

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

FIRST SECTION

CASE OF KĽAČANOVÁ v. SLOVAKIA

(Application no. 8116/19)

JUDGMENT

STRASBOURG

31 March 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kľačanová v. Slovakia,

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

Raffaele Sabato, *President,*
Alena Poláčková,
Davor Derenčinović, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 10 March 2022,

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

PROCEDURE

1. The case originated in an application against Slovakia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 6 February 2019.

2. The Slovak Government ("the Government") were given notice of the application on 17 December 2020.

THE FACTS

3. The details of the applicant, a Slovak national, and information relevant to the application are set out in the appended table.

4. The applicant complained of the excessive length of restitution proceedings which had been initiated by her legal predecessor with the Martin Land Office on 29 December 2004. She also raised other complaints under the provisions of the Convention.

5. According to the Government's observations, on 21 March 2005 the Land Office stayed the proceedings for 180 days awaiting the amendment of the claim by the applicant's predecessor.

6. It further appears from the Government's observations that on 23 December 2011 and 12 January 2012 the Land Office issued decisions partially granting the claim with respect to certain plots of land and partially dismissing it with respect to other plots of land. On 6 July and 18 May 2012, respectively, the decisions were quashed by the Zilina Regional Court and remitted to the Land Office for further proceedings.

7. Following the applicant's predecessor's action for acceleration of the administrative proceedings, on 10 April 2012 the Zilina Regional Court found that the Land Office had been inactive and compelled it to decide within two months.

8. On 22 June 2012 the Land Office issued another partial decision which became final on 3 August 2012.

9. On 22 August 2012 the Constitutional Court rejected for lack of jurisdiction a constitutional complaint lodged by the applicant's predecessor concerning the excessive length of the restitution proceedings, finding that

the latter should have lodged a new administrative action for acceleration of the administrative proceedings (I. US 400/2012).

10. On 26 March 2013 the Zilina Regional Court fined the Land Office 200 EUR due to the ongoing delays in the proceedings.

11. As further appears from the Government's observations, on 17 and 20 May 2013 the Land Office issued further partial decisions and sent them to the applicant in her quality as her predecessor's lawyer. On 21 and 28 June 2013 the applicant informed the Land Office that her power of attorney had been terminated. The letters contained no information about the death of the predecessor.

12. On 24 June 2013 the Land Office thus again sent the decisions to the legal predecessor herself, but they were returned by the post office marked "addressee deceased".

13. In October 2013, following the Land Office's request, a notary informed the Land Office that the applicant's predecessor had died on 27 April 2013 and that the applicant and her brother had been indicated as heirs.

14. The Land Office stayed the restitution proceedings on 21 November 2013, awaiting the result of the inheritance proceedings. They ended on 22 July 2016 and the decision became final, confirming both the applicant and her brother as heirs.

15. On 20 May 2014, 6 February 2015, 3 February 2016 and 3 January 2017 the Land Office requested the Martin District Court as well as the notary to send it the inheritance certificate. This was done after its last request in January 2017.

16. On 16 October 2016 the applicant and her brother lodged a constitutional complaint challenging the length of the proceedings before the Land Office and complained also of the violation of their right to peaceful enjoyment of possessions as a result of the excessive length of the restitution proceedings.

17. As appears from the Government's observations, on 17 March 2017 the Land Office issued a new partial decision which was quashed by the Zilina District Office on 1 June 2017.

18. Furthermore, on 1 August 2017 the applicant and her brother initiated additional inheritance proceedings, following which, on 28 August 2017, the Land Office stayed the restitution proceedings. The additional inheritance proceedings ended on 6 April 2018 and the decision became final. The applicant was confirmed as the sole heir of the restitution claim.

19. On 31 May 2018 the Constitutional Court rejected the applicant's and her brother's constitutional complaint for lack of jurisdiction. It found that as long as the proceedings were pending before the Land Office, an administrative action for acceleration of the administrative proceedings had to be exhausted prior to a constitutional complaint (IV. US 353/2018).

20. Between March 2019 and February 2021, the Land Office issued another six partial decisions, three of which were quashed by the Zilina District Office and remitted to the Land Office for further proceedings.

21. According to the information available in the case file, the restitution proceedings are still pending.

THE LAW

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

22. The applicant complained principally that the length of the restitution proceedings in question had been incompatible with the "reasonable time" requirement. She relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

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

23. In respect of the restitution proceedings, the Government submitted that the applicant had failed to exhaust all available remedies, since she had not challenged their length by means of an administrative action for acceleration of the administrative proceedings provided for in Articles 242-251 of the new Code of Administrative Judicial Procedure, as also required by the established practice of the Constitutional Court. The Government stressed that the current legislation had strengthened the preventive character of that remedy in that, *inter alia*, it allowed the administrative court to fine an administrative organ repeatedly in case of inactivity. Coupled with a subsequent civil action under the State Liability Act, these remedies would offer the applicant appropriate satisfaction (preventive and compensatory).

24. The Government then admitted that, as to the merits, the application was not manifestly ill-founded. They argued, however, that the periods when the restitution proceedings had been stayed should not be counted in the overall length. They further submitted that the proceedings had taken place before two levels of administrative organs as well as before the Zilina Regional Court and that the applicant had contributed to the delays since she had failed to inform the Land Office of her predecessor's death and to submit the relevant inheritance certificates.

25. The applicant submitted that the administrative action for acceleration of the administrative proceedings under the new Code of Administrative Judicial Procedure did not constitute an effective domestic remedy. In this regard, she submitted that her legal predecessor had already used such an action, but to no avail, and that the action under the new Code of Administrative Judicial Procedure was *de facto* identical to the action

provided for under the former legislation and used by her predecessor (see paragraphs 7 and 10 above).

