



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

FOURTH SECTION

CASE OF ROSIVAL AND OTHERS v. SLOVAKIA

(Application no. 17684/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

23 September 2008

This judgment is final but it may be subject to editorial revision.

In the case of Rosival and Others v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 17684/02) 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 five applicants who are members of the same family. Their particulars appear in Appendix 1 below. They were represented before the Court by Mr P. Kerecman, a lawyer practising in Košice.

2. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. The applicants complained, *inter alia*, (i) under Article 6 § 1 of the Convention about the unfairness of the proceedings in respect of a part of their claim for restitution of land; (ii) under Article 1 of Protocol No. 1 about the outcome of those proceedings; and (iii) under Article 14 of the Convention about their being discriminated against in respect of the complaint under Article 1 of Protocol No. 1.

4. On 13 February 2007, after obtaining the parties’ observations, the Court declared the application admissible in so far as those complaints were concerned. Further complaints of the applicants were declared inadmissible on the same date.

5. On 21 September 2007, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 20 June 2008 and on 1 July 2008 the Government and the applicants respectively submitted formal declarations dated 20 June 2008 indicating that they had come to a friendly settlement of the case.

THE FACTS

6. The following is a brief summary of the relevant facts of the case¹.

7. The applicants' family owned real estate of approximately 1,500 hectares. It was confiscated by the State after the Second World War.

8. In 1991, the Land Ownership Act (Law no. 229/1991 Coll. - "the Act") was enacted, which provided for certain real property to be restored to its original owners or their legal successors. In situations similar to that of the applicants, the total acreage which could be returned was limited, under section 6 (3) of the Act, to 150 hectares for agricultural land and 250 hectares for other land.

9. On 28 February 1992 an amendment to the Act (Law no. 93/1992 Coll.) repealed section 6 (3) of the Act as, according to its explanatory memorandum, "the acreage limit restricted human rights".

10. On 8 December 1992 Mrs M.R., the applicants' relative, requested under the Act restitution of all her family's real property to her.

11. On 26 August 1993 a new amendment to the Act (Law no. 186/1993 Coll.) reintroduced section 6 (3) of the Act, setting a general limit of 250 hectares on the amount of land to be restored to one person. Pursuant to a new section 33 (2), pending claims for restitution of land over the said limit could be satisfied only up to that limit.

12. On 15 February 1995 Mrs M.R. died. The applicants inherited her rights and continued her restitution claim as her heirs.

13. On 22 February 1999 the Land Office found that the applicants met all the requirements for restitution of property under the Act and ordered the forestry enterprise which occupied it to restore the land to them up to the 250-hectare limit. The Regional Court in Žilina upheld this decision on 7 July 1999.

14. On 20 September 1999 the Land Office formally ruled, at the applicants' request, that they qualified for restitution of their property under the Act. However, in view of the decision of 22 February 1999 and the limit set by section 6 (3) of the Act, no further land could be restored to them.

15. On 25 January 2000 the Prosecutor General challenged sections 6 (3) and 33 (2) of the Act, as amended in 1993, before the Constitutional Court. On 24 April 2001 the Constitutional Court, sitting in plenary, dismissed the Prosecutor General's challenge.

16. On 14 December 2001 the Regional Court upheld the Land Office's decision of 20 September 1999 as lawful. It became final and binding on 25 March 2002.

¹ For a comprehensive description of the facts of the case and the relevant domestic law see the decision on admissibility of the application in the Court's database HUDOC (<http://echr.coe.int/echr/en/hudoc>).

17. Subsequently the applicants unsuccessfully challenged the decision of 14 December 2001 and the proceedings leading up to it before the Constitutional Court by means of a complaint under Article 127 of the Constitution.

THE LAW

18. On 20 June 2008 the Court received the following declaration from the Government:

“I, Marica Pirošíková, the Agent of the Government of the Slovak Republic before the European Court of Human Rights (hereinafter ‘the Court’), declare that, *ex gratia* and with a view to securing a friendly settlement of the above-mentioned case pending before the Court and lodged by the applicants whose particulars appear in Appendix 1, the Government of the Slovak Republic (hereinafter “the Government”) undertake to secure restitution of the real property which is the subject of this application, as described in Appendix 2, namely forest lands and forests (hereinafter ‘the real property’), to the applicants (to each of them in equal share) within six months from the date of notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights. If the applicants do not acquire the ownership of the real property or parts thereof within the mentioned time-limit, the Government will pay to the applicants jointly such amounts as listed in Appendix 2 and correspond to its official price (official price of the forest lands and forests) fixed on the basis of the expert opinion of Ing. Juraj Blaško no. 1/2002 of 24 February 2002. This undertaking will be discharged by the Government within seven months from the date of notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights.

The Government further undertake, within three months from the date of the notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights, to pay the applicants jointly a global sum of 35,000 (thirty five thousand) euros in respect of any other pecuniary damage, non-pecuniary damage and costs and expenses they have incurred. This amount will be converted into Slovakian korunas (SKK) at the rate applicable at the date of payment, free of any tax that may be payable.

