



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

FOURTH SECTION

CASE OF KANALA v. SLOVAKIA

(Application no. 57239/00)

JUDGMENT

STRASBOURG

10 July 2007

FINAL

30/01/2008

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 Kanala v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 57239/00) 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 Slovak national, Mr Ivan Kanala ("the applicant"), on 6 March 2000.

2. The applicant, who had been granted legal aid, was represented by Mr I. Gažík, a lawyer practising in Prievidza. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková, succeeded by Mrs M. Pirošíková.

3. The applicant alleged, in particular, that his rights under Article 1 of Protocol No. 1 had been violated as a result of the manner of enforcement of his debt.

4. By a decision of 7 February 2006 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1964 and lives in Rožňava. He is a businessman.

7. In 1991 the applicant acquired, at an auction held in the context of denationalisation of State property, real property located in the centre of Rožňava town. The opening price at the auction had been fixed at 245,000 Czechoslovak korunas (Kčs) in accordance with the relevant price regulation. The applicant purchased the property for Kčs 560,000.

8. The applicant took out a bank loan with a view to paying the purchase price. Subsequently, in the course of 1992, he took out further loans including one for 190,000 Slovakian korunas (SKK) for the purpose of reconstructing the buildings.

9. In 1993 the District Court in Spišská Nová Ves determined that the applicant had acquired the above real property in association with his partner Mr T., and that they each owned one half of the property. As a result, Mr T. started running his business in the re-constructed part of the premises. Since he was not able to benefit from the use of a part of the premises, the applicant submitted that he was unable to pay the instalments to the bank.

10. On 17 February 1997 the Rožňava District Court ordered the applicant and a third party who had guaranteed the applicant's debt to pay a sum to the creditor bank. The judgment became final on 20 August 1997. On 11 August 1997 the Rožňava District Court issued a payment order against the applicant and the guarantor ordering them to pay different parts of the debt. The payment order became final on 4 November 1997.

11. On 12 March 1998 the Rožňava District Court, at the creditor's request, authorised an executions officer to execute the above decisions. The creditor bank agreed to the recovery of the debt by selling the applicant's share in the above real property. Both executions were carried out simultaneously as they concerned the same persons.

12. The applicant submitted that the executions officer and the applicant's brother had reached an agreement under which the latter would start paying off the debt and that no sale of the property would be ordered.

13. On 8 June 1998 the applicant filed an objection to the execution on the ground that he had requested the re-opening of the proceedings concerning the ownership of the property. On 16 June 1998 the District Court dismissed the objection.

14. On 24 July 1998 the executions officer ordered the sale of the applicant's share in the real property in issue. On 18 August 1998 the

applicant requested that the execution be adjourned. On 17 September 1998 the District Court dismissed the request.

15. On 14 October 1998 the executions officer informed the applicant that an expert had valued the whole property at SKK 390,590 on 30 September 1998.

16. Both the applicant and the creditor bank objected to the valuation. In particular, in a letter of 19 October 1998 the bank's representatives referred to an expert opinion of 11 January 1992 elaborated for the purpose of the applicant's loan request. In it the expert had valued the property, in accordance with the relevant price regulations including Regulation No. 465/1991, at Kčs 656,679. The bank's letter further stated that the value of real property had increased several times in the meantime and that the applicant had reconstructed the property. Reference was made to the loan of SKK 190,000 and the relevant bills. The property was situated in the centre of the town whereby its value was increased.

17. The executions officer asked for a second expert opinion. In it a different expert assessed the value of the property at SKK 439,280 on 23 November 1998. The property was valued pursuant to Regulation No. 465/1991. That valuation did not reflect the market value of the property.

18. On 21 December 1998 the executions officer announced that the applicant's share in the property would be sold at an auction on 22 January 1999. The opening price was to be SKK 219,640 which corresponded to half of the value of the whole property as determined by the second expert.

19. On 28 December 1998 the other co-owner of the property availed himself of his pre-emption right and deposited SKK 219,640 with the executions officer.

20. On 15 January 1999 the executions officer informed the District Court and the applicant that the real property would not be sold at an auction as the co-owner of the property had deposited a sum corresponding to its value. Reference was made to section 166(2) of the Executions Order.

21. On 25 January 1999 the applicant filed objections to the execution. He complained that an auction had been scheduled in disregard of the fact that his brother had undertaken to pay off the debt and that three payments had been made between September and December 1998. The applicant further objected that the value of the property as determined by experts was disproportionately low. In particular, the applicant argued that a different expert had established a report, in 1992, according to which the value of the property had been Kčs 656,679 at that time, and that more than SKK 400,000 had subsequently been invested in the building. The applicant submitted that the actual value of the property was approximately double the sum established by the experts. He requested that another expert assess the value of the property.

