



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

FOURTH SECTION

CASE OF VARGOVÁ v. SLOVAKIA

(Application no. 52555/99)

JUDGMENT

STRASBOURG

15 February 2005

FINAL

15/05/2005

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 Vargová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 25 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 52555/99) 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, *inter alia*, a Slovakian national, Ms Elfrída Vargová ("the applicant"), on 20 April 1999. The applicant died in 2000.

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

3. The applicant alleged, in particular, that her right to a hearing within a reasonable time and to an effective remedy had been violated.

4. The application was allocated to the Fourth 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. By a decision of 31 August 2004 the Court decided to continue the relevant part of the application filed by the late applicant at the request of Mr J. Varga, her son and only heir. On the same day it declared the application partly admissible.

6. The applicant's son and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 3 April 1992 the applicant claimed restitution of a house before the Bratislava IV District Court. She relied on the Extra-Judicial Rehabilitations Act of 1991.

8. On 21 December 1993 the District Court dismissed the claim. The judgment stated that the house had been taken away from the applicant's parents pursuant to President Beneš's Decree No. 108/1945, in 1945, and that the possibility of restoring property under the Extra-Judicial Rehabilitations Act extended only to cases where the property had been taken away between 25 February 1948 and 1 January 1990.

9. The applicant appealed. She claimed that she had acquired the house in question as an heir following her mother's death in 1941. She concluded that the subsequent confiscation of the house had been void as at that time her parents no longer owned it and that she had never stopped being the owner of the property.

10. On 31 May 1994 the applicant authorised her son to represent her in the proceedings.

11. By a decision of 24 June 1994 the District Court ordered the applicant to pay the court fees. On 11 July 1994 the applicant appealed against this decision. At the same time she requested a waiver from the obligation to pay the fees. On 15 July 1994 the District Court decided not to exempt the applicant from the obligation to pay the fees. On 18 October 1994 the Bratislava City Court quashed the decisions of 24 June and 15 July 1994 as the relevant law had been amended to the effect that no court fees were due in respect of proceedings under the Extra-Judicial Rehabilitations Act.

12. By a separate decision delivered on 18 October 1994 the Bratislava City Court quashed the first instance judgment of 21 December 1993 and instructed the District Court to establish the relevant facts of the case.

13. On 5 June 1997 the Bratislava IV District Court again dismissed the applicant's claim. The court found void the confiscation of the property in question as the applicant's mother had died in 1941, that is prior to the confiscation. It noted that no inheritance proceedings had been held contrary to the relevant provisions of the Civil Code. The District Court further noted that the defendant had inherited the house from her predecessor and that the latter had bought it from the House Administration in Devínska Nová Ves on 30 May 1969. Accordingly, the former owner had not "transferred", within the meaning of Section 4 of the Extra-Judicial Rehabilitations Act, the property to the defendant and the latter was not,

therefore, obliged to restore it to the applicant under the provisions of that Act.

14. On 1 August 1997 the applicant appealed. She claimed, in particular, that the defendant was obliged to restore the property as her legal predecessor fell within Section 4 of the Extra-Judicial Rehabilitations Act.

15. On 21 October 1998 the Bratislava Regional Court upheld the first instance judgment of 5 June 1997. The appellate court held that the confiscation had taken effect on 25 October 1945, that is outside the period covered by the Extra-Judicial Rehabilitations Act. It considered irrelevant that the property had been formally confiscated from the applicant's mother who had died in 1941.

16. The Regional Court further found that the property had not been "transferred" to the defendant within the meaning of Section 4(2) of the Extra-Judicial Rehabilitations Act as she had inherited it following the death of her legal predecessor. The judgment was served on the applicant on 29 March 1999 and the decision to dismiss the applicant's claim thus became final.

17. On 3 May 1999 the appellate court received the applicant's appeal on points of law. In it she argued that the appellate court had failed to notify her of the defendant's written submissions and that the composition of the appellate court's panel had been changed just before the hearing in the case. The applicant requested that a lawyer be appointed to represent her in the proceedings.

18. The case file was submitted to the Bratislava IV District Court on 6 May 1999. On 2 July 1999 the applicant submitted a certificate concerning her financial situation at the court's request.

19. On 17 December 1999 the District Court asked the defendant to submit comments on the applicant's appeal on points of law. The defendant replied on 10 January 2000.

20. On 18 January 2000 the District Court submitted the case file to the Supreme Court. The latter returned the file to the District Court on 6 April 2000 with the instruction to decide on the applicant's request concerning the appointment of a lawyer. The District Court was further requested to clarify the circumstances in which the appellate court's judgment had been served.

21. On 6 October 2003 the Bratislava IV District Court made an inquiry concerning the old-age pension which the applicant had received. It further asked the applicant's son to inform it whether he had stayed at home between 11 and 15 March 1999. The District Court reiterated the latter request on 12 February 2004.

