

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

THIRD SECTION

CASE OF BOROVSKÁ v. SLOVAKIA

(Application no. 48554/10)

JUDGMENT
(*Revision*)

STRASBOURG

16 February 2016

FINAL

16/05/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Borovská v. Slovakia, (request for revision of the judgment of 25 November 2014),

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

Luis López Guerra, *President,*
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 26 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 48554/10) 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 three Slovak nationals, Ms Mária Borovská, Ms Mária Buzová and Mr Štefan Forrai, on 16 August 2010.

2. In a judgment delivered on 25 November 2014, the Court: (1) struck the application out of its list of cases in so far as it had been brought by the applicant Ms Buzová; (2) declared the complaint by the applicants Ms Borovská and Mr Forrai concerning the alleged violation of their right to a fair hearing under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible; and (3) held that there had been a violation of Article 6 § 1 of the Convention in relation to the applicants Ms Borovská and Mr Forrai on account of the lack of certainty to which they had been exposed with regard to the domestic case-law pertaining to their standing to sue over their property claim, as a consequence of which they had been deprived of one of the fundamental guarantees of a fair trial. The Court also (4) decided to award the applicants Ms Borovská and Mr Forrai 5,200 euros (EUR) each in respect of non-pecuniary damage and EUR 1,200 jointly for costs and expenses and dismissed the remainder of their claims for just satisfaction.

3. On 1 June 2015 the Government informed the Court that they had learned that the applicant Mr Forrai had died on 25 October 2014. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 25 August 2015 the Court considered the request for revision and decided to give the applicants' representative six weeks in which to submit any observations. Those observations were received on 28 September 2015.

THE LAW

THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 25 November 2014, which they had been unable to execute as the applicant Mr Forrai had died before the judgment had been adopted.

6. The applicants' representative stated that he had contacted the presumed heirs of Mr Forrai, that he had explained the situation to them, that none of them had granted him a power of attorney to act in their name before the Court, and that – accordingly – he was not in apposition to specify whether or not any of them was interested in pursuing the case in the late Mr Forrai's stead.

7. The Court considers that the judgment of 25 November 2014 should be revised pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

> "A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.
>
> ..."

8. The Court notes that the applicant Mr Forrai died and that, despite a specific request to that effect, none of his prospective heirs has demonstrated wish to pursue the application in his stead.

9. Article 37 § 1 of the Convention, in its relevant part, reads:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) ... it is no longer justified to continue the examination of the application."

10. The Court recalls that it has been its practice to strike applications out of the list of cases in the absence of any heir or close relative who has expressed a wish to pursue the application (see, for example, *Eremiášová and Pechová v. the Czech Republic* (revision), no. 23944/04, § 10, 20 June 2013, with further references). It further finds no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application in respect of the applicant Mr Forrai. Thus, the application should be struck

out of the Court's list of cases in so far as it relates to this applicant and the first ruling in the operative part of the original judgment should be amended accordingly.

11. The conclusion in the preceding paragraph has an impact on the ruling on the admissibility of the present application in that its admissible part, as specified in the judgment of 25 November 2015, should be declared admissible only in so far as brought by the first applicant, Ms Borovská.

12. The ruling on just satisfaction in respect the applicant Ms Borovská and non-pecuniary damage, namely the award of EUR 5,200, plus any tax that may be chargeable, should be confirmed.

13. Having regard to the fact that the applicants Ms Borovská and Mr Forrai were represented by the same representative, the amount originally awarded to them jointly in respect of costs and expenses has now to be paid to the applicant Ms Borovská, namely EUR 1,200, plus any tax that may be chargeable to her.

14. 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. *Decides* to revise the judgment;

2. *Decides* to strike the application out of its list of cases in so far as brought by the applicant Mr Štefan Forrai;

3. *Declares* the complaint by the first applicant concerning the alleged violation of her right to a fair hearing under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

4. *Holds*

(a) that the respondent State is to pay the applicant Ms Mária Borovská, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,200 (five thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable to her, 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.

Done in English, and notified in writing on 16 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President