



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

FOURTH SECTION

CASE OF KOPECKÝ v. SLOVAKIA

(Application no. 44912/98)

JUDGMENT

STRASBOURG

7 January 2003

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
28/09/2004**

*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 Kopecký v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

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

Having deliberated in private on 26 February 2002 and 26 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 44912/98) against the Slovak Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Juraj Kopecký ("the applicant"), on 25 August 1998.

2. The applicant, who had been granted legal aid, was represented before the Court by Ms R. Smyčková, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Vršanský

3. The applicant alleged, in particular, that his right to the peaceful enjoyment of his possessions had been violated as a result of the dismissal of the claim for restitution of his late father's property.

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 1 February 2001 the Court declared the application partly admissible.

7. 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 (Rule 52 § 1).

8. The Government, but not the applicant, filed additional observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 12 February 1959 the applicant's father was convicted of an offence on the ground that he had kept, contrary to the regulations then in force, 131 gold coins and 2,151 silver coins of numismatic value. He was sentenced to one year's imprisonment. He was also fined and the coins were confiscated.

10. On 1 April 1992 the Supreme Court of the Slovak Republic (*Najvyšší súd*) quashed, in the context of judicial rehabilitation provided for by the Judicial Rehabilitation Act of 1990, the judgment of 12 February 1959 including all consequential decisions and discharged the applicant's late father.

11. On 30 September 1992 the applicant claimed the restitution of his father's coins under the Extra-Judicial Rehabilitations Act of 1991.

12. On 19 September 1995 the Senica District Court (*Okresný súd*) granted the action and ordered the Ministry of the Interior to restore the coins to the applicant. The court established, with reference to the relevant records, that the coins had been taken away from the applicant's father on 21 November 1958 and that they had been transmitted to the Regional Administration of the Ministry of the Interior in Bratislava on 12 December 1958. On 19 December 1958 the coins were examined by an expert and inventoried in the premises of the Regional Administration in Bratislava.

13. The relevant part of the District Court's judgment reads as follows:

"It is true that the law requires that a person claiming restitution of movable property should indicate and show where such property is. However, in the present case the plaintiff undoubtedly has no possibility of inspecting the premises or safes of the former Public Security Regional Administration in Bratislava as he is not allowed to enter those premises. By insisting that the applicant should show that the coins are at the last known place the court would impose a burden of proof on him which it is practically impossible to fulfil. On the contrary ... the Ministry of the Interior neither showed that the former Public Security Regional Administration in Bratislava had transferred the coins to a different authority nor did it propose to take evidence to that effect...

The court established that the last time the coins ... had been held in the premises of the Public Security Regional Administration in Bratislava to which the Ministry of the Interior is a successor, and it has not been shown that the coins were not in those

premises when the Extra-Judicial Rehabilitations Act became operative, i.e. by 1 April 1991.”

14. On 1 December 1995 the Ministry of the Interior appealed. Its representative argued that all relevant documents had been destroyed and that the onus of proof as regards the deposit of the coins lay on the applicant.

15. On 29 January 1997 the Bratislava Regional Court (*Krajský súd*) dismissed the applicant’s action. It found, with reference to Sections 4 (1), 5 (1) and 20 (1) of the Extra-Judicial Rehabilitations Act of 1991, that the applicant had failed to show where the coins had been deposited when that Act had become operative on 1 April 1991.

16. In the judgment the Regional Court admitted that the applicant had limited possibilities of locating his father’s property. It therefore took further evidence of its own initiative. In particular, the Regional Court noted that in accordance with the relevant practice the confiscated property should have been handed over to the public prosecutor and, after the relevant judgment had become final, to the financial department of the competent local government authority. The Regional Court therefore examined the criminal file concerning the case of the applicant’s father. It further established that the archives of the Senica District Office, of the Ministry of the Interior, of the National Bank of Slovakia and of the State Regional Archive in Bratislava contained no document relating to the coins in question. The Regional Court also heard a witness who had worked at the Myjava District Department of the Ministry of the Interior in 1958. However, the latter had no knowledge of the case.