22. On 31 March 2004 the Bratislava IV District Court asked for the file concerning the estate of the applicant. The file was submitted to it on 10 May 2004.

23. On 10 May 2004 the Bratislava IV District Court requested the applicant's son to eliminate shortcomings in the appeal on points of law. On 27 September 2004 the District Court issued a formal decision to the same effect. The applicant's son submits that none of these documents has been served on him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *The Constitution*

24. Article 48(2) of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

25. Pursuant to Article 130(3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon a petition (*podnet*) presented by any individual or a corporation claiming that their rights had been violated.

26. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127 the relevant part of which reads as follows:

“1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated.” ...

2. *Constitutional Court Act*

27. Under Section 49, complaints to Constitutional Court can be filed by natural or legal persons alleging that their fundamental rights or freedoms were violated unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

28. Section 53(3) provides that a complaint is to be filed within two months from the final effect of a decision or of notification of the interference complained of. That time-limit starts running from the moment when the plaintiff had a practical possibility of learning about such interference.

3. Extra-Judicial Rehabilitations Act of 1991

29. The aim of the Extra-Judicial Rehabilitations Act (*Zákon o mimosúdnych rehabilitáciach*) is to redress certain infringements of property and social rights which occurred between 25 February 1948 and 1 January 1989.

30. Section 4(2) provides that any natural person who acquired property from the State contrary to any law in force at the relevant time, for a price inferior to any applicable price regulations, or on the basis of any unlawful advantage, is obliged to restore the property to its former owner. Where such persons transferred the property to other persons close to them, the latter are also obliged to restore it.

4. Constitutional Court's practice

31. According to its case-law under former Article 130(3) of the Constitution, as in force until 30 June 2001, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48(2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

32. It has been the Constitutional Court's practice to examine alleged violations of the right to a hearing without undue delay only where the relevant remedy was filed with it at a time when the alleged violation occurred or still lasted (decisions No. I. ÚS 34/99 of 20 May 1999 or III. ÚS 20/00 of 12 April 2000). It has not examined complaints about length of proceedings in which a final decision had been delivered at the moment of introduction of such complaints.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Applicability of Article 6 § 1

33. The Government argued, as they did at the admissibility stage, that the proceedings complained of fell outside the ambit of Article 6 § 1 of the Convention. In particular, the property in question had been taken away from the applicant's predecessor in 1945, whereas the Extra-Judicial Rehabilitations Act of 1991 exclusively provides for redress where such interference had occurred between 1948 and 1989. As the applicant was not entitled to claim restitution of the property under the relevant law, her claim did not attract the guarantees of Article 6 § 1.

34. The applicant disagreed.

35. In its decision on the admissibility of the case the Court held that Article 6 § 1 of the Convention was applicable as in the proceedings in issue there was a genuine and serious dispute over the existence of the applicant's civil right to claim restitution of property. That right was recognised, at least on arguable grounds, in the Extra-Judicial Rehabilitations Act of 1991.

36. The Court finds no reason for reaching a different conclusion at this stage of the proceedings. In particular, it notes that the courts at two levels of jurisdiction, after having examined the merits of the applicant's action, dismissed her arguments and concluded that that claim could not be granted as the property had been expropriated outside the period covered by the relevant law. In doing so, the courts determined the applicant's civil rights within the meaning of Article 6 § 1 of the Convention. The Government's objection relating to the applicability of this provision must therefore be dismissed.

B. Exhaustion of domestic remedies

37. The Court joined to the merits the examination of the Government's objection that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. According to the Government, Mr Varga, as the universal heir of the applicant, had been a party to the proceedings on the appeal on points of law. In that capacity, it had been open to him to complain about the length of the proceedings to the Constitutional Court under Article 127 of the Constitution, as in force since 1 January 2002. The Government thereby relied on an opinion submitted by the President of the Constitutional Court indicating that the son of the

applicant, as her universal legal successor and a party to the proceedings concerning the appeal on points of law, had standing to complain about undue delays in those proceedings. In particular, the applicant's son could have complained that the Bratislava IV District Court, which was responsible for preparing the file for an examination by the Supreme Court, had not displayed due diligence in the context of the proceedings on the appeal on points of law. Furthermore, once the file has been submitted for decision to the Supreme Court, the applicant's son can complain about any delays which that court may occasion. The opinion further stated that the Constitutional Court could no longer examine whether undue delays occurred in the proceedings leading to the Regional Court's decision of 21 October 1998 as a final decision on the case had already been given.

