



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

FOURTH SECTION

CASE OF CSEPYOVÁ v. SLOVAKIA

(Application no. 67199/01)

JUDGMENT

STRASBOURG

24 February 2004

FINAL

24/05/2004

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 Csepyová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 3 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 67199/01) 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 Slovakian national, Mrs Alžbeta Csepyová ("the applicant"), on 12 March 2001.

2. The applicant was represented by Mrs A. Szücs, a lawyer practising in Komárno. The Slovakian Government ("the Government") were represented their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák in that function.

3. The applicant alleged, in particular, that the proceedings on her request for restitution of property have exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention.

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 (Rule 52 § 1).

6. By a decision of 8 April 2003, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1922 and lives in Komárno.

9. The applicant lodged a claim under the Land Ownership Act no. 229/1991 Coll. (*Zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku* – “Act 229/91”) for the restitution of an ownership interest of 1/6 in an undivided plot of agricultural land which had belonged to her family before it was taken away during the communist regime.

10. On 15 September 1992 the applicant and the agricultural co-operative that was using the plot concluded a restitution agreement (*dohoda o vydaní*) concerning the modalities of the ownership interest transfer to her.

11. On 19 October 1992 the Komárno Land Office (*Okresný úrad, odbor pozemkový, poľnohospodárstva a lesného hospodárstva*) approved the restitution agreement in accordance with Act 229/91.

12. On 22 November 1992 the Land Office informed the applicant that a third person (G.N.) had filed an appeal with the Ministry of Agriculture (*Ministerstvo pôdohospodárstva*) against the approval of 19 October 1992. G.N. was an heir of a person to whom the plot was assigned (*prídelový vlastník* – “the assigned owner”) by the State after it had been taken away from the applicant’s family. In her appeal, she claimed ownership of the plot. On 2 December 1992 the applicant submitted her observations in reply to the appeal.

13. On 22 December 1992 G.N. died.

14. On 21 October 1993 the Ministry annulled the approval of the Land Office of 19 October 1992.

15. On 3 November 1994 the Land Office ordered the accelerated consolidation of the plot in accordance with the Act on Land Consolidation no. 330/1991 Coll. (*Zákon o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách* – “Act 330/91”). Pursuant to Section 15 § 2 of the Act, the accelerated land consolidation was ordered for an interim period, namely until the completion of the ongoing general land consolidation proceedings in the area concerned or, alternatively, until the co-operative was dissolved without a legal successor; whichever would occur earlier.

16. On 1 December 1995 the applicant requested that the Land Office should deal with her case expeditiously.

17. On 6 December 1995 the co-operative rescinded the restitution agreement of 15 September 1992.

18. On 12 April 1996 the Land Office requested G.N.'s heir, P.N., to submit a decision on her estate.

19. On 27 September 1996, on a motion of the co-operative, the Komárno District Prosecutor asked the Land Office to submit to him the case-file concerning the applicant's case. In his decision of 31 October 1996, the Prosecutor found that there had been undue delays in the proceedings in that the Land Office had failed to rule on the restitution agreement within the prescribed time-limit and that since 4 November 1993 it had failed to take any procedural steps. The Prosecutor instructed the Land Office to deal with the case without undue delays.

20. In its decision of 25 November 1996 the Land Office withheld its approval of the restitution agreement of 15 September 1992.

21. On 23 December 1996 the applicant petitioned for a judicial review of this decision. On 27 December 1996 she supplemented her petition.

22. On 3 September 1997 a notary public determined G.N.'s estate.

23. On 30 November 1998 the Nitra Regional Court (*Krajský súd*) upheld the decision of the Land Office of 25 November 1996. As a result, under Act 229/91, it became incumbent upon the Land Office to determine *ex officio* the applicant's restitution claim.

24. The applicant requested the Land Office repeatedly, *inter alia* by letters of 19 April, 3 May, 18 May and 11 December 1999, to determine her restitution case expeditiously.

25. On 21 February 2000 the Land Office ordered preparatory measures to be taken with a view to opening land consolidation proceedings under Act 330/91 in respect of the plot in issue.

26. On 15 August 2000 the Land Office opened the land consolidation proceedings. It noted that "heirs of the assigned owners had submitted competing ownership claims to the plot" and that the rival claims had to be determined before it could be decided whether any part of the plot was to be restored to the applicant and, if so, which part. The applicant and another party to the proceedings filed appeals with the Nitra Regional Office (*Krajský úrad*).

27. On 8 September 2000 the Land Office decided to stay the proceedings on the applicant's restitution claim pending the outcome of the consolidation proceedings opened on 15 August 2000.

28. On 17 October 2000 the Land Office asked the parties to the consolidation proceedings for their observations on the appeals filed by the applicant and by the other party.

29. In its decision of 2 January 2001, the Regional Office found factual inaccuracies and inconsistencies in the reasoning of the Land Office's decision of 15 August 2000 to open the consolidation proceedings in respect of the plot. It quashed this decision and sent the case-file back to the Land Office for reconsideration. The decision of 8 September 2000 to stay the restitution proceedings was not affected by this decision.

30. On 13 February 2001 the applicant lodged a complaint with the Head of the Land Office (*Prednosta okresného úradu*) about the delays in her restitution proceedings. She demanded that the proceedings be resumed and her claim considered on the merits. On 28 February 2001 the Head of the Land Office informed the applicant that the Land Office would determine the applicant's claim following the determination of the preliminary question in the consolidation proceedings, i.e. the competing ownership claims filed by the third parties.

31. On 13 March 2001 the applicant requested that the Land Office inform her about the state of her restitution proceedings.

32. On 19 March 2001 the Land Office informed the applicant that the restitution proceedings were still stayed pending the determination of the preliminary question that was being dealt with in the consolidation proceedings.