In the event of failure to pay any sum within the set time-limit (namely seven months or three months, as mentioned above), the Government undertake to pay simple interest on it, from expiry of that time-limit until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

This arrangement will constitute the final resolution of the case and its implementation will be subject to the supervision of the Committee of Ministers.

The Government finally undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

19. On 1 July 2008 the Court received the following declaration signed by the applicants’ representative:

“We, the applicants listed in Appendix 1 to this declaration, note that, *ex gratia* and with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights (hereinafter ‘the Court’), the Government of the Slovak Republic (hereinafter ‘the Government’) undertake to secure restitution of the real property which is the subject of this application, as described in Appendix 2, namely forest lands and forests (hereinafter “the real property”), to us (to each of us in equal share) within six months from the date of notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights. We note that if we do not acquire the ownership of the real property or parts thereof within the mentioned time-limit, the Government will pay to us jointly such amounts as listed in Appendix 2 and correspond to its official price (official price of the forest lands and forests) fixed on the basis of the expert opinion of Ing. Juraj Blaško no. 1/2002 of 24 February 2002. This undertaking will be discharged by the Government within seven months from the date of notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights.

Further, we note that the Government undertake, within three months from the date of the notification of the Court’s decision pursuant to Article 39 of the European Convention on Human Rights, to pay us jointly a global sum of 35,000 (thirty five thousand) euros in respect of any other pecuniary damage, non-pecuniary damage and costs and expenses we have incurred. This amount will be converted into Slovakian korunas at the rate applicable at the date of payment, free of any tax that may be payable.

Finally, we note that, in the event of failure to pay any sum within the set time-limit (namely seven months or three months, as mentioned above), the Government undertake to pay simple interest on it, from expiry of that time-limit until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

We accept this proposal and waive any further claims against Slovakia in respect of the facts of this application. We declare that this constitutes a final resolution of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicants have reached.

We lastly undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

20. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

21. Accordingly, the remainder of the application should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the remainder of the application out of its list of cases;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

APPENDIX 1

List of the applicants

1. Mr Viktor Rosival, a Slovakian national who was born in 1930 and lives in Trnava (Slovakia);
2. Ms Viktória Lužáková, née Rosivalová, a Slovakian national who was born in 1957 and lives in Trnava (Slovakia);
3. Ms Klára Trugerová, an Austrian national who was born in 1957 and lives in Graz (Austria);
4. Ms Agneša Trugerová, a Slovakian and Austrian national who was born in 1964 and lives in Graz (Austria);
5. Mr Ladislav Rosival, a Slovakian national who was born in 1968 and lives in Bratislava (Slovakia).

APPENDIX 2
THE REAL PROPERTY (lands and forests)

Cadastral area: Sklabinský Podzámok					
Certificate of ownership no. 389					
Register "C"					
Plot no.:	Acreage (m ²)	Price (SKK)	Plot no.:	Acreage (m ²)	Price (SKK)
282/1	73 1000	16,251,661.99	319	4676	77,422.55
284	3951	16,793.40	320	3866	64,011.03
285	41 0418	6,829,060.95	322	23 7997	6,953,800.20
286	57 8902	12,414,117.14	323	36 4352	10,054,736.51
287	2596	2,605.37	326	52 0207	8,927,106.76
288	469	8,012.10	341/1	36 0063	9,838,581.70
289	6321	68,241.52	341/2	52	1,443.58
290	4282	73,151.00	342	35 7816	7,158,329.90
291	641	9,432.56	343	2 2351	337,612.93
292	64 2028	9,213,005.85	344	14 6741	3,929,004.74
293	1 6559	125,628.89	346	532	14,617.20
294	1499	22,058.36	347	4732	19,655.46
298	33 4852	7,713,440.42	348	2870	78,855.95
299	36 8113	6,658,582.93	350	58 0195	10,856,157.93
300	1589	5,663.27	351	6446	117,404.43
301	4029	22,892.69	352	1222	22,256.94
302	2340	9,685.37	353	2961	9,800.19
303	32 2449	4,376,643.23	354	826	14,655.73
304	1 3965	58,620.78	355	3158	56,032.44
305	1 2371	204,831.98	356	35 7741	6,393,091.97
306	5 6702	467,006.88	357	763	5,678.24
308	13 9278	719,049.47	358	16 5315	3,548,270.38
310	20 9607	2,061,397.84	359	595	13,435.88
311	700	2,461.63	360	376	8,490.58
312	2075	5,751.39	361	396	8,942.20
313	10 1492	1,103,529.53	362	1123	29,591.99

316	1 5185	211,842.00	363	25 8312	6,517,958.10
318	8 8175	1,296,231.64			
Register "E"					
Plot no.:	Acreage (m ²)	Price (SKK)	Plot no.:	Acreage (m ²)	Price (SKK)
472/1	380	5,591.84	512	2 5275	460,347.04
477	4193	98,783.64	513/1	1108	20,180.59
506	1 4281	107,392.31	544	124	3,267.50

Total price (SKK)**145,703,908.61****Total acreage (m²)****752 2633**