17. On 27 January 1998 the Supreme Court (*Najvyšší súd*) dismissed the applicant’s appeal on points of law. It shared the Regional Court’s view according to which the applicant had failed to produce evidence that the defendant Ministry was in possession of the coins as required by Section 5 (1) of the Extra-Judicial Rehabilitations Act of 1991.

18. In the judgment the Supreme Court further stated:

“The allegation that the movable property in question had been taken over by an employee of the Public Security Regional Administration in Bratislava on 12 December 1958 and that ... it had been examined there by an expert on 19 December 1958 cannot suffice. Since then a considerable period lapsed during which the golden and silver coins in question could have been alienated, destroyed or lost. The legislator, however, explicitly included in Section 5 (1) of the Extra-Judicial Rehabilitations Act the obligation to show where the movable in question is at the moment of the entry into force of that law.

... it follows from logical and systematic interpretation of Section 5 (1) of the Extra-Judicial Rehabilitations Act that a restitution claim can only concern the same property which was taken over by the State and not a different object of the same kind. Only movable property which can be individually identified by its specific features thanks to which it cannot be interchanged with other objects is therefore liable to restitution...”

II. RELEVANT DOMESTIC LAW

A. The Judicial Rehabilitation Act of 1990

19. Act No. 119/1990 on Judicial Rehabilitation (*Zákon o súdnej rehabilitácii*) entered into force on 1 July 1990. The relevant provisions read as follows:

Section 1

“The aim of the Act is to authorise the quashing of convictions for offences where such convictions are incompatible with the principles of a democratic society respecting the political rights and freedoms enshrined in the Constitution and set out in the international documents, ... to ensure social rehabilitation and adequate material compensation for the persons [so] convicted...”

Section 23

...

“2. The conditions under which the provisions of this Act shall apply to claims resulting from quashed confiscation decisions ... as well as the manner of redress and the scope of such claims shall be defined in a special law.”

B. The Extra-Judicial Rehabilitations Act of 1991

20. Act No. 87/1991 on Extra-Judicial Rehabilitations (*Zákon o mimosúdnych rehabilitáciách*) became operative on 1 April 1991. Its preamble stipulates that it was adopted with the aim of mitigating the consequences of certain infringements of property rights as well as of other rights which occurred between 25 February 1948 and 1 January 1990. The relevant provisions of the Extra-Judicial Rehabilitations Act read as follows:

Part One – General Object

Section 1

“1. This Act relates to the mitigation of the consequences of certain infringements ... which arose between 25 February 1948 and 1 January 1990 ... and which are incompatible with the principles of a democratic society respecting the rights of citizens as enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the ensuing international pacts on civil, political, economic, social and cultural rights.

2. This Act also lays down the conditions for submitting claims resulting from quashed sentences by which property was confiscated as well as the manner of redress and the scope of such claims.”

Part Two – In the field of civil and administrative law

Section 4

“1. Persons obliged [to restore the property] comprise the State or legal persons having confiscated property in their possession at the date when this Act becomes operative...

2. Any natural person who [unlawfully] acquired property from the State is also obliged to restore such property...”

Section 5

“1. A person obliged [to make restitution] shall restore the property upon a written request provided that the person [claiming the property] proves that he or she is entitled to have the property restored and shows in which way it was taken away by the State. When claiming restitution of movable property [the person concerned] is further required to show where the property is...”

Section 13

“1. Financial compensation may be granted to the person concerned only in respect of real property which cannot be restored...

2. When the State acquired, on the basis of a judicial decision which was quashed under Act no. 119/1990 on Judicial Rehabilitation..., the entire property of a citizen and when such property did not comprise real property, the person concerned is entitled to compensation in the amount of 60,000 Czechoslovak korunas...”

Part Three – In the field of criminal law

Section 20

“1. The persons obliged [to restore confiscated property] shall comprise any legal person referred to in Section 4 (1), any natural person referred to in Section 4 (2) who acquired such property from the State where the State itself obtained it as a result of a judicial decision, and the competent central government authority.

