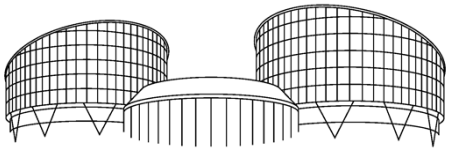

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BOSITS v. SLOVAKIA

(Application no. 75041/17)

JUDGMENT

STRASBOURG

19 May 2020

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

In the case of Bosits v. Slovakia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Dmitry Dedov, *President,*
Alena Poláčková,
Gilberto Felici, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application 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 Hungarian national, Mr Miklós Bosits ("the applicant"), on 18 October 2017;

the decision to give notice of the application to the Slovak Government ("the Government");

the parties' observations;

Having deliberated in private on 28 April 2020,

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

INTRODUCTION

The applicant complained, in particular, that the quashing, upon an extraordinary appeal on points of law filed by the Prosecutor General, of a final and binding judgment in his favour was contrary to his rights under Article 6 § 1 of the Convention.

THE FACTS

1. The applicant was born in 1966 and lives in Budapest. He was represented by Mr T. Keszegh, a lawyer practising in Dunajská Streda.

2. The Slovak Government ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The Hungarian Government, who had been invited to submit written observations on the case, did not express any wish to exercise that right (Article 36 § 1 of the Convention and Rule 44 § 1).

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

5. By virtue of a regulation adopted in 1945, the applicant's ancestors agricultural property had been confiscated; the individual decision of the confiscation committee, which had been registered in the land register, was issued in 1946. According to the Government, the State thus became *ex lege* the owner of the property in question.

6. Within the process of renewal of registration of certain plots of land and of the relevant legal relationships, based on Act no. 180/1995 and aimed at renewing the register of existing plots of land, the competent

administrative authority decided, on 29 September 2000, to register the applicant's ancestors again as owners of the impugned property. The applicant inherited ownership rights to that property in 2006.

7. In 2009, the State brought a civil action for determination of ownership against the applicant, claiming that it had owned and cultivated the land in question for almost 70 years, since the confiscation, and that the renewed registration of the applicant's ancestors' ownership was not based on sufficient data.

8. The courts at two levels of jurisdiction dismissed the State's action since it had not been proved that the 1946 confiscation decision had been served on the applicant's ancestors; thus the confiscation process had not been duly terminated. The appellate court added that the State had been member of the commission tasked with the renewal of registration of the land concerned and that through the decision of a public authority issued in 2000 the State had recognised the applicant's ancestors' ownership rights. At the same time, it dismissed an application by the State for leave to appeal on points of law (*dovolanie*), holding that the questions submitted as being of crucial legal importance, which mainly concerned the application of a governmental regulation no. 8/1928 and the effects of the confiscation decision, had already been solved in the case-law. The decision became final on 6 September 2013.

9. Subsequently, the State asked the Prosecutor General to exercise his discretionary power to challenge the above judgments by way of an extraordinary appeal on points of law (*mimoriadne dovolanie*) to the Supreme Court, asserting that the judgments were based on an incorrect legal appreciation of the case.

10. On 4 September 2014, the Prosecutor General lodged such an appeal, being of the view that the courts had not followed the applicable legal provisions and that the plaintiff (the State) had discharged its burden of proof as to its acquisition title *ex lege*; it had thus been superfluous to examine whether the confiscation decision had been served on the applicant's ancestors in accordance with the governmental regulation no. 8/1928; moreover, that decision had not been issued in proceedings subjected to the said regulation. He also considered incorrect the appellate court's argument that the State had recognised the applicant's ancestors' ownership rights in 2000 since the process of renewal of registration only aimed at collecting available information about the plots of land and the legal relationships towards them but could not have led to acquisition of the ownership.

11. The Supreme Court then invited the applicant to submit written comments on the Prosecutor General's appeal, which he did on 19 December 2014. He claimed that the courts had not breached the law but had only adopted a legal opinion differing from that of the Prosecutor

General. In his supplementary comments, the applicant referred to the Court's case-law regarding the principle of legal certainty.

12. On 29 September 2015, the Supreme Court quashed the impugned judgments and remitted the matter to the court of first instance. Although it did not share the Prosecutor General's opinion on the inapplicability of the regulation no. 8/1928, the Supreme Court agreed that the State had duly proven that it had become owner of the property in question in 1945, that the State's legal certainty could not be challenged after such a long time and that it was not possible to acquire ownership on the basis of Act no. 180/1995 on the renewal of registration.

13. The applicant challenged the Supreme Court's decision by a constitutional complaint in which he relied on his right to a fair trial, including the principles of legal certainty and equality of the parties to the proceedings.

14. By a decision of 8 June 2016 the Constitutional Court accepted the applicant's constitutional complaint for further examination.

15. On 29 March 2017 the Constitutional Court (I. US 379/2016) decided that the Supreme Court's decision of 29 September 2015 had not violated the applicant's rights to a fair trial and to equality of parties. It found that the Supreme Court had acted within the limits of its competence and in accordance with the relevant procedural provisions in force, which in principle precluded any violation of Article 6. Moreover, it had been the Supreme Court's obligation to correct the excess, or rather the blatant legal error, of the lower courts which had arbitrarily proceeded to the examination of the conditions of confiscation without a proper analysis of the facts of the case, and to give a specific answer to all decisive aspects of the case. The Supreme Court could only do so in the proceedings on the extraordinary appeal, given that an appeal on points of law was inadmissible *ex lege* in the case at hand. The Constitutional Court also observed that all parties to the proceedings had had a possibility to submit their comments on the extraordinary appeal and that the adversarial principle had thus been complied with.

16. After the matter had been remitted by the Supreme Court to the court of first instance, the proceedings were suspended, on 27 February 2019, until the Court's decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

17. The relevant domestic law and practice and European texts have been summarised in the Court's judgment in, *inter alia*, the case of *DRAFT - OVA a.s. v. Slovakia* (no. 72493/10, §§ 39-56 and 58-61, 9 June 2015).

18. On 18 March 2015, the plenary of the Slovak Constitutional Court adopted a unifying opinion no. PLz. ÚS 3/2015 in which it held that, regard

being paid to the principle of legal certainty which was set up by a final decision, to the principle of subsidiarity enshrined in Article 127 § 1 of the Constitution, as well as to the exceptional nature of the extraordinary appeal on points of law lodged by the Prosecutor General, the admissibility of such appeal in civil proceedings was acceptable only if the party to the proceedings exhausted all ordinary and extraordinary remedies which were available to him/her and which he/she could effectively use to protect his/her rights and legitimate interests.

19. In the joint observations no. 94 of its Civil and Commercial Law Divisions adopted on 20 October 2015, the Supreme Court stated that the procedural admissibility of the extraordinary appeal on points of law filed upon a party's petition in civil proceedings is conditioned by the fact that the party in question had unsuccessfully used all available ordinary and extraordinary remedies likely to secure him/her a more favourable decision. If such possibility was not used, the extraordinary appeal had to be dismissed.

20. The new Code of Civil Contentious Procedure (Law no. 160/2015), adopted on 21 May 2015, entered into force on 1 July 2016, i.e. after the relevant procedural steps taken by the applicant in this case. According to its Section 458, the extraordinary appeal on points of law lodged by the Prosecutor General shall be admissible only if a final judicial decision breaches the right to a fair trial or suffers from errors resulting in a severe violation of that right on account of the fact that the legal conclusions reached are arbitrary or untenable, and if the need to quash such decision prevails over the interest in preserving its inalterability and the principle of legal certainty.

THE LAW

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

21. The applicant asserted that the fact that a final judgment in his favour was quashed by the Supreme Court following an extraordinary appeal on points of law lodged by the Prosecutor General breached his right to a fair trial as provided in 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 ..."

22. The Government contested that argument.

A. Admissibility

23. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

24. The applicant observed that according to the Supreme Court and the Government, different legal opinions on the interpretation of the domestic rules on administrative procedure constituted in this case a sufficient reason to submit an extraordinary appeal on points of law. The Government maintained, furthermore, that the lower courts' wrong interpretation amounted to an excess which vitiated the proceedings by a fundamental error. In the applicant's view, however, the disputed issue was an ordinary legal matter which the State had had ample opportunity to comment upon during the proceedings preceding the final judgment of the Regional Court, and there had been no fundamental error or shortcoming requiring to set the judgment aside by way of extraordinary means.

25. As far as the Government argued that lodging the extraordinary appeal on points of law was justified by the interest of legal certainty, the applicant observed that it was the State that, by initiating the proceedings in 2009 (see paragraph 7 above), undermined legal certainty and challenged the status quo. As a result, the Supreme Court's judgment interfered with a property title which the State had recognized to his predecessors in 2000, during the process of renewal of registration of certain plots of land. In any event, the Government referred to legal certainty of property titles, claiming that the State had owned and cultivated the land in question for a very long period, whereas Article 6 requires legal certainty of final court decisions. Indeed, even if the lower courts' judgments had been wrong and even if the State had been the owner of the land at the time of the proceedings, which was not the case, this would not be a sufficient reason to set aside a final judgment.

26. Finally, the applicant objected that equality of arms had not been observed in the present case since, unlike the other party (i.e. the State), he had had no opportunity to present to the Prosecutor General his opinion on whether the extraordinary appeal on points of law should be submitted. In his view, this could not be remedied by the fact that he could comment on the extraordinary appeal once it was lodged before the Supreme Court.

27. The Government observed that, in his extraordinary appeal on points of law, the Prosecutor General expressed his view that the governmental regulation no. 8/1928 relied on by the lower courts was not applicable in the present case, that the confiscation had occurred *ex lege* and that no

ownership could be acquired through the process of renewal of registration. Hence, the fact that the applicant's predecessors had been in this process registered as owners was an error which had to be remedied. The Supreme Court had indeed considered that, in order to preserve legal certainty as well as the necessary authority of the State, (confiscation) decisions by virtue of which a certain person had acquired or had been deprived of his or her ownership must not be put in doubt and have to produce effects in the future regardless of whether they exist in a written form.

28. The Government also pointed out that the Court's case-law does not absolutely prohibit the possibility that final decisions be quashed following an extraordinary remedy, provided that such departure from the principle of legal certainty is made necessary by circumstances of a substantial and compelling character such as fundamental defects or miscarriage of justice. In the present case, such fundamental error resulted from the arbitrary opinions of the lower courts which undermined legal certainty based on valid decisions adopted in the 1940's. Since an ordinary appeal on points of law was not admissible here, the excess could not be remedied and legal certainty restored but by an extraordinary intervention of the Supreme Court; this was confirmed by the Constitutional Court.

29. As to the equality of arms complaint, the Government noted that even if the Prosecutor General acted upon the State's request, it was within his discretion to decide whether he would realise his procedural right and lodge the extraordinary appeal on points of law; thus he did not take on the role of a "tribunal" deciding on civil rights and obligations. In any event, the applicant had the opportunity to take cognisance of the Prosecutor General's argumentation and to submit his comments to the Supreme Court.

2. The Court's assessment

30. The Court observes at the outset that the action for determination of ownership lodged by the State was adjudicated in the applicant's favour and that the final and binding judgment was quashed following the application of an extraordinary remedy. Therefore, it must be ascertained whether the interference with the originally completed proceedings in the present case was compatible with the guarantees of Article 6 of the Convention, in particular with the principles of the rule of law, legal certainty and equality of arms inherent in that provision.

31. The Court has reiterated the applicable principles recently in its judgment in *DRAFT - OVA a.s.* (cited above, §§ 77 and 78, with further references). With reference to it, the Court considers it appropriate to examine first whether there has been any circumstance of a substantial and compelling character to justify a departure from the principle of legal certainty according to which, where the courts have finally determined an issue, their ruling should not be called into question.

32. The Government argued that the original judgment recognising the applicant's ownership rights had been wrong in facts and law and ignored the status quo based on decisions adopted almost 70 years ago; thus, it was vitiated by a fundamental error and had to be corrected in order to preserve legal certainty and the State's authority. The applicant asserted that it was the State that challenged legal certainty following from the decision of 29 September 2000.

33. The Court notes that the impugned proceedings were initiated by the State's action for determination of ownership to agricultural property which had once belonged to the applicant's ancestors and which had been subject to confiscation in the 1940's. The questions to be resolved in these proceedings related to the 1945 regulation on confiscation, to the validity of the confiscation decision and to the effects on the ownership of Act no. 180/1995 on the renewal of registration. In the Court's view, these are ordinary legal questions which fall within common judicial activity. Although the Supreme Court found that the lower courts had erred when considering that the confiscation had not been effective and that the applicant's predecessor's ownership rights had been recognised by the State during the renewal of registration, the Court is not convinced that it constituted an "error of fundamental importance to the judicial system" (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009) or any other defect or miscarriage of justice justifying an interference with the final and binding judgment in the present case.

34. Moreover, the Court notes that the matter disputed in the present case had its origin in a decision adopted in 2000 by a State authority in charge of renewing the register of existing plots of land (see paragraph 6 above). The State, as a plaintiff in the subsequent proceedings for determination of ownership, had a particular interest in their outcome since it wanted to reverse that administrative decision on the basis of which the applicant's ancestors had been registered as owners in its place. In these proceedings, the fairness of which was not called into question, the State could submit any arguments or evidence to protect its rights, including the points raised later by the Prosecutor General. In such conditions, the Court considers that the extraordinary appeal may rather be seen as a further appeal or, in other words, an appeal in disguise in terms of the Court's case-law (see, for example, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

35. In these circumstances, the Court has established no particular grounds for departing from the general premise that under the principle of legal certainty where the courts have finally determined an issue, their ruling should not be called into question (*Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). This conclusion is unaffected by whether or not this will ultimately result in any real damage having been sustained by the applicant.

36. There has accordingly been a violation of Article 6 § 1 of the Convention. This finding makes it unnecessary for the Court to examine separately on the merits the complaint pertaining to the respect of the principle of equality of arms.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant did not claim any pecuniary damage. Alleging that he suffered emotional distress because of legal uncertainty, he asked to be awarded 7 000 euros (EUR) in respect of non-pecuniary damage.

39. The Government stated that, should the Court find a violation of Article 6 of the Convention, it should award adequate compensation to the applicant.

40. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,900 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 6,200 for the costs and expenses incurred before the domestic courts and the Court. He submitted documents certifying that he had to pay his lawyer 100 EUR per hour of legal work, which amounted to 62 hours in total.

42. The Government requested the Court to award the applicant a sum which would correspond to costs and expenses which had been necessarily incurred and were reasonable as to quantum.

43. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the sum of EUR 2,000 covering costs under all heads.

C. Default interest

44. The Court considers it appropriate that the default interest rate 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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;

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

Done in English, and notified in writing on 19 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Dmitry Dedov
Deputy Registrar	President