



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

FOURTH SECTION

CASE OF HUDÁKOVÁ AND OTHERS v. SLOVAKIA

(Application no. 23083/05)

JUDGMENT

STRASBOURG

27 April 2010

FINAL

27/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hudakova and Others v. Slovakia,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 30 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 23083/05) 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”) on 15 June 2005 by three Slovak nationals, Ms Helena Hudáková, born in 1956 and residing in Košice, Ms Lea Besseneyová, born in 1977 and residing in Malý Ruskov, and Mr Martin Sabó, born in 1954 and residing in Milhost’ov, (“the applicants”).

2. The applicants were represented before the Court by Mr A. Fuchs, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged that their right to a fair hearing had been violated by the failure of the Supreme Court to communicate to them the plaintiffs' written observations on their appeal. They also alleged a violation of Article 6 § 1 and Article 1 of Protocol No. 1 in that they had lost ownership of the real property in issue as a result of the domestic courts' judgments.

4. On 18 March 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants' relative and another person were sued in the District Court in Trebišov. The plaintiffs in the case claimed that real property in respect of which the defendants were registered as owners belonged to the estate of the plaintiffs' predecessors.

6. On 5 October 1999 the District Court dismissed the action.

7. On 26 October 2000 the Regional Court in Košice quashed the first-instance judgment.

8. On 9 October 2001 the applicants joined the proceedings as defendants.

9. On 18 September 2002 the District Court allowed the plaintiffs' action.

10. On 16 September 2003 the Regional Court upheld the decision of the District Court.

11. The applicants filed an appeal with the Supreme Court on points of law. They alleged that the Regional Court had not assessed the relevant facts correctly. In particular, the applicants challenged the conclusion that the predecessors of the plaintiffs had acquired the property in question pursuant to a document issued on 6 April 1948. In any event, they argued that the document was invalid as it contained incorrect information. Finally, the applicants alleged that the property in question had not been specified with sufficient certainty in the document.

12. On 27 July 2004 the Supreme Court publicly delivered a judgment dismissing the applicants' appeal on points of law. The judgment stated that the Supreme Court had examined the case without a hearing pursuant to Article 243a § 1 of the Code of Civil Procedure. It indicated that the plaintiffs had submitted observations on the applicants' appeal on points of law. In their observations the plaintiffs had alleged that their predecessors had acquired the property in question by virtue of the document of 6 April 1948 or, in any event, by prescription.

13. The Supreme Court upheld the conclusions reached by the Regional Court. It held that, despite several inconsistencies in the text of the administrative document of 6 April 1948, it was evident that the land in question had been allocated to the plaintiffs' predecessors. Similar administrative documents were to be presumed correct and binding to the extent that they had been delivered by a competent authority and had become final. The ordinary courts could not subsequently review the merits of such decisions. The fact that, according to the document, further action had been needed with a view to completing the allocation of the property to the persons concerned was irrelevant as regards the acquisition of the

property by the plaintiffs' predecessors by virtue of that document. Such situation was in conformity with the law in force at that time.

14. The applicants filed a complaint with the Constitutional Court. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. They complained that the Supreme Court had had before it observations submitted by the plaintiffs which had not been communicated to the applicants. They further contended that the Regional Court had not taken into account the fact that the document in issue did not clearly indicate the persons to whom the land had been allocated and that the Supreme Court had not remedied that shortcoming.

15. On 2 February 2005 the Constitutional Court dismissed the applicants' complaint. It found that the parties had had ample opportunity to submit their arguments on the relevant issues before the ordinary courts at two levels. With reference to the judgment of the Supreme Court, the Constitutional Court held that the plaintiffs' observations in those proceedings had contained no new arguments. The reasons for the Supreme Court's judgment relied on facts and arguments which had been known to the applicants and on which they had been able to comment at an earlier stage of the proceedings. The Supreme Court had taken no evidence. It had addressed the relevant issues and had given sufficient reasons for the conclusions reached, which did not appear arbitrary. The fact that the applicants had not been able to comment on the plaintiffs' submissions to the Supreme Court, and that the latter had dismissed their appeal on points of law, was not contrary to the applicants' right to a fair hearing. The Constitutional Court further held that, in view of its above conclusions, the applicants' complaint regarding the alleged violation of their property rights as a result of the Supreme Court's decision was manifestly ill-founded.