2. The persons obliged to restore confiscated property shall do so in accordance with Sections 5, ... of the Act. When it is impossible to restore the property the persons concerned are entitled to claim compensation pursuant to Section 13 of [this] Act.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

21. The applicant complained that, as a result of the dismissal of his claim, he had been prevented from peacefully enjoying his father's property. He alleged a violation of Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

22. The Government maintained that the applicant had failed to comply with the formal requirements for restitution of property laid down in the Extra-Judicial Rehabilitations Act of 1991 and that his claim cannot, therefore, be regarded as an “asset” which would attract the protection of Article 1 of Protocol No. 1.

23. The applicant contended that he had a “legitimate expectation” to obtain effective enjoyment of the property which had been taken away from his father. He pointed out, in particular, that he had complied with the requirements of Section 5 (1) of the Extra-Judicial Rehabilitations Act of 1991 in that he had presented documentary evidence indicating that the coins had been deposited in the premises of the Regional Administration of the Ministry of the Interior on 12 December 1958. The applicant maintained that he cannot reasonably be expected to indicate the exact place where the property had been at the relevant time as he had no practical possibility of tracing the coins within the Ministry of the Interior.

24. The applicant submitted that his claim should be considered as a possession within the meaning of Article 1 of Protocol No. 1. Its dismissal amounted to an interference with his rights under this provision which was neither in the public interest nor did it satisfy the requirement of proportionality.

25. The Court recalls that, according to the established case-law, “possessions” within the meaning of Article 1 of Protocol No. 1 can be “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of the survival of an old property right which it has long

been impossible to exercise effectively cannot be considered as a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see the recapitulation of the relevant principles in *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000, ECHR 2000-XII and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, to be published in ECHR 2002, with further references).

26. In the present case the point at dispute is whether the applicant could have any “legitimate expectation”, within the meaning of the Court’s case-law under Article 1 of Protocol No. 1, of realising his claim to restitution of his father’s property and, if so, whether the dismissal of his claim was compatible with the guarantees laid down in that provision.

27. In this respect the present case should be distinguished from the cases of *Malhous v. the Czech Republic* and *Gratzinger and Gratzingerova v. the Czech Republic* referred to above or the case of *Brezny & Brezny v. Slovakia* (application no. 23131/93, Commission decision of 4 March 1996, DR 85, pp. 65-83) in which the Court and the Commission respectively found that the applicants’ claims for restitution of property did not amount to a legitimate expectation in the sense of the Court’s case-law. In those cases the applicants were excluded from the very beginning from the possibility of having the property restored as it was obvious either that they failed to meet the relevant requirements or that their claim clearly fell outside the relevant law.

28. In the present case the Senica District Court, by judgment of 19 September 1995, granted the applicant’s action noting that the Ministry of the Interior had not shown that the coins had been transferred to another place or authority. In the District Court’s view, the applicant could not reasonably be required to indicate where the coins were as he was not allowed to enter the premises of the defendant Ministry. Subsequently, the appellate court and the Supreme Court overturned this decision finding that the applicant had failed to show where the coins had been deposited when that Act had become operative on 1 April 1991. They concluded that the applicant had thereby failed to meet the condition set out in Section 5 (1) of the Extra-Judicial Rehabilitations Act of 1991, under which a person claiming restitution of movable property is required, *inter alia* to indicate where such property is.

29. Thus there existed a genuine dispute as to whether the applicant met the requirement of Section 5 (1) of the Extra-Judicial Rehabilitations Act. The finding of the first instant court indicates that the applicant could claim, at least on arguable grounds, that he met the relevant requirements and that he was entitled to restitution of his father’s property. The fact that the appellate court and the Supreme Court reached a different conclusion cannot affect the position as the applicant’s claim was not unsubstantiated or

devoid of any prospect of success from the very beginning. The Court therefore finds that the applicant had a “legitimate expectation” of having his claim satisfied which justifies considering it as a possession within the meaning of Article 1 of Protocol No. 1. Reaching a different conclusion on the ground that the applicant failed to show the location of the property when the Extra-Judicial Rehabilitations Act of 1991 became operative would be, having regard to the above circumstances, too formalistic and would render the protection of the rights under the Convention and its protocols ineffective and illusory.

