CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 47227/99
by Mária BAKOVÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 26 March 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced on 24 November 1998 and registered on 6 April 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Mária Baková, is a Slovakian national, who was born in 1937 and lives in Košice. The respondent Government were represented by Mr P. Vršanský, their Agent.

A. The circumstances of the case

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

The applicant claimed restitution of real property which had been expropriated from her in 1967 and which was possessed by an educational institution for youth.

On 15 September 1992 the Košice-mesto Land Office (*Pozemkový úrad*) granted the applicant's claim. The Land Office established, after an inspection of the land in question, that it had never served the purpose for which it had been expropriated which was a relevant reason for its restitution within the meaning of Section 6 (1) (m) of the Land Ownership Act of 1991. The educational institution which possessed the land challenged the decision. Subsequently the whole property, including the land claimed by the applicant, was transferred to a different medico-educational institution.

On 19 April 1993 the Košice Regional Court (*Krajský súd*) quashed the administrative decision as it considered the reason for it to be insufficient. The Regional Court instructed the administrative authority to establish all relevant facts of the case and to hear the parties.

On 29 December 1997 both the applicant and a representative of the institution using the land in question met with officials of the Košice 2 District Office (*Okresný úrad*) to which the case fell to be examined. The applicant refused to sign the record of the meeting.

On 6 February 1998 the Košice 2 District Office delivered a new decision by which it dismissed the applicant's claim. It held that the plot served the original purpose of its expropriation within the meaning of Section 6 (1) (m) of the Land Ownership Act of 1991 and that the applicant had received compensation for it.

On 10 March 1998 the applicant requested a judicial review of this decision. She complained that the Land Office had failed to establish the relevant facts correctly, that it had decided arbitrarily and that there had been no hearing in the case. In particular, the applicant alleged that the plot had been expropriated with a view to building a school for handicapped children and a sescondary school, that at the moment of the entry into force of the Land Ownership Act of 1991 it had not been used at all and that subsequently it had been unlawfully transferred to a social institution. The applicant further argued that a different plot which had been expropriated

for the same purposes had been restored to its original owner in a different set of administrative proceedings in 1993.

On 12 June 1998 the Košice Regional Court upheld the District Office's decision. The court found, with reference to the documents included in the file of the District Office, that the plot in question served the purpose of its expropriation since a social institution used it as a playground for handicapped children. In its judgment the Regional Court addressed the arguments put forward by the applicant. It considered irrelevant that there was no building on the plot as the regulations in force provided for similar institutions to have adequate free space at their disposal. With reference to Article 250f of the Code of Civil Procedure, the Regional Court decided *in camera.* In accordance with the relevant rules, the judgment was to be served on the parties. It was served on the applicant's representative on 29 June 1998 and became final on 28 July 1998.

The applicant complained to the Court of the above facts for the first time in a letter dated 24 November 1998. It was posted on 14 December 1998 and delivered on 22 December 1998. After an exchange of correspondence with the Court's Registry the applicant submitted her application on the form provided for in Rule 47 § 1 of the Rules of Court. The form was dated 26 February 1999 and it was delivered on 8 March 1999.

B. Relevant domestic law and practice

The Land Ownership Act of 1991

Pursuant to Section 6 (1) (m) of Act No. 229/91 on Adjustment of Ownership Rights to Land And Other Agricultural Property ("the Land Ownership Act"), real property which was expropriated with payment of compensation shall be restored if it still exists provided that it has never served the purpose for which it was expropriated.

Code of Civil Procedure

The lawfulness of the decisions of administrative authorities can be examined by courts in accordance with Part 5 of the Code of Civil Procedure which governs the administrative judiciary.

Article 250f entitles the courts to deliver a judgment without prior oral hearing in simple cases, in particular when there is no doubt as to whether the administrative authority established the facts correctly, and the point at issue is a question of law. In its finding No. PL.ÚS 14/98 of 22 June 1998 the Constitutional Court found that Article 250f of the Code of Civil Procedure was contrary to the Constitution and also to Article 6 § 1 of the Convention. As a result, this provision ceased to be effective.

In accordance with Article 250m (3), participants to the proceedings before an administrative court are the parties in the proceedings before the administrative authority and the administrative authority the decision of which is to be reviewed.

