



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

THIRD SECTION

CASE OF ZBOROVSKÝ v. SLOVAKIA

(Application no. 14325/08)

JUDGMENT

STRASBOURG

23 October 2012

FINAL

23/01/2013

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

In the case of Zborovský v. Slovakia,

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

Josep Casadevall, *President*,

Egbert Myjer,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 14325/08) 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 Imrich Zborovský and Mr František Zborovský (“the applicants”), on 7 March 2008.

2. The applicants were represented by Mr M. Macko, 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, in particular, that the resolution of their property dispute by the domestic courts and the rejection of their appeal on points of law and two constitutional complaints had been incompatible with their rights under Articles 6 § 1 of the Convention and 1 of Protocol No. 1.

4. On 24 February 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. The applicants are brothers. They were born in 1954 and 1956 and live in Neratovice (the Czech Republic) and Prešov (Slovakia) respectively.

A. Property

6. The applicants' father owned a piece of real estate located in the centre of the city of Prešov, which comprised a plot of land and buildings standing on it.

7. On their father's death in 1964, the applicants each inherited half of that estate.

8. The estate was subsequently seized by a State-owned enterprise and some of the buildings were torn down and new ones built. The new buildings included a garage.

9. In the early 1990s the State-owned enterprise was privatised and transformed into a joint stock company.

10. In 1992 the applicants brought an action for removal of the garage and vacant possession of their land. This action and its outcome is the main subject matter of the present application. The details are given below.

11. In 2004 title to a portion of the real estate, which included the garage, was transferred from the joint-stock company to three individuals. Consequently, the action of 1992 was redirected against them.

12. In 2005 the applicants brought another action seeking a judicial ruling declaring them to be the owners of the plot on which the garage was situated and of an adjacent plot. The action was directed against the three beneficiaries of the transfer of 2004 (see previous paragraph).

13. On 27 September 2006, following a hearing held on the same day, at which the defendants acknowledged the applicants' title, the Prešov District Court (*Okresný súd*) allowed the action of 2005.

14. On 15 November 2006, on the basis of the ruling of 27 September 2006, the applicants and the defendants settled their differences by exchanging title to the garage for title to the adjacent plot, under the judgment mentioned above, and by setting off their mutual financial claims, including those under the judgments mentioned below.

B. Action of 1992

1. First level of jurisdiction and appeal

15. On 27 February 1992 the applicants lodged an action with the District Court seeking a judicial order for removal of the garage and vacant possession of their land.

16. The District Court ruled on the action on 13 December 1995 and 18 November 1997. These judgments were quashed on appeal (*odvolanie*) and the action was remitted by the Košice Regional Court (*Krajský súd*) on 16 April 1997 and the Prešov Regional Court on 22 November 1998 respectively.

17. On 30 September 2005 the District Court ruled on the action anew. It relied on the above-mentioned decision of the Prešov Regional Court of 22 November 1998 in acknowledging that the applicants were the owners of the land on which the garage stood and that the garage had been constructed on that land without the consent of its owners. The garage was therefore considered an “unlawful construction”. It was not practicable (*účelné*) to remove the garage or to have the applicants take over title to it. The situation had to be resolved under Article 135c § 3 of the Civil Code by establishing an easement for the benefit of the owners of the garage and by ordering that they pay the applicants compensation in an amount equivalent to some 3,050 euros (EUR). The amount of compensation was determined on the basis of an expert assessment with reference to existing prices as opposed to future prices.

18. On 11 April 2006 the Prešov Regional Court upheld the judgment of 30 September 2005 following appeals by both the applicants and the defendants. The Regional Court fully endorsed the reasoning provided by the District Court, referred to previous judicial practice and held that in matters such as that at hand the courts were not bound to follow the parties’ specific requests, but rather had to resolve the matter within the parameters set by statute.

2. *Appeal on points of law*

19. On 6 June 2006 the applicants challenged the judgment of 11 April 2006 by way of an appeal on points of law (*dovolanie*). They relied on Article 237 (e) of the Code of Civil Procedure (“CCP”) and argued that the courts had wrongfully ruled on their action *ultra petitem*. In particular, the applicants argued that in litigious matters such as theirs the courts were bound by the plaintiffs’ formulation of the claims. The applicants had been seeking a ruling for removal of the garage or alternatively to have them established as the owners of the garage. However, the courts had made a ruling establishing an easement, which had not been sought. In addition, the applicants argued that the lower courts had failed to hear and examine all the evidence they had adduced.

