



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

FOURTH SECTION

CASE OF GAŽÍKOVÁ v. SLOVAKIA

(Application no. 66083/01)

JUDGMENT

STRASBOURG

13 June 2006

FINAL

13/09/2006

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 Gažíková v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 66083/01) 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 a Slovakian national, Mrs Júlia Gažíková (“the applicant”), on 7 February 2001.

2. The applicant was represented by Mr I. Gažík, a lawyer practising in Prievidza. The Slovakian Government (“the Government”) were represented by their Agent, Mrs A. Poláčková.

3. On 11 March 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1932 and lives in Bojnice.

5. The applicant’s mother, Mrs D., owned real property. She died in 1982. Her estate was determined by the State Notary Office (*Štátne notárstvo*) in Považská Bystrica in a decision of 7 October 1982. The inheritance comprised *inter alia* a share in a complex of agricultural land which was located in Klobušice and was formally divided into several plots. The share of Mrs D. passed to the applicant’s father, Mr D., who himself already owned an equal share in the land.

6. In 1983 Mr D. died. His estate was determined by notarial decisions of 18 August 1983 and 4 December 1987. His own share in the above land as well as the share inherited from Mrs D. passed to the applicant and her sister.

7. On 22 March 1993 the applicant and her sister, who were represented by a lawyer, made a submission to the Považská Bystrica District Court (*Okresný súd*) described as a “motion for commencement of inheritance proceedings”. They maintained that the above inheritance decisions were flawed by inaccuracies as regards the definition of the parcels, their acreage and the ownership shares to be inherited. The applicant and her sister asserted in particular that in the original decisions no account had been taken of the fact that Mrs D. and Mr D. both had equal shares in the land and that the decisions were wrongfully based on their having only one of these shares. They sought “additional inheritance proceedings” and the “correction of obvious errors” in the original decisions.

8. On 20 January 1994 the District Court took a formal decision to commence inheritance proceedings and authorised a notary public to carry them out.

9. On 23 May 1996 the District Court discontinued the proceedings. It interpreted the motion of 22 March 1993 as being formally aimed at determining a “newly discovered inheritance” on the death of Mrs D. It observed that no such new inheritance had in fact been disclosed and concluded that, therefore, there was no case to be determined.

10. On 31 July 1996, on appeal by the applicant and her sister, the Banská Bystrica Regional Court (*Krajský súd*) quashed the decision of 23 May 1996 and remitted the matter to the District Court for re-examination. The Regional Court found that the written version of the decision of 7 October 1982 did not correspond to the oral version as recorded in the minutes of the hearing at which it had been pronounced. The Regional Court instructed the District Court to bring the written version in line with the recorded oral version. The Regional Court observed that even the oral version was not absolutely precise. However, in the Regional Court’s view, once the written version of the decision was so “corrected” and a copy of it was served on the parties, they could appeal against it on the merits.

11. The case-file was subsequently transmitted to a notary public who was designated by the District Court to effect certain procedural steps in the matter (*súdny komisár*).

12. In September 1998 the notary public obtained a report from the Land Registry explaining changes in definition of the land in issue in the context of the preceding land reforms.

13. On 20 November 1998 the District Court gave a decision under Article 164 of the Code of Civil Procedure correcting errors in the operative

part of the written decision of 7 October 1982 by aligning it with the oral version.

14. On 1 February 1999 the applicant and her sister appealed against the decision of 7 October 1982, as corrected by the decision of 20 November 1998. They argued that, even after the correction, the ruling as regards the land in question was inoperative as the land was not defined clearly.

15. On 31 May 1999 the Trenčín Regional Court quashed the decision of 20 November 1998. It found that it was not bound by the views of the Banská Bystrica Regional Court as expressed in its decision of 31 July 1996 and found that it was not right “to correct” the decision of 7 October 1982 by bringing it in line with the recorded oral version which itself was inaccurate. The Trenčín Regional Court remitted the case to the District Court and instructed it to examine the contents of the case file. On the basis of such contents the decision of 7 October 1982 was to be corrected by defining the land properly.

