



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

FOURTH SECTION

**CASE OF BAKOVÁ v. SLOVAKIA**

*(Application no. 47227/99)*

JUDGMENT

STRASBOURG

12 November 2002

**FINAL**

*21/05/2003*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Baková v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 October 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 47227/99) 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 a Slovakian national, Ms Mária Baková ("the applicant"), on 24 November 1998.

2. The Slovakian Government ("the Government") were represented by Mr P. Vršanský, their Agent.

3. The applicant alleged, *inter alia*, that her right to a public hearing before a tribunal was violated in proceedings concerning her claim for restitution of property.

4. 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

6. By a decision of 26 March 2002 the Court declared admissible the applicant's complaint about the absence of a public hearing before a tribunal. It further declared inadmissible the complaints that the dismissal of the applicant's action had been arbitrary and that her property rights had been violated in that context.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant claimed restitution of real property which had been expropriated from her in 1967.

8. On 15 September 1992 the Košice-mesto Land Office (*Pozemkový úrad*) granted the applicant's claim. The Land Office established, after an inspection of the land in question, that it had never served the purpose for which it had been expropriated which was a relevant reason for its restitution within the meaning of Section 6 (1) (m) of the Land Ownership Act of 1991. The educational institution which possessed the land challenged the decision.

9. On 19 April 1993 the Košice Regional Court (*Krajský súd*) quashed the administrative decision as it considered the reasons for it to be insufficient. The Regional Court instructed the administrative authority to establish all relevant facts of the case and to hear the parties.

10. On 29 December 1997 both the applicant and a representative of the institution using the land in question met with officials of the Košice 2 District Office (*Okresný úrad*) to which the case fell to be examined. In the course of the meeting the relevant facts of the case were examined.

11. On 6 February 1998 the Košice 2 District Office delivered a new decision by which it dismissed the applicant's claim. It held that the plot served the original purpose of its expropriation within the meaning of Section 6 (1) (m) of the Land Ownership Act of 1991 and that the applicant had received compensation for it. The decision was signed by the head of the land, agriculture and forest department of the District Office.

12. On 10 March 1998 the applicant requested judicial review of this decision. She complained that the Land Office had failed to establish the relevant facts correctly, that it had decided arbitrarily and that there had been no hearing in the case.

13. On 12 June 1998 the Košice Regional Court upheld the District Office's decision. The court found, with reference to the documents included in the file of the District Office, that the plot in question served the purpose of its expropriation since a social institution used it as a playground for handicapped children. With reference to Article 250f of the Code of Civil Procedure, the Regional Court decided *in camera*.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Land Ownership Act of 1991

14. Pursuant to Section 6 (1) (m) of Act No. 229/91 on Adjustment of Ownership Rights to Land And Other Agricultural Property (*Zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku* – “the Land Ownership Act”), real property which was expropriated with payment of compensation shall be restored if it still exists and provided that it has never served the purpose for which it was expropriated.

### B. Code of Civil Procedure

15. The lawfulness of decisions delivered by administrative authorities can be examined by courts in accordance with Part V of the Code of Civil Procedure which governs the administrative judiciary.

16. Article 250f, as in force at the relevant time, entitled the courts to deliver a judgment without prior oral hearing in simple cases, in particular when there is no doubt as to whether the administrative authority established the facts correctly, and the point at issue was a question of law.

17. In accordance with Article 250m (3), the parties to the proceedings before the court are the parties in the proceedings before the administrative authority and the administrative authority whose decision is to be reviewed.

18. Pursuant to Article 250q (1), when the court reviewing an administrative authority’s decision does not decide without an oral hearing pursuant to Article 250f, it may take such evidence as is necessary for reviewing the decision at issue.

19. Under Article 250r, if the court quashes the decision of the administrative authority, the latter, when taking a new decision, is bound by the legal opinion expressed by the court.

### C. The Local State Administration Act of 1996

20. Act No. 222/1996 on the Organisation of the Local State Administration (*Zákon o organizácii miestnej štátnej správy a o zmene a doplnení niektorých zákonov*) governs, *inter alia*, the status and competence of district offices.

21. Sections 1 (1) and 4 (1) provide that district offices are State authorities in charge of local administration of the State which are financed from the State budget.

22. Section 5 (2) entitles the district offices to decide at first instance on the rights and obligations of natural or legal persons in the context of administrative proceedings.

23. Pursuant to Section 8 (2), the head of a district office is appointed and revoked by the Government.

24. Section 8 (7) provides that the heads of departments of district offices are appointed by the head of the district office.

25. Pursuant to Section 9, the departments of district offices shall act and decide in the context of administrative proceedings autonomously unless the law otherwise provides.

26. Section 11 (1) provides that district offices are directed and controlled by the Government when carrying out State administration.

#### **D. Constitutional Court's practice**

27. In its finding No. PL.ÚS 14/98 of 22 June 1999 the Constitutional Court found that Article 250f of the Code of Civil Procedure was contrary to the Constitution and also to Article 6 § 1 of the Convention. As a result, this provision ceased to be effective from the moment of its publication in the Collection of Laws on 14 July 1999.