22. On 26 March 1999 the Rožňava District Court judge informed the executions officer that he had proceeded erroneously. The letter stated, in particular, that the market value of the property should have been established for the purpose of the execution. Reference was made to section 144(4) of the Executions Order. The judge requested the executions officer to have the assessment modified by an expert accordingly.

23. On 15 July 1999 the executions officer informed the District Court that experts were bound by Regulation No. 465/1991 and that they could not, therefore, take into account the market value of the property in issue.

24. In a decision of 13 September 1999 the Rožňava District Court confirmed that the co-owner had acquired the applicant's share in the property in that he had deposited the above sum of SKK 219,640 with the executions officer. The District Court further dismissed the applicant's objections concerning the valuation of the property. It held that the experts had been bound by Regulation No. 465/1991. The fact that the executions officer had disregarded the above agreement according to which the applicant's brother would start paying off the debt was irrelevant as such agreement was subject to approval by the creditor. No such approval had however been given. No appeal lay against the District Court's decision.

25. Subsequently the applicant's brother claimed the sum of money which he had paid to the executions officer in order to pay off the applicant's debt. On 11 February 2002 the District Court in Rožňava dismissed the action holding that the money paid had been transferred to the applicant's creditors with a view to paying off the latter's various debts.

26. On 14 March 2006 the Government requested an expert to determine the market value of the property in issue as of December 1998. In an opinion comprising 16 pages and dated 20 March 2006 the expert found that the general value of the whole property had been SKK 518,047 at the relevant time. The fact that the property had been co-owned by two persons could have affected its value. At that time similar real property had been sold at a price between SKK 500,000 and 550,000.

27. On 5 May 2006 a different expert valued the property at the applicant's request of 9 April 2006. His opinion indicates that, in December 1998, the general value of the property in issue had been SKK 1,758,727. On 9 April 2006 it amounted to SKK 2,451,179.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Executions Order of 1995 (Act No. 233/1995, as amended)

1. Provisions in force at the relevant time

28. Section 139(1), as in force until 8 November 1999, provided for the value of property to be established in an expert opinion.

29. Pursuant to section 142(2), as in force until 8 November 1999, the lowest bid at a sale by auction of real property equalled the price as established in an expert opinion.

30. Section 144(4) provides, *inter alia*, that the purchase price of property obtained as a result of its sale at an auction is not limited by price regulations.

31. Pursuant to section 157(4), where the proceeds of the sale exceed all claims to be satisfied in the context of the execution, the executions officer shall, after having satisfied all justified claims, transmit to the debtor the remainder of the proceeds of the sale.

32. Under section 166(2), a co-owner of an object which is to be sold in the context of an execution can prevent its sale if he or she deposits with the executions officer, prior to the start of the auction, a sum corresponding to the value of the share which is to be sold. The executions officer shall use the sum thus obtained as income from the sale.

2. Amendments enacted with effect from 9 November 1999

33. As from 9 November 1999, section 139(1) was amended in that an expert opinion on the value of real property should comprise both the price established pursuant to the relevant price regulation and the market price of the real property in question.

34. Pursuant to amended section 142(2), the lowest bid at a sale by auction of real property equals the market value of the property as determined by an expert under section 139(1).

B. Regulation No. 465/1991 (as amended)

35. Regulation No. 465/1991 of 25 October 1991 governed, *inter alia*, the valuation of buildings and of plots of land. It was repealed with effect from 1 January 2004.

36. Section 1(a) provided that the Regulation extended, *inter alia*, to the determination of the opening price for the purpose of the sale of property at public auctions unless the law otherwise provided.

C. Regulation No. 86/2002 (as amended)

37. Regulation No. 86/2002 governs the determination of the general value of property and became operative on 31 December 2003.

38. Section 1(2) provides that it applies to determining the general value of property in the context of proceedings under, *inter alia*, the Executions Order.

39. Pursuant to section 3(2)(a) and (b), the general value of property is its final value determined in an objective manner by an expert and corresponding to a price for which the property could be realised in normal circumstances at a given place and time. It should include, as a rule, value-added tax. The state of the property, influence of the market, economic situation and other specific factors should be taken into account.