20. On 25 January 2007 the Supreme Court (*Najvyšší súd*) declared the appeal on points of law inadmissible. It upheld the Regional Court’s view that when dealing with “unlawful constructions” the courts were not bound by the specific requests made by the parties to the proceedings. A specific request for the situation to be resolved by way of establishing an easement had therefore not been required. The applicants did not have a right as such to have all evidence they adduced examined and taken into account. The appeal was thus not admissible on the ground identified by the applicants and neither was it admissible on any other ground envisaged by law.

C. Constitutional Court

1. First complaint

21. On 17 March 2005, following a complaint by the applicants under Article 127 of the Constitution, the Constitutional Court (*Ústavný súd*) found that the District Court had violated their right to a hearing within a reasonable time and ordered that the District Court proceed with the case without delay. It awarded each applicant the equivalent of some EUR 515 in just satisfaction in respect of non-pecuniary damage.

2. Second complaint

22. On 6 June 2006 the applicants lodged a new constitutional complaint. They contested delays in the proceedings subsequent to the Constitutional Court's judgment of 17 March 2005 and challenged the judgments of the District Court of 30 September 2005 and the Prešov Regional Court of 11 April 2006 as having treated them unequally.

23. On 4 January 2007 the Constitutional Court declared the complaint inadmissible. It discerned no unjustified delays in the proceedings and rejected the relevant part of the application as manifestly ill-founded.

The Constitutional Court held that an appeal on points of law was a remedy that was available to the applicants, and observed that they had in fact used it (see paragraph 19 above). As it was still pending, that part of their constitutional complaint was premature.

3. Third complaint

24. On 19 April 2007 the applicants lodged a fresh constitutional complaint. They relied, *inter alia*, on Articles 6 § 1, 13 and 14 of the Convention and 1 of Protocol No. 1 and challenged the rulings of the Supreme Court of 25 January 2007 (see paragraph 20 above), the Prešov Regional Court of 11 April 2006 (see paragraph 18 above) and the District Court of 30 September 2005 (see paragraph 17 above) arguing that these rulings were incompatible with their property rights, of which they had failed to obtain protection.

25. On 24 May 2007 the Constitutional Court declared the complaint inadmissible. It found that the complaint had been lodged outside the statutory two-month time-limit in so far as it concerned the rulings of the Prešov Regional Court of 11 April 2006 and the District Court of 30 September 2005.

26. The complaint in respect of the decision of the Supreme Court of 25 January 2007 was manifestly ill-founded because that decision was not vitiated by any constitutionally relevant unlawfulness, arbitrariness or irregularity.

The written version of the Constitutional Court's decision was served on the applicants' lawyer on 25 January 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution (Constitutional Law no. 460/1992 Coll., as amended)

27. The "right to judicial and other legal protection" is laid down in Section (*Oddiel*) Seven of Part (*Hlava*) Two, dealing with "basic rights and freedoms". The relevant part of Article 46 provides as follows:

"1. Everyone shall be able to assert his or her rights in a procedure provided for by a statute before an independent and impartial court of law and, in cases defined by a statute, before another organ of the Slovak Republic...

4. Conditions and details of judicial and other legal protection shall be provided for by a statute."

28. Article 127, subsumed under Section One (dealing with Judicial Power) of Part Seven (dealing with the Constitutional Court), provides:

"1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2 If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash that decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from violating the fundamental rights and freedoms... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated."

B. Constitutional Court Act (Law no. 38/1993 Coll., as amended)

29. Under section 53(1), a complaint under Article 127 of the Constitution is admissible only where the complainant has used effective remedies provided for by the law to protect his or her fundamental rights. A complaint to the Constitutional Court can be lodged within two months of a decision finally taking effect or from the date of a contested measure or notification of another interference with a person's rights (section 53(2)).

C. Civil Code (Law no. 64/1963 Coll., as amended)

30. The settlement of matters related to “unlawful constructions” is regulated by Article 135c, which provides that – if a construction is erected on a surface belonging to someone else, the removal of the construction at the expense of its owner may be ordered by a court upon application for this remedy by the owner of the surface (paragraph 1).

If however the removal of the construction does not prove practicable, and subject to consent by the owner of the surface, the court establishes the owner of the surface to be the owner of the construction, in return for the payment of compensation (paragraph 2).

The court also has the power to settle the relations between the owner of the surface and the owner of the construction differently, in particular by establishing an easement to enable the exercise of the ownership right in respect of the construction.

D. Code of Civil Procedure (Law no. 99/1963 Coll., as amended)

31. The relevant provisions concerning appeals on points of law are laid down in Articles 236 et seq. They are summarised, for example, in the Court’s judgment in the case of *Ringier Axel Springer Slovakia v. Slovakia* (no. 41262/05, §§ 61-68, 26 July 2011).

