges administrative authorities to decide on simple matters immediately.

28. Pursuant to section 49(2), in other matters administrative authorities are obliged to decide within thirty days, unless a different period has been fixed in a special law. The thirty-day period can be extended to sixty days in particularly complex cases. Any further extension has to be approved by a higher authority.

THE LAW

I. THE SECOND APPLICANT'S DEATH

29. The second applicant died on 19 May 2009. The first applicant, as his brother's sole heir, expressed the wish to pursue the application in the second applicant's stead as well.

30. The Court accepts that the first applicant as his brother's heir has a legitimate interest in pursuing the application in his stead (see also *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicants complained that their right to a fair hearing had been breached in the proceedings concerning their restitution claim. They relied on Article 6 § 1 of the Convention, which reads as follows:

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

32. The Government contested that argument.

A. Admissibility

33. The Court notes that the application 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

34. The applicants alleged that the dismissal of their claim on the basis of a legislative amendment enacted after the introduction of the proceedings had been in breach of their right to a fair hearing by a tribunal. They further maintained that the domestic authorities had failed to establish the relevant facts correctly, disregarded their argument that the property had been taken away from their predecessors unlawfully, and had decided arbitrarily. The applicants also argued that a legislative amendment had reduced the limitation period for claiming compensation to three years in 2008, and that they had not been informed thereof.

35. The Government admitted that the amendment of section 6(1)(a) of the 2003 Act with effect from 1 May 2004 interfered with pending restitution proceedings including those of the applicants. That interference pursued the aim of ensuring the legal certainty and equal protection to natural persons and private-law legal persons who had acquired the property in issue in good faith. The interference was thus in the general interest and did not overturn the situation of individuals to whom the 2003 Act applied, as they were entitled to compensation. The Government further argued that the guarantees of Article 6 § 1 had been complied with in the proceedings complained of.

36. The Court notes that the present case concerns the applicants' claim for restitution of land which had been taken away from their predecessors under the communist regime, before the entry into force of the Convention in respect of Slovakia. As regards such situations, the Court has acknowledged that the Contracting States enjoy a wide margin of appreciation in choosing the conditions under which they agree to restore property rights or to provide other form or redress to former owners. The enactment of laws providing for such redress involved comprehensive consideration of manifold issues of a moral, legal, political and economic nature (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35-38, ECHR 2004-IX, with further references).

37. In this context the Court accepts the Government's argument that the amendment excluding restitution of real property under the 2003 Act, where such property was owned not only by natural persons but also by legal persons falling under the regime of private law, pursued the aim of ensuring legal certainty for those owners. Obliging legal persons, similarly as the natural ones, who owned property in good faith to return it to the original owners or their heirs would require further measures with a view to ensuring appropriate compensation for them. This is supported by the fact that the amendment excluded restitution *in natura* of real property only in respect of legal persons who did not use or administer State-owned property. Albeit not relevant in the case of the present applicants, the obligation of the State

to restore such property where it was still in its possession remained unaffected.

38. The legislative amendment under consideration was thus enacted with a view to addressing an issue of general interest which concerned a number of persons, and not for the specific purpose of interfering with the proceedings which the applicants had brought. It did not deprive the applicants of the right to claim other forms of redress available. In particular, section 6(2) of the 2003 Act provided for transfer of different land in State ownership of an appropriate area and quality to the person concerned, where possible within the area of the same municipality. Where the person concerned disagreed with such a transfer, he or she was entitled to financial compensation.

39. In view of the above considerations, the Court takes the view that the legislative amendment in issue which modified the legal framework as regards real property restitution claims was not contrary to the applicants' right under Article 6 § 1 of the Convention in the circumstances.

40. It is true that, on 1 January 2008, the limitation period for submitting claims for an alternative plot of land or compensation with the Slovak Land Fund was reduced to three years. The applicants had until 21 February 2010 to submit such a claim, but they failed to do so. There is no indication that that failure can be imputed to the respondent State or that an issue under Article 6 of the Convention arises in that regard.

41. The Court further reiterates that its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

42. The documents available indicate that the domestic courts considered the applicants' arguments and gave sufficient and relevant reasons for their decisions (paragraphs 15, 16 and 19 above), which do not appear to be arbitrary. There is no appearance of unfairness in the way in which the domestic authorities dealt with the applicants' case.

43. The foregoing considerations are sufficient to enable the Court to conclude that in the present case there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the first applicant has standing to continue the present proceedings in his late brother's stead;
2. *Declares* the application admissible;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President