



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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 75567/01  
by Jože, Jože jr. and Andrej OBERWALDER  
against Slovenia

The European Court of Human Rights (Third Section), sitting on 24 March 2005 as a Chamber composed of:

Mr J. HEDIGAN, *President*,  
Mr B.M. ZUPANČIČ,  
Mr L. CAFLISCH,  
Mr C. BÎRSAN,  
Mrs M. TSATSA-NIKOLOVSKA,  
Mr V. ZAGREBELSKY,  
Ms R. JAEGER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 10 February 2000,  
Having deliberated, decides as follows:

THE FACTS

The applicants, Jože, Jože junior ("jr.") and Andrej Oberwalder, are Slovenian nationals who live in Domžale.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

### *1. The first set of proceedings*

On 15 June 1959 two plots of land belonging to the late wife of the first applicant, J.O. and the mother of the second and third applicants (H.O.) were nationalised. The right to make free use of the land remained with her until her death and was inherited on 22 March 1973 by the second applicant.

On 18 August 1981 the Municipality of Domžale (*Občina Domžale* - "the Municipality") confiscated the land from J.O. jr. in accordance with the Cessation of Property and Other Rights in Land Earmarked for Large-Scale Constructions Act (*Zakon o prenehanju lastninske pravice in drugih pravic na zemljiščih namenjenih za kompleksno graditev*).

On 8 May 1992 J.O. jr. lodged a request for the return of two plots of land with the Domžale Administrative Authority for Regional Planning and Environment ("Administrative Authority", *Upravna enota Domžale, Oddelek za okolje in prostor*).

In 1997 J.O. jr. was granted the ownership of one plot of land in accordance with the Privatisation of the Socially-Owned Property Act (*Zakon o lastninjenju nepremičnin v družbeni lastnini*).

On 29 May 2000 the Administrative Authority dismissed his request for the other plot of land.

The applicant appealed to the Ministry of the Environment, Regional Planning (*Ministrstvo za okolje in proctor* - "the MERP").

On 25 August 2000 the MERP rejected his appeal. He filed a claim with the Administrative Court.

On 23 January 2002 the Administrative Court rejected his claim, pointing out that the conditions provided for by Articles 3 and 4 of the Denationalisation Act (*Zakon o denacionalizaciji*) had not been fulfilled.

The decision was served on him on 25 January 2002.

### *2. The second set of proceedings*

On 8 July 1970 and 11 March 1971 respectively, two plots of land were sold to the Municipality by H.O.

On 5 August 1973 and 4 June 1974, respectively, three plots of land were sold to the Municipality by the second applicant (J.O. jr.) and his brother (A.O.), the third applicant.

On 23 November 1973 and 10 September 1976 three plots of land were sold to the Municipality by J.O.

On 6 May 1992 the applicants lodged a request for the return of seven plots of land with the Domžale Administrative Unit, claiming that they were pressured by the Community to sell their land by contracts of sale that were tantamount to expropriation.

In 1993, the Administrative Unit transferred their request to the Domžale Local Court (*Okrajno sodišče v Domžalah*), as the competent authority.

On 13 December 2001, after a hearing, the Local Court rejected the applicants' claim.

On 28 January 2001 the applicants lodged an appeal with the Ljubljana Higher Court (*Višje sodišče*).

On 15 January 2003 the Ljubljana Higher Court rejected their appeal. On 6 February 2003 the decision was served on the applicants.

## **B. Relevant domestic law**

### *1. The 1991 Act on Denationalisation*

Sections 52 to 57 of the 1991 Act specify which administrative authorities have jurisdiction in matters regulated by the Act. Section 58 sets time limits for delivery of decisions and provides as follows:

“The decision of the body of first instance concerning the request (...) must be issued and served on the applicant within one year at the latest following the filing of any such properly presented request.

...”

### *2. The 1999 Administrative General Procedure Act*

Section 222 § 1 of the 1999 Administrative General Procedure Act (*Zakon o splošnem upravnem postopku*, Official Journal no. 80/99) provides that in simple matters, where there is no need to undertake separate examination proceedings, an administrative body is obliged to give a decision within one month of the submission of an application. In all other cases the administrative body is obliged to give a decision within two months.

Section 222 § 4 entitles a party whose application has not been decided upon within the time limits set out in paragraph one to lodge an appeal as if the application had been denied.

### *3. The 1997 Administrative Disputes Act*

Section 26 of the 1997 Administrative Disputes Act (*Zakon o upravnem sporu*, Official Journal no. 50 /97) entitles a party having lodged an application with an administrative body to institute administrative proceedings before the Administrative Court (administrative dispute) in the following cases:

“ ...

2. If the appellate body does not rule on the applicant's appeal against the first-instance decision within 2 months or within a shorter period if any, provided by law, and fails to make an award upon a subsequent request within a further period of seven

days, the applicant may then bring an administrative action, as if his request had been dismissed.