Moreover, in 2012 her predecessor had lodged a civil action for compensation under the State Liability Act, but it was dismissed by the Zilina Regional Court. She denied having contributed to the delays, since according to the relevant law she had not been obliged to cooperate actively with the Land Office. It was the latter's obligation to obtain all information and documents necessary for its decisions.

26. She further emphasised that the Land Office had been repeatedly inactive, issuing only partial decisions, and those which had become final had not yet been enforced.

27. As for the Government's plea of non-exhaustion, the Court observes that in *Oros v. Slovakia* (no. 7303/21, §§18-21, 18 November 2021), which also concerned excessive length of restitution proceedings before a land office, it held that given the circumstances of that case the applicant could not be expected to lodge an administrative action for acceleration of the proceedings under the new Code of Administrative Judicial Procedure.

28. Similarly, in the present case, the Court observes that at the time when the legislative changes took effect, namely on 1 July 2016, the impugned proceedings had already been pending for many years before the Land Office and the Regional Court. At that stage, a violation of the applicant's right to a hearing within a reasonable time had already occurred and a mere preventive remedy could not provide adequate satisfaction (see *Ištván and Ištvánová v. Slovakia*, no. 30189/07, § 82, 12 June 2012). Yet, the administrative action for acceleration of proceedings under the new Code of Administrative Judicial Procedure provides exclusively this type of satisfaction.

29. Moreover, the Court has already held that the action for acceleration of proceedings together with the civil action under the State Liability Act appear to have been scarcely used in this context (see *Balogh and Others v. Slovakia*, no. 35142/15, § 59, 31 August 2018) and the Government did not identify any examples of the use of either remedy to show how they function and, more importantly, to demonstrate their effectiveness (see, *a contrario, Pallanich v. Austria*, no. 30160/96, § 30, 30 January 2001).

30. In the light of these considerations, and given the length of the restitution proceedings in the present case, the Court is of the view that the applicant should not be expected to lodge yet another action, namely an action for damages under the State Liability Act. Indeed, this would place an excessive burden on her, taking into account that such proceedings could potentially be held before several levels of jurisdiction and would entail supplementary legal costs and expenses (see, *mutatis mutandis*, *Edward and Cynthia Zammit Maempel v. Malta*, no. 3356/15, § 85, 15 January 2019). Moreover, the applicant lodged a constitutional complaint which is deemed to have a compensatory effect in cases of excessive length

of proceedings (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00 and 6 others, ECHR 2002 IX).

Accordingly, the Government's objection of non-exhaustion must be dismissed.

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

32. In this regard, the Court agrees with the Government that the suspension of the restitution proceedings (see *Maxian and Maxianová v. Slovakia* (dec.), no. 10816/12, §§ 32-33, 13 December 2016), as well as the applicant's passive approach towards cooperation with the Land Office, should be taken into account when assessing the overall length of the impugned proceedings (see paragraphs 5, 11-15 and 18 above).

33. The Court observes that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir, he or she can complain of the entire length of the proceedings (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-V).

34. The Court further reiterates that when, under the national legislation, an applicant has to exhaust a preliminary administrative procedure before being able to turn to a court, the proceedings before the administrative authorities are to be included in the overall length of proceedings calculated for the purposes of Article 6 § 1 of the Convention. Accordingly, the period to be taken into consideration in the present case began on 29 December 2004 and has not yet ended. It has thus lasted so far more than thirteen years and three months for the proceedings before administrative organs and one level of jurisdiction (see *Balogh and Others*, cited above, §§ 44-45, *Engelhardt v. Slovakia*, no. 12085/16, § 54, 31 August 2018).

35. Having examined all the material submitted to it, the Court has not found any fact or argument, including the applicant's contribution to the delays, capable of justifying the overall length of the proceedings at the national level. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

36. These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained under Article 13 of the Convention that she had not had an effective remedy at her disposal in respect of the excessive length of the restitution proceedings.

38. This complaint is admissible and constitutes a violation of Article 13 of the Convention, having regard to the Court's findings in the leading case of *Balogh and Others* (cited above, §§ 48-67).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

39. The applicant further complained under Article 1 of Protocol No. 1 of the Convention that, due to the excessively long restitution proceedings, she had been deprived of the peaceful enjoyment of her property.

40. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible.

41. The Court observes that the applicant's complaint under Article 1 of Protocol No. 1 of the Convention has the same factual and legal basis as the complaint of the excessive length of those proceedings.

42. Having regard to the finding of a violation of the applicant's right to a hearing within a reasonable time in those proceedings (see paragraph 36 above), the Court finds that it is not necessary to examine separately the merits of this complaint under Article 1 of Protocol No. 1 (see *Šidlová v. Slovakia*, no. 50224/99, §§ 87-88, 26 September 2006).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

44. Regard being had to the documents in its possession and to its case-law (see, in particular, *Balogh and Others*, cited above, § 74), the Court considers it reasonable to award the sum indicated in the appended table.

45. The Court further 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 this application discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of restitution proceedings;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy in respect of the complaint of the excessive length of the restitution proceedings;

4. *Holds* that it is not necessary to examine separately the merits of the complaint of the violation of the applicant's rights under Article 1 of Protocol No. 1;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 31 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Raffaele Sabato
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (excessive length of administrative proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Domestic court File number Domestic award (in euros)	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]
8116/19 06/02/2019	**Gabriela KĽAČANOVÁ** 1977	29/12/2004 21/09/2005 22/07/2016 06/04/2018	21/03/2005 21/11/2013 28/08/2017 pending	More than 13 years, 3 months and 13 days 1 level of jurisdiction	Constitutional Court IV. US 353/2018 0	9,100

[1] Plus any tax that may be chargeable to the applicant.