

APPLICATION N° 23256/94

Karel HAVA v/CZECH REPUBLIC

DECISION of 29 June 1994 on the admissibility of the application

Article 6, paragraph 1 of the Convention

- a) An applicant who has been unsuccessful because he brought proceedings before courts with no jurisdiction to entertain them cannot complain of lack of access to a tribunal on the ground that those courts should have informed him of the procedure to be complied with*
- b) This provision does not prevent Contracting States from regulating access to appeal jurisdictions. The dismissal of an appeal by the Constitutional Court (Czech Republic) for non exhaustion of remedies does not constitute an arbitrary decision rendering the proceedings unfair*

Article 25 of the Convention *The Commission cannot examine the compatibility of a law with the Convention in abstracto. A person who cannot show that he is personally affected by the law to a greater extent than any other citizen may not claim to be a victim of a violation of the Convention*

Is a Czech applicant resident abroad who cannot claim from the Czech and Slovak Federal Republic the restitution of his confiscated property because section 4 of Law No 229/1991 on land makes this claim conditional on permanent residence in the territory of the Republic personally affected by that law? (Question unresolved)

Article 26 of the Convention *Domestic remedies have not been exhausted where an appeal is not admitted because of a procedural mistake by the applicant*

THE FACTS

The applicant, who is of Czech nationality, is retired and is resident at Zurich (Switzerland)

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

A *Particular circumstances of the case*

On 19 November 1991 the applicant in pursuance of Law No 229/1991 on land (see relevant legislation), submitted a claim to the Jihlava District Court for the restitution of his real estate, which at the time had been confiscated

By letter of 13 February 1992, which was served on the applicant in July 1992, the court informed him that he did not satisfy a condition prescribed by the above mentioned law, namely permanent residence in the territory of the Czech and Slovak Federal Republic

On 18 August 1992 the applicant submitted a similar claim to the Brno Court of Appeal which, on finding that the District Court had already dealt with the case and provided further legal information to the applicant, referred the claim to the latter court

On 28 September 1992 the applicant introduced a constitutional appeal. The Constitutional Court, by letter of 13 October 1992, advised the applicant of the procedural mistakes in his appeal and also of the need to be assisted by a lawyer throughout the proceedings

On 30 November 1992 the applicant acting through his lawyer, introduced a fresh constitutional appeal. He complained that he was discriminated against by Law No 229/1991, Article 4 of which limited the possibility of claiming the restitution of property to Czechoslovak nationals permanently resident in the territory of the Czech and Slovak Federal Republic. He also complained of the conduct of the Jihlava District Court and of the Brno Court of Appeal, alleging that these courts had failed to fulfil their obligations under Article 5 of the Code of Civil Procedure namely the requirement to inform the parties of the procedural requirements of their legal actions and to provide them with information on their rights and obligations in relation to the proceedings (see relevant legislation)

By judgment of 14 October 1993 the Constitutional Court dismissed the applicant's appeal. The court considered first, that the appeal was inadmissible, since the applicant had not satisfied the procedural conditions for the introduction of such an appeal, laid down by Law No 182/1993 on the Constitutional Court. The court also observed that "under Article 75 para 1 [of Law No 182/1993], the court can be seised only after all remedies have been exhausted. As regards claims for restitution introduced under Law No 229/1991, a person entitled to claim must first bring the

matter before the administrative authority whose decision is susceptible of an appeal to the courts. It follows that the applicant's action before the Jihlava District Court cannot be interpreted as constituting an appeal within the meaning of Law No 229/1991 but as a mere request for information. Accordingly the letter of 13 February 1992 merely constituted an act within the meaning of Article 5 of the Code of Civil Procedure.

Meanwhile, by letter of 3 December 1992, the President of the Jihlava District Court informed the applicant that since his action of 19 November 1991 was not introduced before the competent organ and did not satisfy the procedural conditions, it did not constitute a civil action. However, observing that the deadline for introducing a claim for the restitution of property under Law No 229/1991 was due to expire on 31 December 1992, he referred the case to the competent administrative authority.

