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

SECOND SECTION

**CASE OF JÓRI v. SLOVAKIA**

(*Application no. 34753/97*)

JUDGMENT

STRASBOURG

9 November 2000

**FINAL**

*09/02/2001*

**In the case of Jóri v. Slovakia**,

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

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr E. LEVITS,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 19 October 2000,

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

# PROCEDURE

1. The case originated in an application (no. 34753/97) against the Slovak Republic lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mrs Eva Jóri (“the applicant”), on 15 November 1996.

2. The Slovak Government (“the Government”) were represented by their Agent, Mr R. Fico who was replaced, as from 14 April 2000, by Mr P. Vršanský in the exercise of this function.

3. The applicant alleged, *inter alia*, that her right under Article 6 § 1 of the Convention to a hearing within a reasonable time had not been respected in proceedings concerning the lawfulness of the restitution and the subsequent sale of the house in which she had lived with her parents.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 23 February 1999 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other’s observations.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

8. On 30 June 1981 the Bratislava I National Committee approved an agreement on exchange of two flats used by the applicant and her parents respectively for a single flat in which they intended to live together. The decision stated that the right to use the flat was subjected to an agreement on its transfer to be concluded between the owner and the new user pursuant to Section 155 of the Civil Code.

9. On 7 July 1981 a record was drawn about the agreement on the transfer of the flat. It was signed by the applicant's father and the applicant's parents were mentioned in it as the users of the flat. Another document concerning the fees for the use of the flat established by the owner on 10 September 1984 mentioned the applicant's father as the user of the flat and both the applicant and her mother as persons living in it together with the official user.

10. On 15 July 1992 the Bratislava - Staré mesto municipality restored the block of flats in which the applicant and her parents lived to its original owners pursuant to the Extra-Judicial Rehabilitations Act. Subsequently the house was purchased by other individuals.

11. On 28 October 1994 the applicant, her parents and thirteen other persons living in the house lodged an action with the Bratislava I District Court (*Obvodný súd* - "the District Court") pursuant to Section 80 (c) of the Code of Civil Procedure. The plaintiffs challenged the lawfulness of the restitution and the subsequent sale of the house. They claimed to have a particular legal interest in lodging the action since the unlawful restitution of the house had prevented them "from having the ownership of the flats transferred to them for the remainder of their value in accordance with the law". They further complained that the new owners were attempting to make them move out of the house in that, for example, they had deliberately broken the central heater.

12. The District Court started proceeding with the case on 16 February 1995. On 14 March 1995 the action was sent to the defendants for observations.

13. The first hearing was held on 12 June 1995. Another hearing was scheduled for 11 September 1995. It was adjourned as the case had been transmitted to another judge.

14. On 12 January 1996 the applicant and several other plaintiffs complained about delays in the proceedings. On 29 February 1996 the vice-president of the District Court explained that the judge who had taken over the case in September 1995 had needed time to study the file and that a hearing was scheduled for 10 April 1996.

15. On 10 April 1996 the District Court adjourned the case with a view to obtaining further information.

16. On 18 June 1996 the District Court granted, in a different set of proceedings, an action of 10 March 1995 by which the new owners of the house had requested that the tenancy of the applicant's parents be terminated. The applicant's parents were ordered to move out of the flat within fifteen days after they were provided with alternative accommodation.

17. On 30 June 1996 the applicant lodged a petition with the Constitutional Court (*Ústavný súd*). She complained about the length of the proceedings concerning the lawfulness of the restitution of the house.

18. On 2 July 1997 the Constitutional Court found a violation of the applicant's right to have her case examined within a reasonable time as guaranteed by Article 48 (2) of the Constitution and Article 6 § 1 of the Convention. The Constitutional Court established, *inter alia*, that the District Court had remained inactive between 12 September 1995 and 22 February 1996 and also between 10 April 1996 and 24 March 1997.

19. On 20 November 1997 the vice-president of the District Court informed the applicant that following the finding of the Constitutional Court the judges who had dealt with the case had been disciplined, and that the case had been transmitted, as from 1 November 1997, to another judge.

