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

THIRD SECTION

DECISION

Application no. 42812/10
Mária BAŠISTOVÁ and others
against Slovakia

The European Court of Human Rights (Third Section), sitting on 4 November 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 1 July 2010,

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

Having deliberated, decides as follows:

THE FACTS

1. A list of the eleven applicants, who are all Slovak nationals, is set out in the appendix ("the applicants").

2. The applicants were represented before the Court by Mr M. Hrouda, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

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

1. Property and context

4. This application and three others (nos. 18803/10, 48554/10 and 44019/11) concern the regularisation of the relationship between ownership and use of real property located in the cadastral area of Košice-Sever.

5. Certain land in this area was expropriated in the 1980s by the (then socialist) State and a public sports centre was built on it. The sports centre comprises buildings and various other facilities, such as a tennis court, a grandstand, a water station and paved areas.

6. After the post 1989 political, constitutional and legal changes, litigation took place with a view to resolving various property claims made by the original owners (or their legal successors) against the entities that owned or operated the sports centre or various parts of it.

7. The land concerned is divided into a number of plots with various owners, many of whom are linked by family relations and history, and who had the same legal representation in the above-mentioned proceedings. Their lawsuits followed a similar pattern, but sometimes had varying results. They included the following proceedings.

2. The proceedings

8. The applicants in the present case are all successors in title to a plot of land in the above-mentioned area, having inherited their title from the original owners, who died in 1948 and 1982, respectively.

9. On 3 October 1994 the applicants, represented then and throughout the proceedings by a laywer, lodged an action against a sports club seeking to obtain a court order for the removal of the constructions on the land.

10. The principal line of argument was that the expropriation decision of 24 February 1984 was invalid in law. The applicants were therefore the lawful owners of the land in question, in particular plot no. 10605 (recorded on sheet no. 1303 of the "old" records), and the defendant had no lawful title to the constructions on the applicants' land.

11. The action was subsequently amended to state that, alternatively, the applicants sought a judicial ruling establishing an easement on their land for the benefit of the owner of the sports centre in return for financial compensation payable to the applicants. It was also extended to two more defendants, a municipality and a private company.

12. The action was dismissed at first instance by the Košice I District Court (*Okresný súd*) on 11 August 2008, and – following the applicants' appeal – by the Košice Regional Court (*Krajský súd*) on 2 February 2009.

13. The courts reached their conclusions after having taken complex oral and documentary evidence, including expert evidence.

14. In accordance with the applicants' claim, the courts found that (i) the expropriation of 1984 was legally ineffective on account of procedural flaws; (ii) the applicants were the owners of the land in question;

(iii) the constructions on it had been built without a valid legal title in so far as the land was concerned; and (iv) the applicants were entitled to seek redress under general civil law, that is to say Article 135c of the Civil Code (Law no. 40/1964 Coll., as amended), which was not subject to any statute of limitation, unlike the special legislation on restitution, which contained specific time-limits.

15. As regards the options available under Article 135c of the Civil Code for resolving the discrepancy between the ownership and use of the land and the constructions concerned, the District Court found that, for practical reasons, it was out of the question to have the applicants established as the owners of the constructions and to order them to pay the current owners financial compensation. Furthermore, in the circumstances, it was likewise not practical to order the physical removal of the constructions in question.

The establishment of an easement for the benefit of the owners of the constructions in return for compensation payable by them to the applicants was therefore in principle an option.

16. However, on the specific facts, and contrary to the applicants' assertions, the courts found that no easement could be established on the land. The bone of contention was the legal nature of the constructions concerned. In particular, these constructions could not be considered as "buildings" in terms of civil law. However, an easement over land could only be established for the benefit of the owner of a "building".

17. The court dismissed the applicants' argument that the buildings and the adjacent facilities belonged to one integrated complex and in reality served a single purpose, that in the past easements had been established on some plots in that area and that, accordingly, a similar solution should be adopted in their own case. However, the court did not respond to their specific argument that, in case no. 15C 251/94, an easement had been established also over land that had no "buildings" on it (see paragraph 27 below).