30. The Court accepts that the Contracting States are free to choose conditions under which they will restore or pay compensation for property which had been confiscated before they ratified the Convention. In cases such as the present the Court must, however, examine whether the implementation of the relevant law was compatible with the guarantees of the Convention and its protocols.

31. Admittedly, the conclusion the appellate court and the Supreme Court reached in the applicant’s case was not contrary to the provisions of the relevant national law. However, the Court attaches particular importance to the fact that the evidence submitted by the applicant comprised a detailed inventory of the coins and an official record indicating when they had been deposited with the Ministry of the Interior. The representatives of the latter failed to provide any plausible explanation as to why the coins were no longer in the possession of the Ministry.

32. In its judgment of 29 January 1997 the Bratislava Regional Court noted that, in accordance with the relevant practice, the confiscated property should have been handed over to the public prosecutor and, after the judgment had become final, to the financial department of the competent local government authority. Despite substantial supplementary evidence taken to this effect the Regional Court found no indication that such a procedure had been respected. Thus the applicant was unable, for reasons which are imputable to public authorities, to trace the property of his late father after it had been deposited with the Ministry of the Interior. As a result, he was deprived of any possibility of complying with the requirements laid down in the Extra-Judicial Rehabilitations Act of 1991.

33. In these circumstances, and considering that the applicant apparently had no right to compensation in this regard, the Court finds that the obligation to show where the property had been at the time when the Extra-Judicial Rehabilitations Act of 1991 became operative imposed an excessive burden on the applicant which was incompatible with his rights under Article 1 of Protocol No. 1.

34. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 554,200 Slovakian korunas (SKK) in compensation for the coins which were confiscated from his late father.

37. The Government commented that they had no objection as to the sum claimed by the applicant.

38. The Court notes that the value of the coins was established by an expert and awards the applicant 13,323 euros (EUR) under this head.

B. Non-pecuniary damage

39. The applicant claimed SKK 200,000 in compensation for non-pecuniary damage.

40. The Government objected that the claim was unsubstantiated and excessive.

41. The Court considers that the finding of a violation in respect of the applicant's right to peaceful enjoyment of his possessions constitutes in itself sufficient compensation for any non-pecuniary damage suffered by him. Accordingly, the claim under this head must be dismissed.

C. Costs and expenses

42. The applicant, who received 4,100 French francs (FRF) in legal aid from the Council of Europe in connection with the presentation of his case, sought, in addition, the reimbursement of SKK 6,254 in respect of costs and expenses incurred in the context of the proceedings before the Slovakian authorities. He further claimed SKK 6,649.80 in respect of costs and expenses relating to the proceedings before the Convention organs which he had incurred before he was granted legal aid under the Court's legal aid scheme.

43. The Government accepted the claimed amounts to be reasonable as such.

44. The Court considers it reasonable to award the applicant EUR 310, in addition to FRF 4,100 which the applicant already received by way of legal aid from the Council of Europe.

D. Default interest

45. The Court considers it appropriate 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 *Christine Goodwin v. the United Kingdom* [GC], application no. 28957, § 124, to be published in ECHR 2002).

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* by four votes to three
 - (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, the following amounts to be converted into Slovakian korunas at the rate applicable at the date of settlement, together with any tax that may be chargeable:
 - (i) EUR 13,323 (thirteen thousand three hundred and twenty-three euros) in respect of pecuniary damage;
 - (ii) EUR 310 (three hundred and ten euros) in respect of costs and expenses in addition to the FRF 4,100 (four thousand one hundred French francs) received by way of legal aid from the Council of Europe;
 - (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* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 7 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Sir Nicolas Bratza, Mr Pellonpää and Mrs Palm is annexed to this judgment.

N.B.
M.O'B.