38. The applicant's son argued that prior to the death of his mother in 2000 the remedy invoked did not exist. The decision on dismissal of his mother's claim became final in 1999, that is prior to the introduction of the remedy invoked by the Government, and under the relevant provisions of the Constitutional Court Act a complaint under Article 127 of the Constitution was to be submitted within two months from the moment when a decision had become final. In addition, the applicant's son argued that he could not complain under Article 127 of the Constitution about the length of the proceedings leading to the Regional Court's judgment as he had not been a party to those proceedings.

39. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52).

40. The position in the present case prevents the son of the applicant from successfully complaining before the Constitutional Court about the length of the proceedings leading to the Bratislava Regional Court's judgment of 21 October 1998. Since the remedy invoked by the Government can provide only partial redress for the alleged violation of the Convention, it cannot be considered as adequate in the particular circumstances of the case.

41. The Government's objection relating to the failure to exhaust domestic remedies must therefore be dismissed.

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

42. The applicant complained about the length of the proceedings concerning her restitution claim. 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 ... hearing within a reasonable time by a[n] ... tribunal ...”

43. The Government submitted that the case was particularly complex from both factual and legal point of view as it involved determination of issues relating to confiscation of property which had occurred in 1945. The courts dealing with the case at first and second instance had dealt with the case in an appropriate manner. The Government admitted that the Bratislava IV District Court, in the context of processing the applicant's appeal on points of law, remained inactive between 6 April 2000 and 6 October 2003.

44. As to the conduct of the parties, the Government pointed out that five out of eleven hearings which had been held at first and second instance had had to be adjourned due to the absence of the parties. In particular, the applicant had failed to appear before the courts on four occasions. She had supplemented her claim several times and had extensively availed herself of her procedural rights thereby contributing to the length of the proceedings.

45. The son of the applicant submitted that the domestic courts had failed to proceed with the case in an appropriate manner and that unjustified delays had occurred.

46. The proceedings complained of started on 3 April 1992 and they have not yet ended as the applicant's appeal on points of law of 1999 still remains to be determined. The period to be taken into consideration has thus exceeded 12 years and 9 months.

47. Admitting that the case was of a certain complexity and that the proceedings were to a certain extent prolonged by the conduct of the parties, the Court finds that in the particular circumstances of the case their overall length is incompatible with the reasonable time requirement laid down in Article 6 § 1.

48. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant complained that she had no effective remedy at her disposal as regards the complaint about the length of the proceedings. She relied on Article 13 of the Convention which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

50. The Government submitted that undue delays in the proceedings in issue had occurred exclusively in the proceedings concerning the applicant's appeal on points of law. They argued that in that respect Mr Varga, who had replaced the applicant in those proceedings, could effectively have sought redress by means of a complaint under Article 127 of the Constitution, as operative since 1 January 2002.

51. The applicant's son admitted that he could effectively seek redress by means of a constitutional complaint as regards the delays in the proceedings concerning the appeal on points of law. He stated that he would use that remedy.

52. In the light of its above finding under Article 6 § 1 of the Convention and having regard to the fact that a new remedy under Article 127 of the Constitution has been available in Slovakia since 1 January 2002 in similar cases, the Court finds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention (see *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

54. The applicant's son claimed compensation for damage and costs and expenses incurred at domestic level and before the Court.

A. Damage, costs and expenses

55. The applicant's son claimed compensation for damage of pecuniary nature corresponding to the market value of the real property the restitution of which his mother had claimed.

As regards compensation for non-pecuniary damage and for costs and expenses incurred both at domestic level and before the Court, he claimed the global sum of 18,000 euros.

56. The Government contended that there existed no causal link between the alleged breach of the applicant's rights under Articles 6 § 1 and 13 of the Convention and the pecuniary damage claimed.

As regards the sum claimed in respect of non-pecuniary damage, costs and expenses, the Government argued that it was excessively high and not supported by any evidence.

57. In its decision of 31 August 2004 the Court declared inadmissible as being premature the complaints under Article 6 § 1 of the Convention and

under Article 1 of Protocol No. 1 relating to the fact that the restitution claim in question had not been granted. It concurs with the Government that there is no causal link between the pecuniary damage claimed and the finding that the applicant's right to a hearing within a reasonable time was violated. Accordingly, the Court makes no award under this head.

58. As regards the claim for non-pecuniary damage, making an assessment on an equitable basis and taking into account that it has been open to the applicant's son to obtain partial reparation for delays in the proceedings on appeal on points of law, the Court makes an award of 4,000 euros.

59. Finally, the Court notes that the applicant's son failed to substantiate his claim relating to the costs and expenses. Noting that the applicant was not represented by a lawyer in the proceedings before it and that she or her son obviously had certain expenses relating to the presentation of the case and translation of the relevant documents, the Court awards 300 euros to the applicant's son under this head.

B. Default interest

60. 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. *Dismisses* the Government's preliminary objections;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant's son, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President