20. On 28 November 1997 the District Court dismissed the applicant's request for interim measures to be ordered. On 17 September 1998 the Bratislava Regional Court (*Krajský súd*) modified this decision in that it ordered the owners of the house not to alienate it pending the outcome of the proceedings on the merits. The Regional Court found that the plaintiffs had a legal interest in bringing the proceedings within the meaning of Section 80 (c) of the Code of Civil Procedure since they would be entitled to purchase the flats if the ownership of the house had not been transferred to the original owners.

21. On 28 January 1998 the applicant complained to the president of the Bratislava Regional Court that the District Court had not held a single hearing after the delivery of the Constitutional Court's decision of 2 July 1997.

22. On 3 July 1998 the applicant extended the action of 28 October 1994 claiming that the ownership of the house be restored to the Bratislava - Staré mesto municipality.

23. On 8 February 1999 the applicant complained to the president of the Bratislava Regional Court that there had been no progress in the case since 1997 and that the interim measure ordered by the Regional Court on 17 September 1998 had not yet been notified to the land registry.

24. On 24 June 1999 the applicant extended her action and claimed that the tenancy of the flat be restored to her and her mother. She also claimed compensation for damage which she had suffered in this context.

25. On 28 June 1999 the District Court dismissed the action. It found that proceedings under Section 80 (c) of the Code of Civil Procedure aimed at preventive protection of existing rights. As the alleged interference with the plaintiffs' rights had been prior to the filing of their action of 28 October 1994, the District Court held that they had no pressing legal interest for having the lawfulness of the restitution determined.

26. The District Court noted that the applicant had extended the action in that she claimed also reparation for the alleged violation of her rights. In this respect it found that the applicant had lived in the flat together with her parents as a member of the household. She had not been, however, formally registered as a tenant. The District Court concluded that the applicant lacked standing in the case from the very beginning.

27. Finally, the District Court recalled that the tenants' right to purchase flats under Act No. 182/1993 was subjected to conditions set out in Sections 29a and 31, and that the restitution had been prior to the entry into force of Act No. 182/1993 on 1 September 1993. It held that the restitution had in no way affected the tenants' rights.

28. On 8 December 1999 the applicant appealed. She argued that she had both standing in the case and a pressing legal interest in having the issue determined. She also submitted that the District Court had misinterpreted Act No. 182/1993.

29. The appellate proceedings are pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Civil Code

#### *1. The relevant provisions in force until 31 December 1991*

30. Under Section 155, the right to use a flat was subjected to an agreement on its transfer concluded between the owner and an individual. A record of the conclusion of the agreement was to be drawn and signed by the owner's representative and by the individual acquiring the right to use the flat.

31. Section 188 (1) permitted the exchange of flats between users. The exchange was subjected to a written agreement and to its approval by the authority charged with the administration of the flats. Paragraph 2 of Section 188 provided that the right to use an exchanged flat could be acquired by means set out in Section 155.

*2. The relevant provisions in force as from 1 January 1992*

32. Section 871 (1) provides that the right to use a flat, either by an individual or jointly by several persons, existing by 1 January 1992 is automatically transformed into tenancy or, as the case may be, joint tenancy.

### B. Act No. 182/1993 on the ownership of flats and other premises

33. Act No. 182/1993 on the ownership of flats and other premises (*Zákon o vlastníctve bytov a nebytových priestorov*) entered into force on 1 September 1993. It provides, *inter alia*, for the transfer of ownership of flats to individuals by means of a contract. Section 31 reserved the right of municipalities to keep a certain number of flats in their ownership with a view to providing accommodation to persons in need. This provision was deleted as from 1 June 1998.

34. Section 29a, enacted by an amendment which entered into force on 1 August 1995, imposes on municipalities the obligation to transfer the ownership of flats to tenants so wishing within two years in houses in which such a transfer was requested by at least 50% of tenants. This obligation did not apply, until 1 June 1998, in respect of flats falling under Section 31.

### C. The Code of Civil Procedure

35. Section 80 (c) of the Code of Civil Procedure gives everyone the right to bring civil proceedings with a view to having the existence of a legal relation or of a right determined provided that it is justified by a pressing legal interest.