DISSENTING OPINION OF JUDGES BRATZA,
PELLONPÄÄ AND PALM

To our regret, we are unable to agree with the conclusion of the majority of the Chamber that there has been a violation of Article 1 of Protocol N° 1 in the present case.

As noted in the judgment, according to the established case-law of the Court, although the term “possessions” in Article 1 has been widely defined to include a claim to property which an applicant has at least a “legitimate expectation” will be realised, the mere hope that a former property right which has been extinguished or which it has long been impossible to exercise may be revived or recognised as having survived, cannot be regarded as a “possession”; nor can a conditional claim to property which lapses or which never materialises as a result of a failure on the part of the applicant to fulfil an essential condition. Moreover, Article 1 does not guarantee the right to acquire property and cannot in principle be interpreted as imposing any restrictions on the freedom of Contracting States to impose conditions for the restoration of property confiscated before the date of ratification of the Convention or for the payment of compensation in respect of such property.

In the present case, the coins belonging to the applicant’s father were confiscated in November 1958, well before the coming into effect of the Convention in respect of Slovakia. The applicant’s claim, if any, to the recovery of the coins derived exclusively from the provisions of the Extra-Judicial Rehabilitations Act 1991 and was dependent on the terms of that Act. As is apparent from its terms (see section 13), the Act provides for restitution of specific items of movable property which have been confiscated and makes no alternative provision for the payment of financial compensation if the property in question has been lost or destroyed or is otherwise untraceable. As is also clear from the provisions of sections 4 and 5 of the Act, any claim to recover confiscated property is made conditional on the fulfilment of two requirements, *inter alia*: first, property confiscated by the State or legal persons has to be “in their possession at the date of the entry into force of the Act”; secondly, a claimant is required to show “where the property is”.

In ordering the Ministry of the Interior to restore the coins to the applicant, the Senica District Court found that the requirement in section 5 of the Act that the applicant show the location of the property imposed a burden of proof on him which it was practically impossible to fulfil. The District Court went on to point out that the Ministry had not shown that the former Public Security Regional Administration in Bratislava had transferred the coins to a different authority or that the coins were not in the premises of the Regional Administration when the Act entered into force.

The majority of the Chamber have based themselves on this reasoning of the District Court to hold that the applicant could claim, at least on arguable grounds, that he met the relevant requirements for restitution of his father's property and that this claim amounted to a legitimate expectation sufficient to constitute a "possession". To reach a different conclusion on the ground that the applicant had failed to show the precise location of the coins would, in their view, be too formalistic and would render the protection of the rights under the Convention and its protocols ineffective and illusory.

Had the case proceeded no further than the Senica District Court, we might have been able to share the view of the majority. However, on appeal, the Bratislava Regional Court accepted that the applicant had only limited possibilities of locating his father's property and therefore took further evidence of its own initiative to discover whether the coins could still be traced. In particular, it examined the criminal file of the applicant's father. It further established that the archive of the Senica District Office, of the Ministry of the Interior, of the National Bank of Slovakia and of the State Regional Archive in Bratislava contained no document relating to the coins in question. The Regional Court also heard a witness who had worked at the Myjava District Department of the Ministry of the Interior in 1958 and who testified that he had no knowledge of the case.

The judgment of the Regional Court that in these circumstances the applicant was unable to fulfil the conditions prescribed in the 1991 Act was upheld by the Supreme Court. The Supreme Court held that the fact that the coins had been examined at the Public Security Regional Administration in Bratislava in December 1958 did not suffice to show their continued existence in the possession of the State, the Court noting that, since that date, a considerable period had elapsed during which the coins could have been alienated, destroyed or lost. As the Supreme Court went on to point out, a restitution claim was only sustainable under the terms of the Act when it concerned the same property which had been confiscated by the State and not where it related to different objects of the same kind.

In these circumstances, since there is no evidence that the confiscated coins continued in existence and were in the possession of the State authorities at the time of the coming into force of the 1991 Act and since the conditions laid down by that Act were therefore not fulfilled, we consider that the applicant had no "possession" for the purposes of Article 1 of Protocol N° 1 and that therefore there has been no violation of that Article.