II. RELEVANT DOMESTIC LAW

16. Article 243(a) § 1 permits the court of cassation to dispense with a hearing, *inter alia*, where an appeal on points of law is based on the argument that the lower court had incorrectly assessed the case. Paragraph 2 of Article 243(a) provides that no evidence is taken in cassation proceedings.

THE LAW

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

17. The applicants complained that they had not had a fair hearing in that the plaintiffs' observations to the Supreme Court had not been communicated to them to allow them an opportunity to comment. They 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 ... hearing ... by [a] ... tribunal ...”

18. The Government contested that argument.

A. Admissibility

19. 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

1. The parties' submissions

20. The applicants maintained that the failure to communicate to them the observations of the plaintiffs in the proceedings before the Supreme Court rendered the proceedings unfair. The unfairness was all the greater in light of the fact that the plaintiffs were provided with all relevant information in the proceedings.

21. The applicants considered irrelevant the finding of the Constitutional Court that the written submissions of the plaintiffs were insignificant as the substance of the submissions was already known to the applicants.

22. The Government emphasised that two courts had considered the applicants' case before the matter came before the Supreme Court. They argued that the Court's approach in *Milatová and Others v. the Czech Republic*, no. 61811/00, ECHR 2005-V and *Mareš v. the Czech Republic*, no. 1414/03, 26 October 2006, in which violations of Article 6 § 1 were found, was too absolutist and formal. They referred to the Court's judgment in *Verdú Verdú v. Spain*, no. 43432/02, 15 February 2007, in which no violation of Article 6 § 1 was found, and argued that in that case the Court had deviated from its existing case-law.

23. In any event, the Czech cases were distinguished by the Government on the ground that they involved a failure to communicate the submissions

of State authorities to one of the parties. However, the plaintiffs in the present case were not State authorities. The Government argued that if the case-law were extended to cover submissions by opposing parties, it would result in a never-ending chain of comments being exchanged. The Government further distinguished the Czech cases on the basis that they involved a failure to communicate submissions in the context of proceedings before the Constitutional Court, in which new complaints of a constitutional nature were raised. In contrast, the present application concerned cassation proceedings directly related to the arguments advanced in the lower courts.

24. The Government concluded that the applicants' right to react to the comments of the opposing party in the cassation proceedings was not absolute. A margin of appreciation should be afforded to the domestic courts in this regard. There was, in the Government's view, no violation of Article 6 § 1 in the present case.

2. The Court's assessment

a. General principles

25. The Court reiterates that the principle of equality of arms, one of the elements of the broader concept of a fair trial, requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, for example, *Nideröst-Huber v. Switzerland*, 18 February 1997, § 23, *Reports of Judgments and Decisions* 1997-I).

26. In addition to this requirement, the concept of a fair hearing implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to be made aware of any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision (see *Nideröst-Huber*, cited above, § 24; and *Milatová*, cited above, § 59). However, the right to adversarial proceedings is not absolute and its scope may vary depending on the specific features of the case in question (see *Asnar v. France (no. 2)*, no. 12316/04, § 26, 18 October 2007; and *Vokoun v. the Czech Republic*, no. 20728/05, § 26, 3 July 2008).

27. Finally, the Court has indicated that the concrete effect of the observations in question on the judgment of the domestic court concerned is of little importance. It is for the parties to the case to judge whether or not a document calls for their comments (see *Nideröst-Huber*, cited above, § 29; *Milatová*, cited above, § 65; and *Gaspari v. Slovenia*, no. 21055/03, § 52, 21 July 2009). What is particularly at stake here is litigants' confidence in the workings of justice, which is based on the knowledge that they have had the opportunity to express their views on every document in the file (see *Nideröst-Huber*, cited above, § 29; and *Asnar*, cited above, § 25).