### D. Case-law and academic opinion

36. Pursuant to the Supreme Court's case-law, the right to use an exchanged flat was acquired, at the relevant time, upon the conclusion of an agreement on its transfer within the meaning of Section 155 of the Civil Code. Such a right could also be acquired as a result of an action indicating unequivocal intention of the parties to enter into an agreement, e.g. in that the persons concerned moved into the flat with the owner's consent (opinion published in 1978 in the Collected Decisions as No. 14).

37. According to academic opinion, an agreement on the transfer of a flat the exchange of which had been approved by the competent authority could be concluded in writing, orally or tacitly. The agreement is considered to be valid even in the absence of a record concerning its conclusion mentioned in Section 155 of the Civil Code (*Občanský zákoník, Komentář, Díl I., Praha, Panorama, 1987, pp. 600-680; Československé občianske právo, 1. zväzok, Bratislava, Obzor, 1986, p. 382*).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant alleged that the Slovak courts failed to determine her civil claims “within a reasonable time” and that there has therefore been a violation of Article 6 § 1 of the Convention which, so far as relevant, provides:

> “In the determination of his civil rights and obligations … everyone is entitled to a … hearing within a reasonable time by [a] … tribunal ...”

### A. Applicability of Article 6

#### *1. Arguments before the Court*

39. The applicant referred to the agreement on exchange of flats approved by the Bratislava I National Committee on 30 June 1981 (see paragraph 8 above), to the document concerning the fees for the use of the flat established by the owner on 10 September 1984 (see paragraph 9 above) and maintained that she and her parents had been joint tenants. She contended that she and her parents would have had the right to purchase the flat under Act No. 182/1993 if her action had been granted. The applicant concluded that the outcome of the proceedings was directly decisive for the determination of her “civil” rights within the meaning of Article 6 § 1.

40. The Government maintained that the proceedings did not determine the applicant’s civil rights. In their observations of 19 June 1998 they submitted, in particular, that a possible judicial decision granting the applicant’s claim of 28 October 1994 and declaring the restitution of the house null and void would not affect the new owners’ title as the courts were not called upon to determine the ownership in this context. The Government considered, however, that the outcome of the proceedings could be decisive for the determination of the applicant’s civil rights if she extended the original action and requested the District Court to determine the ownership of the house.

41. In their memorial of 23 April 1999 the Government contended that the applicant had not formally become a tenant of the flat in which she had lived together with her parents. They referred to the Bratislava I District Court’s judgment of 18 June 1996 concerning the termination of the tenancy of the applicant’s parents (see paragraph 16 above). The Government also pointed out that prior to 1 August 1995 municipalities had not been obliged to sell apartments to tenants under Act No. 182/1993 and that even after that

date Section 31 of Act No. 182/1993 reserved the right of municipalities to keep a certain number of flats in their ownership with a view to providing accommodation to persons in need (see paragraphs 33 and 34 above).

### *2. The Court's assessment*

42. The Court recalls that for Article 6 § 1 to be applicable under its "civil" head, the proceedings at issue must concern a "dispute" over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; Article 6 § 1 does not in itself guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question. As the Court has consistently held, mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see Athanassoglou and Others v. Switzerland [GC], no. 27644/95, § 43 with further references, ECHR 2000).

43. As to the Government's argument that the applicant lacked standing in the proceedings as she was not a tenant in the flat, the Court notes that this issue remains to be determined as a preliminary question in the domestic proceedings.

44. In this respect the Court notes that in 1981 the competent authority approved the agreement on exchange of two flats used by the applicant and her parents respectively for a single flat in which they intended to live together. The right to use the flat, which was later transformed to tenancy right, was subjected to an agreement pursuant to Section 155 of the Civil Code for which no specific form was prescribed. Under the domestic courts' practice, the right to use an exchanged flat could be acquired also as a result of an action indicating unequivocal intention of the parties to enter into an agreement, e.g. in that the persons concerned moved into it with the owner's consent (see paragraph 36 above).

45. It is not disputed between the parties that the applicant moved into the flat in question together with her parents with the accord of the owner. It is true that the applicant was not mentioned in the record of the agreement foreseen by Section 155 of the Civil Code which was drawn on 7 July 1981. However, such a record was not necessarily a prerequisite for the agreement to become effective (see paragraph 37 above).