On 23 December 1992 the applicant claimed the restitution of the property in question from the entities currently in possession of his property within the meaning of Law No 229/1991, namely two agricultural co-operatives. At the same time he brought the matter before the land administrative authority (Pozemkový úřad) at Jihlava.

On 8 and 12 January 1993 the co-operatives announced that they would take no action in response to the applicant's claims because he was not an eligible person within the meaning of section 4 of the above-mentioned law.

On 30 March 1993 the land administrative authority rejected the applicant's claim for the same reason.

B Relevant legislation

Law No 229/1991 on land is amended by Law No 195/1993 [translation]

Art. 4

1 Everyone who seeks the restitution of his property must be a national of the Czech and Slovak Federal Republic permanently resident in its territory []

Art. 9

1 Everyone who seeks the restitution of his property shall submit a specific claim to the competent administrative authority. At the same time, he shall ask the entity currently in possession of his property [] to conclude an agreement in respect of the claim within 60 days []

2 Any such agreement must be approved by the competent administrative authority []

3 Where the administrative authority has not given its approval, the person seeking the restitution of his property may introduce a claim before the ordinary courts []

4 Where an agreement within the meaning of the first paragraph has not been concluded, the administrative authority shall determine whether the person seeking restitution of the property is the owner thereof []

6 Decisions issued within the meaning of paragraphs 3, 4 [] shall be susceptible of appeal to the ordinary courts []

Law No 182/1993 on the Constitutional Court [translation]

Art 43

1 The reporting judge without a public hearing and without convening the parties, shall decide that an appeal be rejected where

a) the applicant has not removed the procedural mistakes from his appeal within the period allowed, or []

f) the appeal is inadmissible, []

Art 72

1 A constitutional appeal may be introduced by

a) any natural person [] who claims to be the victim of a breach by 'a public organ' of the fundamental rights or freedoms recognised in a constitutional law or an international treaty

Art 75

1 A constitutional appeal shall be inadmissible where the applicant has not exhausted all remedies []

Code of Civil Procedure [translation]

Art 5

The courts shall provide the parties with the information concerning their rights and obligations relating to the proceedings []

COMPLAINTS

1 The applicant, alleging the violation of Article 1 of Protocol No 1, Article 2 paras 2 and 3 of Protocol No 4 and Articles 8 and 14 of the Convention, complains that Article 4 of Law No 229/1991 introduced discrimination against persons normally

entitled to claim compensation but who are resident outside the Republic, by requiring that they reside in a specific place – namely in the territory of the Czech and Slovak Federal Republic

2 Relying, in essence, on Article 6 para. 1 of the Convention, he complains that by refusing to provide him with information in accordance with Article 5 of the Code of Civil Procedure the national courts failed to guarantee him a fair trial, by denying him access to the courts.

3 He also complains, by virtue of the same Article, that the Constitutional Court rejected the constitutional appeal for non exhaustion of all remedies, even though, in his opinion, the remedies imposed in the court's decision did not constitute effective remedies in relation to his case.

THE LAW

1 The application concerns the fact that the applicant, because of his place of residence, was unable to obtain restitution of the real estate which he had inherited, and which at that time had been confiscated by the former Czechoslovak Socialist Republic.

2 The Commission observes that the application raises an issue relating in particular to the alleged incompatibility between the Convention and Protocol No. 1 and Law No. 229/1991 governing the questions relating to restitutions (see relevant legislation).

In this respect, the Commission recalls its established case law according to which the Commission is competent to examine the compatibility of domestic legislation with the Convention with respect to its application in a concrete case, while it is not competent to examine *in abstracto* its compatibility with the Convention (No. 11045/84, Dec. 8/3/85, D.R. 42 pp. 247-255; No. 13013/87, Dec. 14/12/88, D.R. 58 pp. 163-184).

