

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

FIRST SECTION

CASE OF OROS v. SLOVAKIA

(Application no. 7303/21)

JUDGMENT

STRASBOURG

18 November 2021

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



In the case of Oros v. Slovakia,

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

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 21 October 2021,

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 21 January 2021.

2. The applicant, a Slovak national, was represented by Mr T. Majerčák, a lawyer practising in Košice.

3. The Government of the Slovak Republic ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. On 21 September 1992 the applicant lodged a restitution claim with a land office pursuant to the Land Ownership Act of 1991.

6. Following the applicant's complaints (15 April 2009, 11 April 2011) and prosecutorial intervention, the land office decided on the entirety of his restitution claim by decisions of 15 May 2009 and 14 June 2013, respectively. The applicant lodged an administrative law appeal against the latter decision.

7. On 6 December 2013 the first-instance court upheld that decision. However, following an appeal lodged by the applicant with the Supreme Court, on 29 March 2018 that court overturned the first-instance judgment, quashed the land office's decision of 14 June 2013 and remitted the case.

8. On 22 January 2019 the land office decided anew on the applicant's restitution claim, but the decision was quashed on appeal. The proceedings are pending before the land office.

9. On 6 August 2020 the applicant complained to the Constitutional Court about the overall excessive length of the restitution proceedings, directing his complaint exclusively against the land office. He explained that the reason why he had not resorted to an administrative action for acceleration of the proceedings was because it was ineffective, relying on

the Court's jurisprudence in *Balogh and Others v. Slovakia* and *Engelhardt v. Slovakia* (nos. 35142/15 and 12085/16, 31 August 2018).

10. Nevertheless, on 7 August 2020, the applicant lodged such an action with the administrative courts.

11. On 22 October 2020 the Constitutional Court rejected his constitutional complaint for failure to exhaust all available remedies, notably the above-mentioned administrative action, available since 2003. While noting that the overall length of the restitution proceedings was "scandalous", it observed that the applicant's complaint was only directed against the land office and that he had challenged its conduct only three times, the first being after seventeen years from the commencement of the proceedings. It observed further that in reaction to the applicant's complaint of 15 April 2009, the land office had in fact adopted its decision, albeit a partial one, on 15 May 2009. The Constitutional Court held that any doubts about the effectiveness of the administrative action had only been declared by the Court in 2018, and added that under the new Code of Administrative Judicial Procedure (Law no. 162/2015 coll., as amended), in effect as of 1 July 2016, the remedy was undoubtedly more effective, and that the applicant could have resorted to it.

12. On 21 April 2021 the administrative court granted the applicant's administrative action for acceleration of the proceedings and ordered the land office to decide on his restitution claim within thirty days.

THE LAW

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

13. The applicant complained that the overall length of the restitution proceedings in question was incompatible with the "reasonable time" requirement. He 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 ..."

14. The Government considered the complaint inadmissible for failure to exhaust all available remedies, namely the administrative action for acceleration of the administrative proceedings. They sought to distinguish the present case from that of *Balogh and Others v. Slovakia* (no. 35142/15, 31 August 2018), by differentiating between the administrative action under Article 250t § 1 of the old Code of Civil Procedure (Law no. 99/1963 coll., as amended) and that under Articles 242-251 of the new Code of Administrative Judicial Procedure. They asserted that the current legislation

had strengthened the preventive character of the remedy in question in that, *inter alia*, it had provided an administrative court with the power to repeatedly fine an administrative organ for inactivity. Noting that the applicant had in fact lodged the relevant administrative action and that the ordinary court had granted it on 21 April 2021, the Government considered it effective from the preventive point of view and submitted that the administrative remedy, coupled with a subsequent civil action under the State Liability Act, and a potential constitutional complaint under Article 127 of the Constitution, would offer the applicant appropriate satisfaction (preventive and compensatory).

15. The applicant contested these arguments. He argued that the legislative changes relied on by the Government were merely formal and did not strengthen his position vis-à-vis the applicants in the case of *Balogh and Others*. He submitted that it had taken the administrative court eight months to decide on his administrative action for acceleration of the proceedings, a decision that was adopted right after the present application had been communicated. The applicant asserted that despite that decision, there was no real certainty as to the time frame in which the land office would decide on his restitution claim. Moreover, in order to seek non-pecuniary damages, he would have to lodge another action under the State Liability Act with an uncertain outcome and length of the proceedings.

16. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

17. The restitution proceedings at hand have lasted some twenty-nine years before the land office and two levels of ordinary courts and, to the Court's knowledge, they have not yet ended.

18. The Government's principal argument for the inadmissibility of the applicant's complaint is that he did not exhaust all available remedies (see paragraph 14 above). A similar objection was already examined in *Balogh and Others* (cited above, § 57) where the Court found that such a cumulation of remedies, which by extension leads to a multiplication of judicial proceedings, by its nature, raises general doubts about its overall effectiveness. The Court is of the opinion that despite certain legislative changes in respect of the administrative action for acceleration of the proceedings, the conclusions reached in *Balogh and Others* are still relevant in the present case for the following reasons.

19. While taking note of the legislative changes, the Court observes that they took effect only on 1 July 2016, when the impugned restitution proceedings had already been pending for almost twenty-four years. 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 the proceedings under the new Code of Administrative Judicial Procedure provides exclusively such type of satisfaction.

20. Although the administrative court ordered the land office on 21 April 2021 to decide on the applicant's restitution within thirty days, it does not stem from the Government's observations of 9 July 2021 that such a decision has been issued by the latter date. Moreover, apart from this one example in which the action for acceleration of the proceedings was granted, that remedy, together with the civil action under the State Liability Act, appears to have been scarcely used in practice in this context, making it difficult to demonstrate their actual effectiveness (*Balogh and Others*, cited above, § 59). In addition, the Government have not identified any other 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).

21. Given the length of the restitution proceedings, the applicant should not be expected to lodge yet another action, namely the action for damages under the State Liability Act, as this would place an excessive burden on him, taking into account the subsequent duration of such proceedings and any supplementary legal costs and expenses (see, *mutatis mutandis, Edward and Cynthia Zammit Maempel v. Malta*, no. 3356/15, § 85, 15 January 2019).

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

23. Having examined all the material submitted to it, the Court has not found any fact or argument 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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."

26. 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 sums indicated in the appended table.

27. 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. *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*
   (a) that the respondent State is to pay the applicant, within three months, the amounts 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 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 18 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Erik Wennerström
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	Representative's name and location	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]	Amount awarded for costs and expenses per application (in euros)[2]
7303/21 21/01/2021	**Milan OROS** 1947	Tomáš Majerčák Košice	21/09/1992	pending	More than 29 years and 7 days 2 levels of jurisdiction	Constitutional Court II. US 470/2020 0	11,800	250

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