E. Constitutional Court practice

32. In case no. III. ÚS 114/2010 the complainant alleged a violation of his procedural rights and property rights by virtue of judicial decisions at first instance and on appeal. In parallel to his constitutional complaint he lodged an appeal on points of law relying on Article 237 (f) of the CCP.

33. On 23 March 2010 the Constitutional Court declared the complaint inadmissible. It found that since the complainant had asserted his rights by way of an appeal on points of law, and since that appeal was still pending, the principle of subsidiarity enshrined in Article 127 § 1 of the Constitution and section 53(1) of the Constitutional Court Act precluded a parallel examination of the same subject matter by the Constitutional Court.

34. At the same time, however, the Constitutional Court made a pronouncement concerning the application of the statutory two-month time-limit for lodging a fresh constitutional complaint in the eventuality of a rejection of the complainant’s appeal by the Supreme Court. In that respect, “bearing in mind the purpose of the fundamental right to judicial protection under Article 46 § 1 of the Constitution”, and making a specific reference to the Court’s judgment in the case of *Zvolský and Zvolská v. the Czech Republic* (no. 46129/99, §§ 51, 53 and 54, ECHR 2002-IX), the Constitutional Court held that, in addition to the decision of the court of

cassation, the time-limit would be considered as having been respected also in respect of the previous decision of the court of appeal.

35. This line of reasoning was upheld by the Constitutional Court in its decision of 27 September 2011 in case no. III. ÚS 407/2011, with reference to the principle of “substantive protection of constitutionality”.

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT OF ACCESS TO COURT UNDER ARTICLE 6 § 1 OF THE CONVENTION

36. The applicants complained that the courts had arbitrarily rejected their appeal on points of law and constitutional complaints of 2006 and 2007. They alleged a violation of 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... by [a]... tribunal...”

A. Admissibility

37. The Government submitted that the applicants’ claim of 1992 had been properly examined and resolved by the domestic courts within the parameters of Article 135c of the Civil Code; that in view of the subsequent settlement of their differences with the defendants (see paragraph 14 above) the applicants could not be considered as having suffered a “significant disadvantage”; and that there were no reasons linked to the “respect for human rights” requiring an examination of the applicant on the merits.

Therefore, as a general objection in respect of the application as a whole, the Government proposed that it be declared inadmissible under Article 35 § 3 (b) of the Convention.

38. The applicants disagreed, and emphasised that the settlement of their differences with the defendants had been forced upon them by the circumstances, including the outcome of their action of 1992. In other words, had it not been for the judgments of 30 September 2005 and 11 April 2006 (see paragraphs 17 and 18 above), they would never have accepted the settlement of 15 November 2006 (see paragraph 14 above). In addition, the compensation awarded to them under the contested judgments was grossly inadequate in view of all the circumstances.

39. The Court finds that the Government’s objection under Article 35 § 3 (b) of the Convention has to be examined in respect of the applicants’

complaint under Article 6 § 1 of the Convention concerning the alleged lack of access to court separately from their remaining complaints.

Accordingly, the Court will first examine that objection with reference to the complaint regarding access to court.

In that respect, the Court considers that the Government's objection raises issues which are closely linked to the merits of the complaint in question and that it would be more appropriately examined at the merits stage.

40. At the same time, the Court considers, in the light of the parties' submissions, that the complaint regarding access to court raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must accordingly be declared admissible.

B. Merits

1. The parties' arguments

41. The Government recapitulated the facts and pointed out that, following the applicants' 2007 constitutional complaint, the Constitutional Court had reviewed the Supreme Court's decision of 25 January 2007 on its merits and had found it beyond reproach (see paragraphs 20 and 26 above).

In that respect, the Government sought to distinguish the present case from *Zvolský and Zvolská* (cited above) and *Běleš and Others v. the Czech Republic* (no. 47273/99, ECHR 2002-IX) on the facts, because, in the former, the applicants' constitutional appeal had been rejected as belated (the appeal court's decision not having restarted the running of the time-limit for a constitutional appeal), while in the latter it had been rejected due to the applicants' failure to appeal on points of law under Article 239 § 2 of the Czech CCP.

The Government further sought to distinguish the present case from that of *Stavebná spoločnosť TATRY Poprad, s.r.o. v. Slovakia* (no. 7261/06, 3 May 2011) basing the distinction on the manner in which the Supreme Court had dealt with the respective appeals on points of law.