46. Furthermore, by their action the applicant and the other plaintiffs sought the protection of their tenancy rights as they considered that the new owners intended to make them move out of the house by terminating their tenancy.

47. The Court therefore considers, without prejudging the outcome of the proceedings before Slovak courts, that these proceedings concern a

serious and genuine "dispute" relating to, *inter alia*, the existence and the modalities of exercise of the applicant's tenancy right.

48. The domestic courts have been further called upon to decide whether the applicant and the other plaintiffs have a pressing legal interest in having the lawfulness of the restitution of the house in which they lived determined and, following the extension of the original action by the applicant, also to determine the ownership of the house and her claim for damages relating to the restitution of the house.

49. In its decision of 17 September 1998 the Bratislava Regional Court granted the applicant's request for interim measures and ordered the new owners not to alienate the house as it found that the applicant and the other plaintiffs had a legal interest in bringing the proceedings. It held that they would be entitled to purchase the flats if the house had not been restored to the original owners. In view of this decision, the Court is satisfied that the outcome of the proceedings is decisive for the applicant's civil rights which are recognised, at least on arguable grounds, in Slovak law. Accordingly, Article 6 of the Convention is applicable.

### B. Period to be taken into consideration

50. The Court has found above that by their action the applicant and the other plaintiffs sought, *inter alia*, to protect themselves against the new owners' intention to terminate their tenancy. It therefore considers that it can examine the length of the proceedings from the moment when the action was lodged on 28 October 1994 notwithstanding that the tenants' right to have municipal flats transferred to their ownership was enacted by an amendment to Act No. 182/1993 which entered into force on 1 August 1995. The proceedings are still pending. Accordingly, the period to be considered has lasted five years and more than eleven months.

### C. Reasonableness of the length of the proceedings

51. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, Pélissier and Sassi v. France [GC], no. 25444/94, 25 March 1999, § 67, and the Philis v. Greece (no. 2) judgment of 27 June 1997, Reports 1997-IV, p. 1083, § 35).

52. In the Court's view, the case has not been particularly complex.

53. As regards the conduct of the applicant, she requested the District Court to issue interim measures and she twice extended her action. The

documents before the Court do not indicate, however, that she thereby substantially contributed to the length of the proceedings.

54. As to the conduct of the domestic authorities, the Constitutional Court found on 2 July 1996 that the Bratislava I District Court remained inactive without any relevant reason between 12 September 1995 and 22 February 1996 and also between 10 April 1996 and 24 March 1997.

55. The Court also notes that more than nine months elapsed between 28 November 1997 when the District Court dismissed the applicant's request for interim measures and 17 September 1998 when the Bratislava Regional Court decided on this issue at second instance.

56. The respondent Government have not given any explanations concerning the proceedings before the District Court between 17 September 1998 and 28 June 1999. Finally, the Court notes that the appellate proceedings have been pending for more than ten months.

57. In these circumstances, the Court finds that the delays in the proceedings are mainly imputable to the conduct of the domestic courts and that the "reasonable time" requirement has not been respected. There has accordingly been a breach of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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. Pecuniary damage

59. The applicant claimed 10,000,000 Slovak korunas (SKK) as compensation for the apartment from which she and her parents had to move out and also as compensation for her movable property which had been damaged in this context.

60. The Government contended that the applicant failed to substantiate her claim as required by Rule 60 § 2 of the Rules of Court.

61. The Court sees no direct causal link between the identified breach of the applicant's rights under the Convention and the claimed pecuniary losses. The claim must therefore be rejected.

### B. Non-pecuniary damage

62. The applicant claimed 4,000,000 U.S. dollars as compensation for suffering and deterioration of her and her parents' health resulting from the failure by the Slovak authorities to effectively protect her rights.

63. The Government considered the claim unsubstantiated and excessive.

64. Making an assessment on an equitable basis, the Court awards the applicant SKK 150,000 under this head.

### C. Default interest

65. According to the information available to the Court, the statutory rate of interest applicable in Slovakia at the date of adoption of the present judgment is 17.6% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 § 1 of the Convention is applicable in the instant case;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 150,000 (one hundred and fifty thousand) Slovak korunas in respect of non-pecuniary damage;
(b) that simple interest at an annual rate of 17.6% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 9 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President