16. In a letter of 6 October 1999 the Vice President of the District Court acknowledged that there had been unjustified delays in the proceedings, especially in the period prior to 23 May 1996 and between 31 October 1996 and 20 November 1998.

17. On 8 November 1999 the District Court gave a new decision under Article 164 of the Code of Civil Procedure correcting errors in the decision of 7 October 1982. It defined the parcels belonging to the inheritance and took account of the shares in the ownership of these parcels of both Mrs D. and Mr D. However, the District Court also found that some other parcels to which the applicant and her sister claimed title by way of succession did not belong to the estate of Mrs D.

18. On 7 December 1999 the applicant and her sister lodged an appeal challenging the decision of 8 November 1999 mainly in so far as it concerned the parcels which had been left out from the estate. They demanded that the decision of 8 November 1999 be quashed and that in the subsequent proceedings a hearing should be held before the District Court in order to clarify the matter and to avoid further confusion.

19. On 31 May 2000 the Trenčín Regional Court upheld the decision of 8 November 1999. In its summary reasoning the Regional Court referred to and fully endorsed the findings and conclusions of the District Court. The Regional Court’s decision was served on the applicant’s lawyer at some point after 17 August 2000.

THE LAW

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

20. The applicant complained that the proceedings on her motion of 22 March 1993 had been unfair in that, contrary to the applicable procedural rules and established judicial practice, the courts had not examined her motion diligently *ex officio* but had expected her to substantiate the claims herself and had arbitrarily and unjustly construed the lack of substantiation of her claims to her disadvantage. The applicant further complained that there had been no public hearing before a court and that she had thus been deprived of an adequate possibility to present her case. The applicant also complained that the length of these proceedings had been incompatible with the “reasonable time” requirement. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. *Applicability of Article 6 § 1 of the Convention*

21. The Government argued that Article 6 § 1 of the Convention did not apply to the proceedings initiated by the applicant’s motion of 22 March 1993 since those proceedings concerned merely formal corrections of the decision of 7 October 1982 and, as for their substance, did not involve a determination of the applicant’s “civil rights and obligations”.

22. The applicant contended that Article 6 § 1 of the Convention applied. She argued in particular that real property had to be precisely defined. Otherwise it could not be enjoyed peacefully by its owner. The description of the inheritance in the decision of 7 October 1982 was incorrect *inter alia* because it wrongly indicated a smaller ownership share in the land in question. With this incorrect description the applicant could not make use of any of her rights in respect of the property. The correction of the description in fact made her the real owner of the right share in the property. The correction therefore could not be seen as a mere formality.

23. Under the Court’s case-law, for Article 6 § 1 in its “civil” limb to be applicable, there must be a dispute (“contestation”) over “civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81, and *Powell and Rayner v. the United Kingdom*,

judgment of 21 February 1990, Series A no. 172, p. 16, § 36). 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, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, for instance, *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2507, § 34).

24. In the present case, the applicant claims title to immovable property which she acquired by way of succession. Her title has its formal basis in the decision of 7 October 1982. In her motion of 22 March 1993 the applicant claimed that the description of the property in that decision was wrong in that it was inaccurate and attributed her a smaller ownership share than it should. As a result, the decision was inoperative and curtailed her property rights.

25. The Court observes that although the decisions in respect of the applicant's motion of 22 March 1993 are formally referred to as the "correction of errors" in the decision of 7 October 1982, they do not merely concern formal errors such as textual mistakes or errors in calculation. In order to correct the decision of 7 October 1982, the courts re-examined the contents of the case-file concerning that decision (see paragraphs 10 and 15 above), obtained and considered new evidence (see paragraph 12 above) and determined which portions of the property belonged to the estate (see paragraph 17 above). The determination of the applicant's motion of 22 March 1993 had direct consequences for the applicant in that her legal standing as regards the property was clarified and her title to the correct share in the property was confirmed.