In particular, the Government pointed out that when appealing on points of law in *Stavebná spoločnosť TATRY Poprad, s.r.o.*, the applicant had relied on Article 238 of the CCP and that the Supreme Court had failed to examine the case under that provision, limiting itself to examination of the case under Article 237 of the CCP. By contrast, in the present case the Supreme Court had examined the applicants' appeal on points of law precisely as they had formulated it, that is to say under Article 237 (e) of the CCP (see paragraphs 19 and 20 above).

42. In conclusion, the Government submitted that the examination of the applicants' constitutional complaints of 2006 and 2007 had been fully compliant with the applicable law, in line with the established practice, and, as such, compatible with the applicants' right of access to court.

43. The applicants disagreed and reiterated their complaint. In particular, they submitted that the subject matter of their 2006 constitutional complaint and their appeal on point of law had not been identical, in as much as the former also contained a complaint of discrimination, which was not part of the latter. That complaint had accordingly received no examination.

2. The Court's assessment

(a) General principles

44. The Court reiterates that the right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the principle of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see *Běleš and Others*, cited above, § 49). In this way the right to a fair hearing embodies the "right to court", one aspect of which is the right of access, that is the right to institute proceedings before courts in civil matters (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 43, ECHR 2001-VIII; and *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X). In other words, everyone has the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see, among many other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 50, ECHR 1999-I).

45. The Court also reiterates that a restrictive interpretation of the right of access to court guaranteed by Article 6 § 1 would not be consonant with the object and purpose of the provision (see *De Cubber v. Belgium*, 26 October 1984, § 30, Series A no. 86).

46. The Court further reiterates that Article 6 § 1 does not guarantee a right of appeal as such. However, where several levels of jurisdiction do exist, each of those levels must comply with the guarantees of Article 6, including the right of effective access to court (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 37, *Reports of Judgments and Decisions* 1997-VIII). Moreover, parties to proceedings must be able to exercise usefully the rights of appeal or other remedy available to them (see *Hadjianastassiou v. Greece*, 16 December 1992, § 33, Series A no. 252; and *Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands*, no. 46300/99, § 48, ECHR 2004-X).

47. At the same time, the Court reiterates that the "right to court", is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by

its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and *Mortier v. France*, no. 42195/98, § 33, 31 July 2001). Nonetheless, the limitations applied must not restrict or reduce the individual's access in such a way or to such an extent as to impair the very essence of the right (see *Guérin v. France*, 29 July 1998, § 37, *Reports* 1998-V).

48. As regards rules setting time-limits for bringing appeals, the Court reiterates that they must not be applied in a way which prevents litigants from using an available remedy and a claim from being examined on the merits, in breach of the right to the effective protection of the courts (see, *mutatis mutandis*, *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41787/98 and 41509/98, §§ 33 and 37, ECHR 2000-I, and *Zvolský and Zvolská*, cited above, § 51).

(b) Assessment of the present case

49. The Court observes that, in the present case, the applicants sought resolution of their property dispute, *inter alia*, by way of their action of 1992. It also observes that this action was examined by the ordinary courts at two levels of jurisdiction. Nevertheless, as such examination did not bring about a result which was acceptable to the applicants, they carried on asserting their rights by way of an appeal on points of law and two constitutional complaints, all of which were declared inadmissible (see paragraphs 20, 23 and 25 above).

50. The Court further observes that, where the protection of fundamental rights or freedoms in Slovakia does not fall within the jurisdiction of a different court, Article 127 of the Constitution allows those concerned to seek protection of such rights or freedoms before the Constitutional Court (see paragraph 28 above). In that respect, the Constitutional Court has been acknowledged as being the supreme authority for the protection of human rights and fundamental freedoms in Slovakia with the jurisdiction to examine individual complaints and to afford those concerned redress if appropriate (see, *mutatis mutandis*, *Lawyer Partners a.s. v. Slovakia*, nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, § 45, ECHR 2009-..., with further references).

51. As to the instant case, the Court notes that the bone of the applicants' contention before the Supreme Court and the Constitutional Court was that the courts had ruled *ultra petitem*, that they had failed to hear and examine all the evidence, and that they had treated the applicants unequally (see paragraphs 19, 22 and 24 above). The applicants' constitutional complaint of 2006 was however rejected without an examination of its merits on the ground that their appeal on points of law was still pending; the examination

of their appeal on points of law by the Supreme Court was limited to an examination as to whether the appeal on points of law was admissible on any of the statutory grounds; and, in its turn, the Constitutional Court's examination of the applicants' complaint of 2007 was limited to a review of the Supreme Court's assessment of the admissibility of the applicants' appeal on points of law. This resulted in an actual bar to examination of the applicants' substantive claims as may be seen for example with respect to their discrimination claim.