Accordingly, the Court has found a violation of Article 6 § 1 even where the unseen observations were favourable to the applicant (*Göç v. Turkey* [GC], no. 36590/97, § 55, ECHR 2002-V). However, the Court has in the past found that the non-communication of written observations or documents in the proceedings and the impossibility for the applicant to comment on them did not constitute a violation of the right to a fair hearing. In its reasoning, the Court explained that, in the particular cases in question, granting to the applicant such rights and opportunities would have had no effect on the outcome of the proceedings as the legal approach adopted was not open to discussion (see, for example, *Stepinska v. France*, no. 1814/02, § 18, 15 June 2004; *Sale v. France*, no. 39765/04, §§ 18 to 19, 21 March 2006; and *Verdú Verdú*, cited above, §§ 26 to 28).

b. Application of the general principles to the facts of the case

28. The Court observes that in the present case, the Supreme Court did not expressly rely in its decision on the observations of the plaintiffs which had not been communicated to the applicants. However, the observations in question constituted the plaintiffs' views on the applicants' appeal and thus manifestly aimed to influence the decision of the Supreme Court by calling for the appeal to be dismissed. The applicants clearly had an interest in receiving a copy of the written observations of the plaintiffs and, if appropriate, seeking to make comments on those observations.

29. The Court notes in this regard that the applicants' appeal was not rejected by the court on the grounds that it failed to meet the requirements for admissibility of the appeal: the Supreme Court judgment dismissed the appeal on its merits (cf. *Stepinska*, cited above, §§ 8, 10 and 18; and *Sale*, cited above, §§ 9 and 17 to 19). Accordingly it cannot be said that the plaintiffs' observations on the merits of the appeal could have no impact on the outcome of the litigation. The Court further considers irrelevant the fact that, in the Government's submission, no new matters were raised in the plaintiffs' observations to the Supreme Court. The requirement that parties to court proceedings have the opportunity to have knowledge of, and to comment on, all evidence adduced or observations filed in their case applies to appeal proceedings as well as to proceedings at first instance, notwithstanding the fact that the appeal may raise no new arguments. Finally, the Court does not consider that there is any reason to distinguish between cases where the non-communicated observations are submitted by a State authority and those where they are submitted by a private individual. As noted above, the importance of the requirement that observations be communicated to all parties to the proceedings lies in the need to ensure that parties have confidence in the workings of justice and that they have not been denied the opportunity to comment on matters which may have influenced the judgment of the court. The onus was on the Supreme Court

to afford the applicants an opportunity to comment on the written observations prior to its decision.

30. The Court also considers it significant that the observations in question were submitted by the opposing party in the proceedings, who, unlike the applicants, had access to all the information in the case file. In permitting the plaintiffs to submit written observations on the applicants' appeal and denying the applicants sight of, and the opportunity to comment on, these observations, the Supreme Court failed to treat the parties equally.

31. In light of the above, the Court concludes that the failure to forward a copy of the plaintiffs' written observations to the applicants denied the applicants the right to a fair hearing before the Supreme Court.

32. There has therefore been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicants also complained under Article 1 of Protocol No. 1 that they had lost ownership of the disputed property and under Article 6 § 1 that the decisions of the domestic courts were incorrect.

34. The applicants have not submitted any detailed argument in support of their allegation that there has been an unjustified interference with their property rights. Nor did they provide any details of any alleged unfairness in the proceedings, aside from the complaint regarding the Supreme Court's failure to provide them with a copy of the plaintiffs' observations, in respect of which the Court has already found a violation of Article 6 § 1. In this connection, the Court reiterates that it is not its task to act as an appeal court of "fourth instance" by calling into question the outcome of the domestic proceedings in the absence of any evidence of a violation of the Convention (see, *inter alia*, *Mehmet Ali Kaçar v. Turkey* (dec.), no. 11326/03, 24 June 2008).

35. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints. The Court therefore concludes that the complaints are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible under Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicants claimed the sum of 5,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government considered the amount claimed to be excessive.

39. The Court, having regard to the technical nature of its finding of a violation of Article 6 § 1 of the Convention, considers that this finding in itself constitutes sufficient just satisfaction in the present case.

B. Costs and expenses

40. The applicants also claimed EUR 2,000 in legal costs and expenses. No detailed claim was submitted and, in particular, no receipts or invoices were provided in support of the sum claimed.

41. The Government highlighted that the applicants had failed to provide any evidence to support their claim as to legal costs. Accordingly, the Government invited the Court to grant to the applicants only those costs and expenses which it considered reasonable and to dismiss the remainder of the claim.

42. 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 were reasonable as to quantum. In the absence of any evidence to support the applicants' claim as to costs and expenses, no award is made under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the failure to communicate to the applicants the plaintiffs' written observations to the Supreme Court 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* that the finding of a violation constitutes sufficient just satisfaction;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President