D. Domestic courts' practice

40. In opinion Cpj 30/97 of 20 October 1997 the Civil-law Section of the Supreme Court held that courts should take into account the general value of property (that is the price for which it could actually be sold) when deciding on the dissolution of joint ownership and on adequate compensation for a part of such property. Such general value of property could not be determined on the basis of the price regulations in force. The opinion stated that the general value should also be applied where a co-owner availed himself or herself of the pre-emptory right to buy the property. The constitutional principle of equality of rights was thereby respected.

THE LAW

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

41. The applicant complained that his property had been sold at a price substantially lower than its market value without any relevant justification. He relied on 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.”

A. The arguments of the parties

1. The applicant

42. The applicant argued that he had bought the property alone in 1991 and that he had subsequently invested considerable sums in its reconstruction. His property had been sold far below its real value in 1998.

43. The applicant relied on the opinion which an expert had submitted at his request on 5 May 2006 (see paragraph 27 above). He contested the method of proceeding and the conclusion reached by the other expert who had valued the property at the Government's request on 20 March 2006.

44. The applicant's brother had undertaken to pay the sums owed by the applicant. In those circumstances, the interference in issue had not been justified.

45. The interference with his rights under Article 1 of Protocol No. 1 had therefore been clearly disproportionate and unjustified.

2. The Government

46. The Government argued that the execution of the judicial orders had pursued the legitimate aim of ensuring compliance with the applicant's contractual obligations. Thus it had been in the public interest. The execution had been carried out in accordance with the law then in force. In the circumstances of the case, the interference had not been disproportionate to the legitimate aim pursued.

47. As regards the fact that the property had not been sold at a price corresponding to its market value, the Government argued, with reference to the expert opinion of 20 March 2006 (see paragraph 26 above), that the difference between the market value of the applicant's share in the property and the price which the co-owner had paid on the basis of the expert opinion of 30 September 1998 was negligible.

48. In any event, the applicant should have foreseen that his failure to comply with his obligations in respect of the creditor would result in a forced sale of his property. Nothing guaranteed that the property would have been sold at a price equal to or above its market value had the co-owner not made use of his pre-emption right. In particular, the fact that the property had been co-owned by two persons could have had a dissuasive effect on potential buyers.

49. The Government expressed doubts as to whether the expert who had submitted the opinion on 5 May 2006 had correctly assessed the value of the property as of 1998.

50. By selling the applicant's property the State had complied with its positive obligation to protect the rights of the persons under its jurisdiction. The Government concluded that Article 1 of Protocol No. 1 had not been violated.

B. The Court's assessment

51. The applicant's ownership share in the real property in issue was transferred to the other co-owner in the context of execution proceedings brought with a view to obtaining sums of money which the domestic courts had earlier ordered to be paid to the applicant's creditor. Even if the interference in question did not involve an expropriation by the State, the contested measure resulted in deprivation of the applicant of his property. The Government have not contested that there was a deprivation of property within the meaning of the second sentence of Article 1 and the Court will accordingly examine it under the "rule" set out in that provision, it being understood that the three rules set out in that provision are not "distinct" in the sense of being unconnected (see, for example, *Bruncrona v. Finland*, no. 41673/98, § 65, 16 November 2004 or *Beyeler v. Italy* [GC], no. 33202/96, §§ 108-14, ECHR 2000-I).

52. Article 1 of Protocol No. 1 requires that such deprivation of property must comply with the principle of lawfulness, be in the public interest and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005). In particular a "fair balance" must be struck between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicant (see *Former King of Greece and Others*, [GC], no. 25701/94, § 89, ECHR 2000-XII).

53. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1. This provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see, among other authorities, *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II). A deprivation of property without compensation can, in certain circumstances, be compatible with Article 1 (see the *Jahn and Others v. Germany* [GC], judgment referred to above, § 117).

54. In the present case the sale of the applicant's property was carried out in accordance with the relevant provisions of the Executions Order of 1995 and Regulation No. 465/1991. As to the applicant's argument that the execution should have been stopped after his brother had started paying off his debt, the Rožňava District Court, on 13 September 1999, noted that the creditor had not approved of this arrangement as required by the relevant

law. The Court finds no indication that the interference complained of was not lawful.

55. The purpose of the interference was to execute courts' decisions ordering the applicant to pay sums which he owed to his creditor. It thus pursued the aim of ensuring legal certainty through enforcement of judicial orders, which undoubtedly is in the public interest.

56. The applicant argued that, as a result, the co-owner had obtained the property at a price which was far below its actual value. The Court's task is therefore to examine whether or not a disproportionate burden was imposed on the applicant in that context contrary to the requirements of Article 1 of Protocol No. 1.

57. The executions officer decided to enforce the relevant judicial decisions by selling the applicant's share in the property at a public auction. The proceeds of the sale were to reimburse a part of the applicant's debts. Both the applicant and the creditor bank had therefore a genuine interest in having the property sold at a price which was as high as the circumstances permitted.

58. The property was valued by an expert at SKK 439,280 in accordance with Regulation No. 465/1991. Pursuant to section 1(a) of that Regulation, the value of the applicant's share thus determined was to be the opening price for the public sale of the property. However, the public sale was annulled after the other co-owner had made use of his pre-emption right in that he had deposited with the executions officer the sum which corresponded to the opening price. As a result, the co-owner acquired the applicant's share in the property at a price which had been fixed in disregard of its actual market value (see also paragraphs 23 and 47 above).

59. The opening price at the auction at which the applicant had acquired the property in 1991 had been fixed, in accordance with the relevant price regulation, at Kčs 245,000. The applicant had purchased the property for Kčs 560,000. He contracted another loan with a view to making further investments in the property. The Court cannot overlook the fact that the general value of real property in Slovakia has substantially increased following the country's transition to a market-oriented economy. The above facts indicate that the market value of the property, at the time of its sale to the co-owner in 1998, was higher than the price determined pursuant to Regulation No. 465/1991. This has not been disputed between the parties who submitted two expert opinions elaborated at their request in 2006. In particular, in those opinions the market value of the property, as of December 1998, was assessed at SKK 518,047 by the Government's expert and SKK 1,758,727 by the applicant's expert.

60. Admittedly, the Court cannot speculate as to the price at which the property would have been sold at a public auction had the co-owner not made use of his pre-emption right. However, by permitting the co-owner to acquire the applicant's share in the property at a price which was below its

market value the domestic authorities deprived the applicant of a reasonable chance of having the property sold at its actual value and reimbursing a greater tranche of his debts.

61. The fact that the other co-owner of the property had the possibility of acquiring the applicant's share by pre-emption is not subject to criticism as such. However, there is no apparent public interest justification for such a financially advantageous transaction to have been permitted by the domestic law at the time in disregard of the actual value of the property and hence of the applicant's and the creditor's legitimate interests. In the Court's view, striking a fair balance between the competing interests required that the applicant should have been allowed an opportunity to have his property sold at a price corresponding to its market value. This could have been realised, for example, if the co-owner had been allowed to make use of his pre-emption right only after the close of the public auction.

62. It is also to be noted that the Supreme Court of the Slovak Republic in a different context, namely dissolution of joint ownership in civil proceedings, held that courts should take into account the general value of property, that is the price for which it could actually be sold. Such general value of property could not be determined on the basis of the price regulations then in force. The constitutional principle of equality of rights required that the general value should also be applied where a co-owner availed himself or herself of the pre-emption right (see paragraph 40 above).

63. The Supreme Court's reasoning is in line with the Court's view expressed in paragraph 61 above. Furthermore, the relevant law was subsequently changed to the effect that the lowest bid at a sale by auction of real property had to be equal to its market value (see paragraphs 33 and 34 above). This cannot, however, affect the position in the present case.

64. In these circumstances, the Court is not satisfied that a "fair balance" was struck between the demands of the public interest and the requirements of the protection of the applicant's rights in the context of the above execution proceedings.

65. There has accordingly been a breach of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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. Submissions of the parties

1. Damage

67. The applicant claimed SKK 1,422,497 plus default interest in respect of pecuniary damage. That sum comprised SKK 1,157,497 corresponding to the applicant's investments in the property minus the proceeds of its sale to the co-owner. It also comprised SKK 265,000 which his brother had paid to the executions officer on behalf of the applicant.

The applicant further claimed SKK 5 million in respect of non-pecuniary damage.

68. The Government argued that there was no link between the pecuniary damage claimed and the alleged violation of Article 1 of Protocol No. 1. The claim related to damage of a non-pecuniary nature was manifestly ill-founded.

2. Costs and expenses

69. The applicant, whose representative had been paid 886 euros under the legal-aid scheme of the Council of Europe, claimed SKK 184,728 which he had paid to his advocate.

70. The Government objected, with reference to the documents submitted by the applicant, that the amount claimed was excessive. It comprised sums which were unrelated to the subject-matter of the present application.

B. The Court's assessment

71. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the question, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
(a) *reserves* the said question in whole;

- (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
- (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 10 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President