18. Observing that the sports centre had always served the public, the courts also took into account the "nature and extent of economic prejudice" suffered by the applicants.

19. Lastly, it was held that the applicants had alternative means of asserting their rights by lodging an action for a declaratory ruling and an action for compensation in respect of unjustified enrichment.

3. Final domestic decision

20. On 23 April 2009 the applicants lodged a complaint with the Constitutional Court (*Ústavný súd*) under Article 127 § 1 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended), to which they added further grounds of complaint on 14 January 2010.

Citing similar grounds to those mentioned above, the applicants contested the outcome of the proceedings and alleged that their rights under, *inter alia*, Article 6 § 1 of the Convention (fairness, adequate reasoning) and the constitutional equivalent of Article 1 of Protocol No. 1 had been violated.

21. On 18 March 2010 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. Observing that it was not a court of further appeal against decisions of the ordinary courts, it found no constitutionally relevant unfairness, arbitrariness or irregularity in the impugned judgments.

The decision was served on the applicants' lawyer on 25 October 2010.

22. The position taken by the courts was subsequently fully endorsed by the Public Prosecution Service when it dismissed the applicants' petition for an extraordinary appeal on points of law to be lodged on their behalf in the present case.

B. Relevant domestic law and practice

1. Civil Code

23. Article 135c deals with situations concerning so-called "unlawful constructions", that is buildings (*stavba*) constructed on somebody else's plot of land (*pozemok*) without an entitlement to do so.

At the request of the owner of the land, the court has the power to order the removal of such buildings at the cost of the person who constructed it (paragraph 1).

However, if the removal of the building is not practical, and subject to consent by the owner of the land, the court has the power to rule that title to the building be transferred to the owner of the land in return for compensation (paragraph 2).

The court also has the power to regularise the relationship between the owner of the land and the owner of the building by taking other measures, in particular by establishing an easement, which is necessary for the exercise of ownership rights in respect of the building, in return for compensation (paragraph 3).

2. Judicial practice

(a) Case 15C 251/94

24. In a case registered at the District Court under file no. 15C 251/94 a different group of claimants raised essentially the same claims as the applicants in respect of other plots of land under the same sports centre, the defendant being the respective municipality.

25. Before the case was resolved on the merits with final effect, the Supreme Court had determined the claimants' appeal on points of law (*dovolanie*) (no. 3 Cdo 96/98) against a previous judgment of the Regional Court. In its judgment of 25 February 1999, the Supreme Court observed that before the action could be determined on the merits (of the claim for an easement), preliminary questions had to be answered as to whether the claimants were the owners of the property concerned and, if they were, whether they had standing to sue in the case.

The Supreme Court further observed that, when dealing with those questions, the Regional Court had noted that the land in question had been expropriated in 1984. The Regional Court had therefore held that, even assuming that the expropriation had been flawed, it could only have been challenged by means of administrative-law remedies and within the statutory time-limits. That, however, had been beyond the scope of the case at hand and, therefore, the Regional Court held that the 1984 expropriation should be considered as being a matter of fact.

26. The Supreme Court disagreed with the Regional Court's position described above. As was found in the present case (see paragraph 14 above), it found that the expropriation of 1984 was legally ineffective. As a consequence, the courts were bound to examine the preliminary question of the claimants' ownership independently and irrespective of the expropriation decision.

27. The case was finally decided on the merits by the District Court on 13 March 2002. The action was granted and an easement was established for the benefit of the claimants in respect of the entire property covered by their claim, that is to say including some plots on which no "buildings", in the sense explained above, were situated.

The judgment was not appealed against and became final and binding on 3 May 2002.

28. The ensuing question concerning the financial compensation payable by the municipality to the claimants for the easement was resolved by the District Court in a judgment of 13 December 2006 (case no. 15C 717/02) on the basis of an expert assessment.

(b) Other judgments concerning similar claims

29. In another similar case concerning property in the same area as in the present case, the claimants raised in principle the same claims. The court took the same position as in the present case, that is to say that the claimants were entitled to assert their property claims under the general provisions of the Civil Code and the determinative factor was whether or not the land in question was under "buildings". As that was only partly so, the action was partly granted and partly dismissed. The respective judgments were given on 24 November 2008 (the District Court) and 20 April 2009 (the Regional

Court), and the final decision was given by the Constitutional Court on 8 September 2009.

30. In a number of other similar cases concerning property in the same area as in the present case, the position was taken that the claimants could not assert their rights under the general provisions of the Civil Code, as those provisions constituted a *lex generalis*, and their application was excluded by virtue of the special legislation on the restitution of property, as a *lex specialis*. However, that position does not appear to be settled.

C. Relevant European texts

1. *Report on the Rule of Law by the Venice Commission, 25-26 March 2011*

31. The relevant parts of the report state that, in order for the principle of legal certainty – essential for maintaining confidence in the judicial system and the rule of law – to be achieved, the State must make the law easily accessible and must also apply the laws it has enacted in a foreseeable and consistent manner. As the existence of conflicting decisions within the highest courts may be contrary to this principle, it is necessary for these courts to establish mechanisms to avoid conflicts and ensure the coherence of their case-law.

2. *Opinion no. 11 (2008) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions*

32. The relevant parts of the Opinion read as follows:

> "47. While recognising the judges' power to interpret the law, the obligation of the judges to promote legal certainty has also to be remembered. Indeed legal certainty guarantees the predictability of the content and application of the legal rules, thus contributing in ensuring a high quality judicial system.
>
> 48. Judges will apply the interpretative principles applicable in both national and international law with this aim in mind. ... In civil law countries, they will be guided by case law, especially that of the highest courts, whose task includes ensuring the uniformity of case law.
>
> 49. Judges should in general apply the law consistently. However when a court decides to depart from previous case law, this should be clearly mentioned in its decision."

COMPLAINTS

33. The applicants complained under Article 6 § 1 of the Convention that the proceedings in respect of their action had been unfair in that their

action had been arbitrarily dismissed and the courts had failed to respond to the argument that, in another similar case, the same District Court had reached a different conclusion.

34. For similar reasons, the applicants also alleged that their rights under Article 1 of Protocol No. 1 had been violated.

35. The applicants also complained under Article 6 § 1 of the Convention that the length of the proceedings had been excessive and under Article 1 of Protocol No. 12 that they had been discriminated against without any acceptable justification in relation to the other claimants referred to above, and in relation to other property owners in conceptually similar situations, for whom a special legal regime had been created providing for the establishment of an easement (for example, the owners of land on which highways had been built).

THE LAW

A. Fairness of the proceedings

36. The applicants contended that the proceedings had been unfair, contrary to Article 6 § 1 of the Convention, the relevant part of which provides as follows:

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

1. Parties' arguments

37. The Government submitted that the situation in case no. 15C 251/94, as referred to by the applicants (see paragraphs 24 *et seq.* above), had been factually complex and generally obscure. At no stage of the proceedings in that case had the question of the applicability of the general rules on property rights under the Civil Code been actually examined. The jurisprudential value of the judgments in that case was therefore insignificant.

38. As for the applicants' case, the Government emphasised that the District Court's judgment of 11 August 2008 had been in full compliance with the Supreme Court's judgment of 25 February 1999 rendered in the context of case no. 15C 251/94 (see paragraph 25 above) and that it was consonant with the District Court's judgment rendered in the other similar case concerning property in the same area as in the present case (see paragraph 29 above). In ruling on the applicants' appeal in the present case, the Regional Court endorsed the District Court's reasoning, adding even more detail. Its judgment was again consonant with that on the appeal in the other similar case concerning property in the same area (see paragraph 29

above). The outcome of the proceedings in the present case was ultimately upheld by the Constitutional Court.

39. The Government concluded that the proceedings had conformed to the requirements of fairness under Article 6 § 1 of the Convention and that the complaint was manifestly ill-founded.

40. The applicants disagreed and reiterated their complaints.

They emphasised that all the various sets of proceedings concerning the land on which the sports centre had been built involved residents from the same village and neighbours, most of whom were related. They were legally and factually in exactly the same situation, intensely shared information as to the development of their respective lawsuits, had had a single legal representation, and their claims and subsequent argumentation had been identical. Moreover, their claims had been subject to the same legal provisions and they had all asserted their rights before the same courts at more or less the same time.

41. As to case no. 15C 251/94, the applicants submitted that it had been meant to serve as a pilot case to be followed in the other parallel lawsuits concerning the same matters. It was all the more striking that the courts had failed to follow the example of that case and had arrived at varying conclusions. The applicants considered the domestic courts' decision-making disorderly and submitted that this had been accentuated by the excessive length of the proceedings.

2. *The* Court's *assessment*

(a) General principles

42. The Court observes that the present case raises issues of adequate reasoning and conflicting court decisions.

43. As to the former point, the Court reiterates that Article 6 § 1 of the Convention obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which the duty to give reasons applies may vary according to the nature of the decision. It is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A).

44. On the issue of conflicting court decisions, the Court observes that the relevant Convention principles have been summarised in its judgment in the case of *Albu and Others v. Romania* (nos. 34796/09 and sixty-three other cases, § 34, 10 May 2012, with further references) as follows:

(i) It is not the Court's 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. Likewise, it is not its function, save in the event of evident arbitrariness, to compare different decisions of national courts, even if given in apparently similar proceedings, as the independence of those courts must be respected;

(ii) The possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction;

(iii) The criteria that guide the Court's assessment of the conditions in which conflicting decisions of different domestic courts ruling at last instance are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention consist in establishing whether "profound and long-standing differences" exist in the case-law of the domestic courts, whether the domestic law provides for machinery for overcoming these inconsistencies, whether that machinery has been applied and, if appropriate, to what effect;

(iv) The Court's assessment has also always been based on the principle of legal certainty, which is implicit in all the Articles of the Convention and constitutes one of the fundamental aspects of the rule of law;

(v) The principle of legal certainty guarantees, *inter alia*, a degree of stability in legal situations and contributes to public confidence in the courts. The persistence of conflicting court decisions, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law;

(vi) However, the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement.

(b) Application of these principles in the present case

45. The Court observes that the problem obtaining in the present case is set against the background of regularisation of the relationship between ownership and use of real property constituting or related to the sports centre, and that the sports centre would appear to function as a single complex. This regularisation process has involved a relatively limited number of actors who were all legally and factually in practically the same position. The claimants had a common history and their claims were made through the same legal representation, around the same time, before the same courts and on the basis of the same arguments.

46. In such circumstances, the Court observes with concern that the claims concerning the property in question appear to have resulted in three different types of outcome.

47. Firstly, in case no. 15C 251/94, an easement was established over the entirety of the real property concerned, irrespective of whether or not there was a "building" on the impugned plot (see paragraphs 24 *et seq*. above).

Secondly, in the present and another case an easement was established only over the land on which a "building" was situated (see paragraph 29 above).

Thirdly, in a number of cases subsequent to the present one, no easement was established at all on the grounds that the claimants had no standing to sue over that matter under the general provisions of the Civil Code.

48. However, in so far as the present case is concerned, the Court is of the opinion that only the alleged discrepancy between the first two categories of outcome is of relevance. This is so because the assessment at the domestic level of the cases in the third category revolved around the question whether the property claims could have validly been made under the general provisions on property rights under the Civil Code. The courts in the present case resolved that question in the affirmative. Thus, the domestic courts' interpretation of the applicable laws in the cases resulting in the third category of outcome was less advantageous for the respective claimants than that of the applicants and, as such, it does not favour the argument raised by the applicants in the present case.

49. From that perspective, the Court observes that the position taken by the courts in the present case is in the "second category" and that accordingly it directly contradicts the conclusion reached in case no. 15C 251/94.

50. The Court further observes that, contrary to the applicants' proposition, the establishing of an easement over the land concerned in case no. 15C 251/94 *en bloc* – that is, irrespective of whether the land was underneath a "building" or not –was not preceded by an analysis of that specific question. In so far as the applicants sought to rely on the Supreme Court's judgment of 25 February 1999, the Court observes in particular that that judgment was concerned with the legal effects of the 1984 expropriation and the ordinary courts' power to examine the question of the claimants' ownership independently of that expropriation, rather than with the implications of there being no "building" on the claimants' land.

51. In addition, the Court observes that the establishing of the *en bloc* easement in case no. 15C 251/94 has never been tested on appeal, that it preceded the applicant's case and that there has been no indication of such a stance being taken by the courts subsequently.

52. In these circumstances, the Courts notes that it does not appear that the proceedings in the applicants' case were vitiated by any "profound and long-standing" divergence of the domestic courts' case-law.

53. As to the adequacy of the domestic courts' reasoning, the Court acknowledges that the domestic courts do not appear to have taken any specific position in relation to the applicants' arguments concerning the alleged discrepancy with the outcome of case no. 15C 251/94.

54. Nevertheless, the Court observes that the domestic courts at two levels of ordinary jurisdiction took and assessed complex written and oral evidence, including expect evidence and that they provided detailed reasoning for their findings of fact and law. The applicants were represented by a lawyer throughout the proceedings and were provided with ample opportunity to state their arguments, to challenge the submissions made by the defendants and to submit any evidence they considered relevant to the outcome. Furthermore, the fairness of the proceedings as a whole was ultimately reviewed and upheld by the Constitutional Court and the Public Prosecution Service.

55. Moreover, the Court is of the opinion that the absence of a specific judicial answer to the applicants' argument made in reliance on the outcome of case no. 15C 251/94 has to be seen in correlation with the relevance of that argument as established above.

56. Thus, in the light of all the material in its possession, and in so far as the matters complained of under Article 6 § 1 of the Convention have been substantiated and are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicants' rights under that provision.

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

B. Article 1 of Protocol No. 1

57. For similar reasons to those mentioned above, the applicants also complained of a violation of their rights under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

58. In reply, the Government reiterated their arguments in respect of the unfairness complaint under Article 6 § 1 of the Convention and considered the applicants' similar complaint under Article 1 of Protocol No. 1 manifestly ill-founded.

59. The applicants did not submit any specific comments on this part of their application.

60. The Court observes that the applicants' complaint under Article 1 of Protocol No. 1 has the same basis, factually as well as in terms of procedural and substantive law, as their complaint under Article 6 § 1 of the Convention. It finds no reason to reach a different conclusion under the latter provision.

61. In addition, the Court observes that no arguments have been presented by the applicants or established otherwise to challenge the domestic courts' conclusion that other means of asserting their property rights may be available to the applicants at the domestic level.

62. In sum, in the light of all the material in its possession, and in so far as the matters complained of under Article 1 of Protocol No. 1 have been substantiated and are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicants' rights under the provision invoked.

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

C. Remaining complaints

63. Lastly, the applicants complained, under Article 6 § 1 of the Convention, about the length of the proceedings and under Article 1 of Protocol No. 12 of discrimination in relation to the other claimants referred to above, and in relation to other property owners in conceptually similar situations.

64. However, in the light of all the material in its possession, and in so far as these complaints are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that the remainder of the application must be rejected in accordance with Article 35 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Stephen Phillips
Registrar

Josep Casadevall
President

APPENDIX

1. Ms Mária BAŠISTOVÁ, who was born in 1953 and lives in Košice,
2. Mr František FORRAI, who was born in 1946 and lives in Košice,
3. Mr Martin FORRAI, who was born in 1948 and lives in Košice,
4. Ms Anna KAJLOVÁ, who was born in 1948 and lives in Košice,
5. Mr Milan KAVECANSKY, who was born in 1961 and lives in Košice,
6. Mr Dušan KAVEČANSKÝ, who was born in 1963 and lives in Košice,
7. Ms Viera PETRÍKOVÁ, who was born in 1953 and lives in Košice,
8. Ms Andrea PROKOPOVÁ, who was born in 1978 and lives in Turňa nad Bodvou,
9. Ms Alžbeta TIMKOVÁ, who was born in 1945 and lives in Košice,
10. Mr Branislav TRESA, who was born in 1987 and lives in Košice,
11. Ms Jarmila TRESOVÁ, who was born in 1967 and lives in Košice.