Pursuant to Articles 250q and 250r, a court examining an administrative authority's decision can either uphold or quash it. When the decision was not taken pursuant to Article 250f or when the administrative authority did not issue a new decision satisfying the plaintiff's claim, the court may take such evidence as is necessary for review of the decision at issue. When the court decides to quash the decision in question, the case is sent back to the administrative authority. The latter is bound by the legal opinion expressed by the court.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the dismissal of her claim for restitution of property was arbitrary and that her right to a fair and public hearing before an independent and impartial tribunal was not respected in the proceedings concerning this claim.

2. The applicant further complains under Article 1 of Protocol No. 1 that her property rights were violated as a result of the dismissal of her claim.

THE LAW

1. The Government object that the applicant failed to introduce her application within the six months' time-limit laid down in Article 35 § 1 of the Convention. They maintain that the Košice Regional Court's judgment of 12 June 1998 became final on 28 July 1998 and that the application was only introduced on 26 February 1999 when the applicant submitted her application on the form foreseen for this purpose.

The applicant disagrees. She contends that the Košice Regional Court decided *in camera* and that its judgment was served on her representative on 29 June 1998. She maintains that her first letter to the Court was dated 24 November 1998 and that it was posted on 14 December 1998, i.e. within the six months' time-limit.

The Court sees no reasons for departing from its practice according to which the object and purpose of Article 35 § 1 of the Convention are best served by counting the period of six months as running from the date of service of the written judgment (see the Worm v. Austria judgment of 29 August 1997, *Reports* 1997-V, p. 1547, § 33). The relevant rules of Slovakian law required that the judgment be served on the parties.

Accordingly, the running of the period of six months in the present case started on 29 June 1998 when the Košice Regional Court's judgment of 12 June 1998 was served on the applicant's representative. It was interrupted by the first letter of the applicant setting out the subject-matter of her application which was written on 24 November 1998 and posted on 14 December 1998, i.e. within the period of six months as required by Article 35 § 1 of the Convention. The Government's objection must therefore be dismissed.

2. The applicant complains that her right to a fair and public hearing before a tribunal was not respected in the proceedings concerning her claim for restitution of property. She alleges a violation of Article 6 § 1 of the Convention the relevant part of which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal..."

a) To the extent that the applicant complains that the dismissal of her claim was arbitrary, the Court recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. It is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I).

In the present case the Košice Regional Court upheld the administrative decision to dismiss the applicant's claim for restitution of property on the ground that the requirements laid down in Section 6 (1) (m) of the Land Ownership Act of 1991 had not been met. In its judgment the Regional Court addressed the applicant's arguments and gave sufficient and relevant reasons for its judgment which does not appear to be arbitrary. Furthermore, the Court finds no appearance of unfairness, within the meaning of Article 6 § 1 of the Convention, in the manner in which the Regional Court dealt with the applicant's case.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) To the extent that the applicant complains that she was not granted a public hearing before an independent and impartial tribunal the Court considers that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant complains that her property rights were violated as a result of the dismissal of her claim for restitution of property. She invokes Article 1 of Protocol No. 1 which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court recalls that Article 1 of Protocol No. 1 applies only to existing possessions and does not guarantee a right to acquire property (see, e.g., Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, § 48). Accordingly, anyone who complains of an interference with one of his or her property rights must show that such a right existed. In accordance with the Court's practice, a conditional claim which lapses as a result of the non-fulfilment of a statutory condition cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see, e.g., *Malhous v. the Czech Republic* (dec.), no. 33071/96, 13.12.2000, to be reported in ECHR 2000-XII).

In the present case the Košice Regional Court, for the reasons expressly set out in its judgment, shared the view of the Košice II District Office that the land in question could not be restored as one of the requirements laid down in Section 6 (1) (m) of the Land Ownership Act of 1991, namely that the property never served the purpose for which it had been expropriated, was not met. The Court has found no indication that the conclusion of the national authorities was arbitrary or incompatible with the relevant provisions of the Slovakian law.

In these circumstances, the Court finds that the applicant's claim falls outside the scope of Article 1 of Protocol No. 1.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint about a violation of her right to public hearing before a tribunal;

Declares inadmissible the remainder of the application.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President