The Commission does not consider it necessary to examine the question whether the applicant is personally affected by the statutory provision in question, as the application is inadmissible in any event for the following reasons:

3 The applicant complains that the provision in Article 4 of Law No. 229/1991 introduced discrimination against persons entitled to claim compensation but resident outside the Republic. He claims that there has been a violation of Article 2 paras. 2 and 3 of Protocol No. 4, Article 1 of Protocol No. 1 and Articles 8 and 14 of the Convention.

The Commission is not required to examine the question whether the complaints alleged by the applicant disclose a violation of those provisions in so far as, according to Article 26 of the Convention, it may only deal with the matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

The Commission observes that the Constitutional Court, in its judgment of 14 October 1993, dismissed the applicant's constitutional appeal, in particular on the ground that he had not satisfied the procedural conditions for introducing such an appeal, laid down in Law No 182/1993 on the Constitutional Court

According to the Commission's established case law, there is no exhaustion of domestic remedies where a domestic appeal is not admitted because of a procedural mistake (cf No 6878/75, Dec 6 10 76, D R 6 p 79) In this case, the applicant's constitutional appeal was declared inadmissible in application of Law No 182/1993 on the Constitutional Court The applicant has therefore not exhausted the remedies available to him under Czech law

It follows that this part of the application must be rejected in accordance with Article 27 para 3 of the Convention

4 The applicant also complains that the domestic courts failed to observe the right to a fair trial guaranteed by Article 6 para 1 of the Convention He claims, first, that the District Court and the Court of Appeal, by refusing to deal with his claim for the restitution of his property and provide him with information in accordance with Article 5 of the Code of Civil Procedure denied him access to the courts

The Commission finds that the applicant brought proceedings for compensation before the Jihlava District Court and the Brno Court of Appeal in turn, but not before the competent administrative authority or the entity in possession of his property, as required by Article 9 para 1 of Law No 229/1991

The Commission observes that the applicant was aware of the conditions governing the procedure for the restitution of property as laid down in Law No 229/1991 The Commission considers that it was for the applicant to comply with these provisions, namely to submit his complaints in their entirety to the competent administrative authorities and if necessary, the civil courts Consequently, the Commission considers that the applicant was not denied access to a court within the meaning of Article 6 para 1 of the Convention

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para 1 of the Convention

5 The applicant complains lastly, that the Constitutional Court did not try his case fairly, in so far as his constitutional appeal was rejected for non exhaustion of remedies, although, in his opinion, the remedies prescribed in the court's decision did not constitute effective remedies in relation to his case

The Commission recalls its established case law, according to which Article 6 para 1 of the Convention does not prohibit Contracting Parties from making regulations governing the access of litigants to an appellate court provided that these regulations serve the purpose of ensuring the proper administration of justice (cf No 8407/78,

Dec 6 5 80, D R 20 pp 179, 180) Regulations concerning recourse to an appellate court undoubtedly serve the purpose of ensuring a proper administration of justice (cf No 11122/84, Dec 2 12 85 D R 45 p 246 No 10857/84, Dec 15 7 86, D R 48 p 106)

In the present case, the Commission observes that the requirement to exhaust remedies before introducing a constitutional appeal constitutes a principle generally applicable to an appeal introduced before the Constitutional Court under Article 75 of Law No 182/1993. The Constitutional Court observed in its judgment of 14 October 1993 that 'the applicant's action before the Jihlava District Court [could] not be interpreted as constituting an appeal within the meaning of Law No 229/1991 but as a mere request for information. The court's letter of 13 February 1992 merely constituted an act within the meaning of Article 5 of the Code of Civil Procedure'.

The application of Article 75 para 1 of Law No 182/1993 by the Constitutional Court in the present case does not strike the Commission as an arbitrary decision the effect of which is to render the proceedings unfair.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE