



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

FOURTH SECTION

CASE OF KANALA v. SLOVAKIA

(Application no. 57239/00)

JUDGMENT
(Just satisfaction)

STRASBOURG

14 October 2008

FINAL

06/04/2009

This judgment 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:

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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. In a judgment delivered on 10 July 2007 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention.

3. Under Article 41 of the Convention the applicant sought just satisfaction for pecuniary and non-pecuniary damage and costs.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

5. The principal judgment became final on 30 January 2008.

6. The applicant and the Government each filed observations on the outstanding issue.

THE LAW

7. 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

1. The parties' submissions

a) The applicant

8. In respect of pecuniary damage the applicant claimed 1,422,497 Slovakian korunas (SKK), which was the equivalent of approximately 47,000 euros (EUR), plus default interest. 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.

9. In support of his claim the applicant argued, in particular, that he had bought the real property for 560,000 then Czechoslovak korunas (CZK) in 1991 and that an expert had valued it at CZK 656,679 in 1992. The applicant had subsequently invested substantial amounts in reconstruction of the property which had been partly financed by a bank loan. The bank had reimbursed to the applicant the relevant amounts thus accepting that they had been used for the purpose of reconstruction. The remark, in the execution officer's file, according to which the applicant had not used the loan for reconstruction, was unsubstantiated.

10. The applicant also referred to the general increase in value of real property in Slovakia, the price for which other real property located in Rožňava had been sold and the opinion which an expert had elaborated, at his request, on 5 May 2006.

11. The applicant further claimed SKK 5,000,000 in respect of non-pecuniary damage.

b) The Government

12. The Government argued that the applicant's share in the property had not been sold under its actual value. The sale had been based on a valuation made by an expert on 23 November 1998 in accordance with the relevant regulation. The creditor bank had not objected to that valuation. The other opinions on which the applicant relied had been

prepared at his request and the Government considered the valuation of the property in them overstated.

13. It was further relevant that the applicant had owned only one half of the real property in issue, and that a bank official had indicated in the course of the execution proceedings that the applicant had not used the loan obtained for reconstruction of the property. The amount which the applicant's brother had transferred to the executions officer had been used to recover different debts of the applicant. Its payment was therefore not related to the subject-matter of the present application. The Government concluded that there was no link between the pecuniary damage claimed and the violation of Article 1 of Protocol No. 1 found by the Court.

14. As to the claim related to damage of a non-pecuniary nature, the Government pointed out that the property at issue had to be sold as the applicant had failed to pay his debts. His claim under this head was overstated in the circumstances of the case.

2. The Court's assessment

a) Relevant principles

15. The Court recalls that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. The Court enjoys a certain discretion in the exercise of that power. In particular, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment.

16. As regards pecuniary damage, where the failure to strike a fair balance between the public interest and the individual's rights, rather than illegality, was the basis of the violation found, just satisfaction must not necessarily reflect the idea of wiping out all the consequences of the interference in question and compensation need not always equal the full value of the property (for recapitulation of the Court's practice see, for example, *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 7-10, 24 April 2008, with further references).

b) Application of the relevant principles to the present case

17. In the principal judgment the Court found that, by permitting the co-owner to acquire the applicant's share in the property at a price which had been determined in disregard of its market value the domestic authorities

had deprived the applicant of a reasonable chance of having the property sold at its actual value and reimbursing a greater tranche of his debts. In particular, no apparent public interest justification had been established for such a 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. The Court concluded that a "fair balance" had not been struck between the demands of the public interest and the requirements of the protection of the applicant's rights (for further details see paragraphs 60-65 of the principal judgment).

18. In an opinion prepared at the Government's request on 20 March 2006 an 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 (paragraph 26 of the principal judgment).

19. On 5 May 2006 a different expert, in an opinion elaborated at the applicant's request, concluded that the general value of the property in issue had been SKK 1,758,727 in December 1998. On 9 April 2006 it amounted to SKK 2,451,179 (see paragraph 27 of the principal judgment).

20. The Court takes note of the considerable difference between the two valuations. It accepts that the actual value of the property was likely to be affected by the fact that the other half of it was owned by a different person. It also notes that the sum claimed by the applicant which his brother had paid to the executions officer had been transferred to the applicant's creditors with a view to paying off the latter's various debts unrelated to the subject-matter of the present application. The applicant's brother had subsequently claimed that sum before the Slovakian courts (see paragraph 25 of the principal judgment).

21. It is not for the Court to 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, in view of the conclusion reached in the principal judgment the Court considers the applicant to have suffered a loss of real opportunities (see also *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 50, 3 March 2000, with further references).

22. Having regard to the nature of the breach found and the relevant circumstances as established on the basis of the documents before it, the Court, making its assessment on an equitable basis as required by Article 41, awards the lump sum of EUR 15,000 to the applicant, in respect of all heads of damage taken together.

B. Costs and expenses

23. The applicant, whose representative had been paid EUR 886 under the legal-aid scheme of the Council of Europe, originally claimed SKK

184,728 plus value-added tax in reimbursement of the fees of his attorney. On 30 April 2008 he submitted an additional claim for SKK 80,000 for the fees of his attorney during the period subsequent to 11 April 2006. On 15 June 2008 the applicant additionally claimed (i) SKK 11,581.90 which he had paid for the expert opinion submitted on 5 May 2006 and (ii) SKK 15,000 as remuneration for additional assistance provided by his attorney.

24. 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.

25. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

26. Having regard to the materials in its possession, and also taking into consideration the fact that a part of the application was declared inadmissible (see paragraph 4 of the principal judgment), the Court considers it reasonable to award the applicant EUR 6,000, less the EUR 886 received by way of legal aid from the Council of Europe. It thus awards EUR 5,114 for the costs and expenses.

C. Default interest

27. 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*

(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, the following amounts (to be converted into Slovakian korunas at the rate applicable at the date of settlement in case the payment is made prior to 1 January 2009):

- (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
- (ii) EUR 5,114 (five thousand one hundred and fourteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President