52. As regards that claim, in particular, the Court notes that it was not asserted before the Supreme Court, that there does not appear to have been an opportunity to assert it there and that, despite the wording of Article 127 of the Constitution, it was excluded from examination by the Constitutional Court. In this respect, the Court has found no relevant distinction between, on the one hand, the present case, and, on the other, the cases of *Zvolský and Zvolská* (cited above), *Běleš and Others* (cited above) and *Stavebná spoločnosť TATRY Poprad, s.r.o.* (cited above).

53. The Court also observes that the problem of access to the Constitutional Court in cases where an appeal on points of law has been rejected has been recognised by the Constitutional Court itself in the cases nos. III. ÚS 114/2010 and III. ÚS 407/2011 where it was resolved in accordance with the principles established in the Court's judgment in the case of *Zvolský and Zvolská* (cited above) (see paragraphs 32-35 above). However, there is no indication as to whether the cited decisions of the Constitutional Court, which post-date those taken in the present case, have developed into an established practice. In any event, the position adopted by the Constitutional Court in the present case is contrary to the approach in those later decisions.

54. The problem obtaining in the present case therefore appears to be of a structural character, involving questions of functional and hierarchical relations of domestic remedies. At the same time, as it appears *inter alia* from the argumentation of the Government, there is no indication that the interpretation of the applicable rules on admissibility of constitutional complaints is of historical interest only.

55. The Court therefore concludes that even assuming that the other criteria for rejecting the complaint under Article 35 § 3 (b) of the Convention are met, respect for human rights as defined in the Convention and the Protocols thereto requires its examination on the merits (see, for example, *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010, and, *a contrario*, *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 39, 1 June 2010).

56. The foregoing considerations are sufficient to enable the Court to conclude that the rejection of the relevant part of the applicants' constitutional complaint of 2007 on the ground that it had been introduced more than two months after the contested rulings of 11 April 2006 and

30 September 2005, in combination with the rejection of the relevant part of the applicants' constitutional complaint of 2006 as premature, was not compatible with their right of access to court.

The Court accordingly rejects the Government's inadmissibility objection and concludes that there has been a violation of Article 6 § 1 of the Convention.

II. REMAINING ALLEGED VIOLATIONS

57. The applicants also relied on Articles 6 § 1, 13, 14, 17 and 18 of the Convention and Article 1 of Protocol No. 1, complaining that the outcome of their action had not served any public interest, that their property rights had been arbitrarily suppressed, and that the courts had arbitrarily established an easement despite not having been called upon to do so.

58. In so far as these complaints had been brought to their attention, in addition to the above-mentioned objection under Article 35 § 3 (b) of the Convention, the Government considered that they were manifestly ill-founded.

59. The applicants reiterated the complaints and emphasised that, in view of all circumstances, the impugned interference with their property rights was disproportionate.

60. However, in the light of all the material in its possession, and in so far as the remainder of the application is within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that the remainder of the application is in any event manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicants claimed EUR 9,759 in respect of pecuniary damage, consisting of the actual damage and profit lost as a result of the alleged violation of their property rights. They also claimed EUR 5,000 in respect of non-pecuniary damage.

63. The Government contested both claims, the former in principle, the latter as to its amount, which they considered overstated.

64. The Court does not discern any causal link between the violation found (see paragraph 56 above) and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicants jointly EUR 3,250 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicants also claimed EUR 1,185 for legal costs before the Supreme Court (EUR 395), the Constitutional Court (EUR 395) and the Court (EUR 395), these amounts having been calculated under the applicable remuneration scales for lawyers in Slovakia. In support of their claim, the applicants submitted that they had concluded an oral agreement with their lawyer under which these costs were payable to him on the conclusion of the case before the Court, which was why they were not in a position to submit any invoice.

66. The Government did not contest the amount of the claim but objected that it was not supported by any documents.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

68. In the instant case, the Court observes that the applicants have not substantiated their claim with any relevant supporting documents establishing that they were under an obligation to pay the costs of legal services and administrative expenses or that they have actually paid them. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest rate

69. 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. *Joins* to the merits of the complaint under Article 6 § 1 of the Convention concerning the alleged lack of access to court the Government's objection under Article 35 § 3 (b) of the Convention and *rejects* it;
2. *Declares* the complaint under Article 6 § 1 of the Convention concerning the alleged lack of access to court admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,250 (three thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President