## THE LAW

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

28. The applicant complained that her right to a public hearing before a tribunal had not been respected. She relied on Article 6 § 1 of the Convention the relevant part of which provides:

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

29. The Government submitted no comments on the merits of this part of the application.

30. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, *Diennet v. France*, judgment of

26 September 1995, Series A no. 325-A, pp. 14–15, § 33 and *Malhous v. the Czech Republic* [GC], no. 33071/96, § 55, 12 July 2001).

31. In the present case the applicant was in principle entitled to a public hearing as none of the exceptions laid down in the second sentence of Article 6 § 1 applied (see *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 20, § 64). These exceptions were not invoked in the domestic proceedings.

32. The Court considers that the Košice 2 District Office which dealt with the applicant's claim cannot be considered as an authority satisfying the requirements of independence necessary for a tribunal within the meaning of Article 6 § 1 of the Convention since it has been charged with carrying out local State administration under the control of the Government, and the appointment of its head is controlled by the executive (see paragraphs 21, 23 and 26 above and also, *mutatis mutandis*, *Kadubec v. Slovakia*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2531, § 57). The fact that the departments of district offices shall act and decide in the context of administrative proceedings autonomously cannot, in the Court's view, affect this position. In these circumstances, there is no need to examine whether the meeting between the parties and the officials of the Košice 2 District Office held on 29 December 1997 can be considered as a hearing in the case.

33. After the dismissal of her claim by the administrative authority, the applicant sought redress before the Košice Regional Court. She alleged, *inter alia*, that the District Office had failed to establish the relevant facts correctly and that there had been no hearing in the case. The Regional Court, however, dispensed with a hearing with reference to Article 250f of the Code of Civil Procedure. Thus the failure to hold a hearing before the Regional Court was not based on the applicant's failure to request one.

34. The Regional Court's jurisdiction was not strictly limited to matters of law, but also extended to the assessment of whether the facts had been correctly established by the administrative authority. The Municipal Court could, if necessary, also take evidence (see paragraph 18). The submissions of the applicant to the Regional Court indicate that her appeal was capable of raising also factual issues. Without questioning the Regional Court's conclusion that the facts had been correctly established by the administrative authority, the Court considers, taking into account also what was at stake for the applicant, that in these circumstances Article 6 § 1 required an oral hearing before a tribunal (see also the *Malhous v. the Czech Republic* judgment referred to above, § 60, with further reference).

35. The Court has noted that after the delivery of the Košice Regional Court's judgment of 12 July 1998 the Constitutional Court declared Article 250f of the Code of Civil Procedure to be contrary to the Constitution and also to Article 6 § 1 of the Convention and that this provision ceased to be effective. This cannot, however, affect the position in the present case.

36. Consequently, there has been a breach of Article 6 § 1 of the Convention on account of the lack of a public hearing before an independent and impartial tribunal in the restitution proceedings complained of by the applicant.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 859,200 Slovakian korunas (SKK) in compensation for the land which the Slovakian authorities had refused to restore to her. She further claimed SKK 350,000 in compensation for non-pecuniary damage resulting from both the failure to hold a public hearing in the case and the refusal to restore the property in question to her.

39. The Government contended that there existed no causal link between the pecuniary damages claimed by the applicant and the alleged breach of Article 6 § 1 of the Convention. With reference to paragraph 71 of the *Malhous v. the Czech Republic* judgment cited above the Government further maintained that a possible finding of a violation of Article 6 § 1 of the Convention would in itself constitute a sufficient just satisfaction in respect of any non-pecuniary damage which the applicant may have suffered.

40. The Court notes that it declared inadmissible the applicant's complaint under Article 1 of Protocol No. 1 concerning the dismissal of her restitution claim, and its finding of a violation of Article 6 § 1 of the Convention on account of the absence of a public hearing in the case does not call in question the Regional Court's conclusion that the facts had been correctly established by the administrative authority (see paragraphs 6 and 34 above). In these circumstances, the Court concurs with the Government that no causal link exists between the violation found and the pecuniary damages claimed.

The Court further notes that, unlike the nephew of the applicant in the case of *Malhous v. the Czech Republic* (see paragraph 71 of the judgment referred to above), the applicant in the present case was personally affected by the violation found. It therefore considers that the applicant sustained non-pecuniary damage which is not sufficiently compensated by the above finding of a violation of the Convention (see also *A.T. v. Austria*,

no. 32626/96, § 43, 21 March 2002). The Court therefore awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage.

### **B. Costs and expenses**

41. The applicant claimed SKK 10,522.40 in compensation for costs and expenses incurred in domestic proceedings.

42. The Government argued that the applicant failed to substantiate the claim and that the sum was excessive.

43. Making its own assessment on an equitable basis, the Court considers it appropriate to award the applicant EUR 230 under this head.

### **C. Default interest**

44. The Court considers that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see the case of *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 230 (two hundred and thirty euros) in respect of costs and expenses which should be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President