26. In these circumstances, the Court finds that the proceedings in question attracted the guarantees of Article 6 § 1 of the Convention.

2. Fair and public hearing

27. The Government argued that the applicant could assert her objections to the fairness of the proceedings, the lack of an oral hearing and access to a court under Article 237 (f) of the Code of Civil Procedure which provided for an appeal on points of law (*dovolanie*) to any party who has been prevented from acting before a court as a result of the court's conduct.

28. The applicant maintained that pursuant to Article 214 § 2 (c) of the Code of Civil Procedure courts had no duty to hold hearings in appeals against decisions (*uznesenie*). She argued that, therefore, the lack of a hearing in her case was in accordance with the law and could not be invoked as a ground for an appeal on points of law under Article 237 (f) of the Code of Civil Procedure.

29. The Court observes that pursuant to Article 236 § 1 of the Code of Civil Procedure appeals on points of law are available against final

decisions of a court of appeal if the law so provides. Under Article 237 (f) an appeal on points of law is admissible against any decision of the appellate court where the appellant has been prevented, by the appellate court's conduct, from acting before the court (see *Indra v. Slovakia*, no. 46845/99, §§ 32 and 33, 1 February 2005). The applicant's objections to the duty to substantiate her case, the lack of an adequate possibility to present the case and the lack of a public hearing appear to fall within the ambit of this provision. Moreover, the Court has previously found that an appeal on points of law was a remedy to be tried for the purposes of Article 35 § 1 of the Convention by applicants who complained that they were not heard by a court (see *Molnárová and Kochanová v. Slovakia* (dec.), no. 44965/98, ECHR 6 July 2000). To the extent the application has been substantiated, the Court finds no reasons for reaching a different conclusion in the present case.

It follows that the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. *Hearing within a reasonable time*

30. The Government accepted that the complaint of the length of the proceedings was not manifestly ill-founded. They however maintained that the applicant's lawyer had significantly contributed to the length of the proceedings as a result of the lack of clarity in his submissions.

31. The applicant reiterated her complaint and opposed the argument that her submissions had been unclear.

32. The period to be taken into consideration began on 22 March 1993 and ended on 31 May 2000. It thus lasted more than 7 years and 2 months for 2 levels of jurisdiction.

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

36. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

37. The applicant also complained under Article 1 of Protocol No. 1 that the judicial decisions in her case had been wrong; that they had amounted to a deprivation of her property (a part of the inheritance); and that they had prevented her from asserting her property rights in a related context.

38. The Court notes that this part of the application has the same factual background as and is linked to the complaint of the lack of a fair and public hearing which has been rejected for non-exhaustion of domestic (see paragraph 29 above). It must therefore likewise be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. Qualifying her claim as concerning pecuniary damage, the applicant claimed 150,000 Slovakian korunas¹ (SKK) in respect of uncertainty and suffering which she had experienced and in respect of the interference with her property rights.

41. The Government contested the claim.

42. With reference to the finding of the violation of the applicant’s right under Article 6 § 1 of the Convention to a hearing within a reasonable time (see paragraph 36 above) and in so far as the claim has been substantiated, the Court can discern no pecuniary damage (see, *mutatis mutandis*, *Šebeková and Horvatovičová v. Slovakia*, no. 73233/01, § 57,

¹ SKK 150,000 is equivalent to approximately 4,000 euros (EUR).

14 February 2006). On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on equitable basis, it awards the applicant 4,000 euros (EUR) under that head.

B. Costs and expenses

43. The applicant also claimed SKK 50,000 for the costs of her legal representation before the domestic courts and before the Court.

44. The Government contested the claim.

45. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

C. Default interest

46. 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. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, to 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;

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

Done in English, and notified in writing on 13 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President