33. On 25 May 2001 the Land Office held a hearing on the applicant's restitution claim.

34. On 18 September 2001 the Land Office allowed the applicant's restitution claim. It noted that the allocation of the plot to the assigned owners had occurred prior to the formal confiscation of the ownership interest she was claiming. It concluded therefore that the allocation did not constitute an obstacle to the restitution of this share to the applicant. This decision became final on 26 October 2001.

35. The applicant's title to the 1/6 ownership interest in the plot has not yet been recorded in the Land Register (*kataster nehnuteľností*).

36. To date, no new decision to open the land consolidation proceedings has been taken.

THE LAW

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

37. The applicant complained that the length of her restitution proceedings had exceeded a "reasonable time". She relies on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

38. The Government asserted that the length of the proceedings was mainly due to the factual, legal and procedural complexity of the case. The proceedings concerned no less than 14 parties. The determination of the dual ownership claims to the plot by (heirs of) the original owners and (heirs of) the assigned owners was a very complicated issue entailing, *inter*

alia, the determination of differences in legal ownership and the factual use and possession of the property.

Nevertheless, the Government accepted that there had been delays in the proceedings imputable to the Land Office, in particular, the delays found by the Komárno District Prosecutor on 31 October 1996.

The Government however claimed that the subject matter of the proceedings at issue was not of a particular importance for the applicant within the meaning of the Court's case law on length of proceedings cases.

39. The applicant argued that her restitution claim was well founded and that the Land Office had a duty to decide upon it no later than 60 days from its submission. She maintained that there was no legal basis for the Land Office to stay the restitution proceedings and that, by doing so, the Land Office had unlawfully and arbitrarily extended the length of these proceedings. She pointed out that the determination of her restitution claim concerned her status as the heir to her family's property and maintained, therefore, that the matter had called for special diligence on the part of the authorities. The applicant finally contended that her title to the share in the plot had not yet been registered in the Land Register.

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court notes that the period under consideration in the present case commenced on 22 November 1992. This was not contested by the parties. It ended on 18 September 2001 when the Land Office allowed the applicant's claim. Accordingly, the proceedings lasted 8 years, 9 months, 26 days.

42. The Court accepts that the case under consideration was of a certain complexity. This factor alone does not, however, account for the overall length of the proceedings. In the Court's view, no substantial delay in the proceedings can be imputed to the conduct of the parties.

43. As to the conduct of the domestic authorities, the Court takes notice of the finding of the District Prosecutor of 31 October 1996 that there were undue delays in the proceedings in that, after 3 November 1993, the Land Office failed to take any procedural steps in the case. These delays were acknowledged by the Government. The Court further observes that it took the Regional Court 1 year, 11 months and 7 days, namely from 23 December 1996 until 30 November 1998, to decide on the applicant's request for a judicial review of the decision of the Land Office of 25 November 1996. Furthermore, the Court notes that, on 15 August 2000, the Land Office decided to open the land consolidation proceedings in the

area concerned. This decision ultimately led to the decision of the Land Office of 8 September 2000 to stay the restitution proceedings. However, this decision was subsequently quashed by the Regional Court Office and, to date, no new decision to open the land consolidation proceedings has been taken.

44. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 2,332,257 Slovakian korunas (SKK) in compensation for pecuniary damage. This sum included first of all SKK 1,546,069 in compensation for the profit that the applicant claimed to have lost as a consequence of the excessive length of the proceedings. This sum further included amounts of SKK 306,393 and SKK 479,795 in compensation for the applicant's real losses which she claimed to have sustained as a result of the co-operative's ensuing insolvency.

47. The Government considered the applicant's claim for compensation for lost profit to be manifestly ill-founded and unacceptable. As to the applicant's claim for compensation for real losses, the Government maintained that there was no causal link between the violation alleged and the loss allegedly suffered.

48. The Court fails to see any causal link between the pecuniary damage allegedly sustained and the length of the proceedings at issue. Accordingly, the Court dismisses the claims under this head.

49. The applicant further claimed SKK 5,000,000 in compensation for non-pecuniary damage. She argued, *inter alia*, that the uncertainty ensuing from the excessive length of her proceedings caused her physical and mental suffering and frustration.

50. The Government considered this amount overstated. They pointed out that it was not supported by any evidence and concluded that this claim was unacceptable.

51. The Court accepts that the applicant suffered damage of a non-pecuniary nature, such as distress resulting from the protracted length

of the proceedings in her case. Making an assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant 3,500 euros (EUR) under this head.

B. Costs and expenses

52. The applicant claimed SKK 119,160 in respect of her costs and expenses. This sum included SKK 75,000 as remuneration for her lawyer for representing her before the Court and expenses for translation of her submissions to the Court of SKK 44,140.

53. The Government contended that the applicant's claim in respect of her legal fees was excessive with regard to the time spent by her lawyer on the case. They maintained that, according to the applicable regulations on lawyers' fees, the applicant's legitimate legal costs were in the amount of SKK 7,570. Finally, the Government pointed out that the applicant's observations in reply to the observations of the Government on the merits of the application, which the applicant had translated into English, concerned to a substantial extent matters which the Court had already declared inadmissible. In conclusion, the Government considered the applicant's claim for the reimbursement of translation expenses excessive.

54. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). On the basis of the information in its possession and the above-mentioned criteria, the Court, making its own assessment on an equitable basis, awards the applicant the global sum of EUR 750 under this head.

C. Default interest

55. 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.

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, the following amounts to be converted into Slovakian korunas at the rate applicable at the date of settlement:

- (i) EUR 3500 (three thousand five hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 750 (seven hundred fifty euros) in respect of costs and expenses, together with 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 24 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President