3. The applicant may also act in accordance with the preceding paragraph when an administrative body of the first-instance fails to give a decision from which no appeal lies.

4. If in matters where a right to an appeal exists a body of the first instance fails to give a decision upon the individual's application within 2 months or within a shorter period, if any, provided by law, the individual may then submit his application to the appellate administrative body. Should the latter find against him, the individual may then bring an administrative action. The individual may also bring an administrative action under the conditions set out in paragraph 2."

## COMPLAINTS

1. The applicants complain in substance about the unfairness, arbitrariness and length of the first set of the proceedings (Article 6 of the Convention). In addition, the second applicant complained in substance that he was discriminated against other claimants following the change of the practice concerning *locus standi* of former owners dispossessed after having used the land over a lengthy period subsequent to expropriation by the Constitutional Court (Article 14 of the Convention).

2. The applicants complained in substance about the unfairness and arbitrariness of the second set of the proceedings. They claimed that the expropriation of their land was realised through compulsory purchase procedure at an unfair price. They also complained about the length of the proceedings, pointing out that the first-instance court did not set a date for a hearing for approximately six years.

## THE LAW

1. The applicants complained in substance about the unfairness, arbitrariness and length of the first set of proceedings started on 8 May 1992. In addition, the second applicant complained in substance that he was discriminated against in the proceedings.

Article 6 provides as far as relevant:

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

Article 14 of the Convention reads:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

a) As to the first and third applicants' complaints about the unfairness, arbitrariness and length of the first set of proceedings, the Court finds that they were not directly affected by the alleged violations of the Convention, since they were not parties to the proceedings. They could not therefore claim to be victims of these violations, as required by Article 34 of the Convention. Accordingly, this part of their application is incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3.

As to the second applicant's complaints concerning the unfairness, arbitrariness and discriminatory nature of the proceedings, the Court finds that the domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention, since the second applicant failed to lodge an appeal with the Supreme Court against the decision of the Administrative Court handed down on 23 January 2002 and eventually an appeal to the Constitutional Court in accordance with the applicable procedural requirements. The Court finds that domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention.

This part of the application must therefore be rejected under Article 35 § 4 of the Convention.

b) The second applicant complained in substance about the length of the first set of proceedings.

In 1997 the Domžale Administrative Authority partially granted the applicant's request in respect of one plot of land. On 29 May 2000 the applicant's request for the other plot of land was dismissed. On 25 August 2000 the Ministry of the Environment and Regional Planning rejected his appeal. The applicant then filed a claim with the Administrative Court that rejected it on 23 January 2002. The decision was served on him on 25 January 2002.

As to the length of the proceedings before the lower administrative authorities, the Court observes that the applicant failed to pursue his application under the conditions set out in Section 58 of the 1991 Act on Denationalisation and the 1997 Administrative Disputes Act.

Although having at his disposal remedies that would have enabled him to pursue his request and bring it earlier before the administrative judicial authorities and even, should they have denied his request, then to lodge a constitutional appeal, the applicant failed to avail himself of those remedies (see *Sirc v. Slovenia*, no. 46279/99, 20 January 2000). In these circumstances, the Court concludes that the second applicant cannot complain about the length of the proceedings before the administrative bodies since he has not, as required by Article 35 § 1 of the Convention, exhausted the remedies available under Slovenian law.

As to the length of the proceedings before the administrative judicial authorities, the Court notes that that part of the proceedings started by filing a claim with the Administrative Court challenging the Ministry of the Environment and Regional Planning's decision of 25 August 2000 and ended on 25 January 2002. The maximum duration of those proceedings is 1 year and 5 months. Having regard to its case-law on the subject, the Court considers that the length of the proceedings is not excessive and therefore meets the "reasonable time" requirement. The Court concludes that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

This part of the application must therefore be rejected under Article 35 § 4 of the Convention.

2. The applicants complained in substance about the unfairness, arbitrariness and length of the second set of proceedings.

a) As to the applicants' complaint concerning the unfairness and arbitrariness of the second set of proceedings the Court finds that domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention, since the applicants failed to lodge an appeal against the decision of the Ljubljana Higher Court handed down on 15 January 2003 in accordance with the applicable procedural requirements. The Court recalls that such allegations should be examined in the light of all the circumstances of the case.

This part of the application should therefore be rejected for non-exhaustion of domestic remedies under Article 35 § 4 of the Convention.

b) As to the applicants' complaint about the length of the second set of proceedings, the Court considers that it cannot determine the admissibility of the complaints. It is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicants' complaint concerning the length of the second set of proceedings;

*Declares* the remainder of the application inadmissible.

Vincent BERGER  
Registrar

JOHN HEDIGAN  
President