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

FIFTH SECTION

DECISION

Application no. 54168/15
Otakar DOHNAL
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 13 April 2023 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 54168/15) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 October 2015 by a Czech national, Mr Otakar Dohnal ("the applicant"), who was born in 1942 and lived in Prague and who was represented by Mr D. Strupek, a lawyer practising in Prague;

the letter of 1 January 2018 from the applicant's lawyer informing the Court of the applicant's death and of his daughter's wish to pursue the application,

the decision to give notice of the application to the Czech Government ("the Government"), represented by their former Agent, Mr V.A. Schorm, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns an alleged violation of the right of property consequent to proceedings on unjust enrichment in which the domestic courts deciding on a preliminary question concluded that the applicant had never acquired possession of a plot of land. That decision was made despite a 2004 decision on inheritance concluding otherwise, as the property had been taken

over from the applicant's family by the State during the communist regime and the applicant had failed to claim ownership of the plot of land through restitution laws. The applicant relied on Article 1 of Protocol No. 1.

2. In 1950 the applicant's mother and her brother (the applicant's uncle), J.W., inherited a plot of land with a surface area of 6,850 square metres located in Prague. She subsequently donated her half of the property to the State. Later on, expropriation proceedings were opened but not concluded, and J.W. remained registered as the owner. He died abroad in December 1982, and the applicant learned of his death in 2001.

3. Up until 1989 various constructions were built on the plot of land, which was handed over to a public transport company in January 1990 for the purpose of constructing a metro line.

4. In 2001 the transport company started negotiations with the applicant, as a potential heir, about the use of the plot of land registered in the name of J.W. In May 2002 the applicant agreed that the property could be used as requested.

5. On 16 February 2004 the Prague 9 District Court confirmed that the applicant and his sister had inherited 0.425% and 0.075% of the plot of land respectively. They were entered in the land register as co-owners.

6. In June 2005 the Prague Metropolitan Office initiated proceedings for approval of a construction on the plot of land. As a co-owner, the applicant stated that the land was being used unlawfully, and on 16 February 2006 he filed a claim against the public transport company, seeking compensation in respect of unjust enrichment.

7. On 1 November 2005 the Constitutional Court issued a plenary opinion (Pl. ÚS-st. 21/05) in which it clarified that "[t]he meaning and purpose of restitution legislation should not be circumvented by an action for declaration of an ownership right. Nor is it possible to effectively seek the protection of an ownership right terminated before 25 February 1948 under general regulations, when no separate piece of restitution legislation has laid down a method for mitigating or redressing this property injustice."

8. In April 2008 the public transport company started to argue that the applicant had failed to prove that he owned the share of the property, as the State had taken over ownership before 1989 and he should have claimed ownership through restitution laws.

9. On 29 October 2009 the district court issued an interim judgment holding that the legal basis of the applicant's claim in respect of unjust enrichment was well-founded. The judgment was subsequently quashed by the Prague Municipal Court, on the grounds that the inheritance decision based on the ownership record of J.W. was not sufficient to establish ownership of the relevant part of the plot of land, and that it was necessary to establish whether the State had taken over this property without a legal basis before 1990.

10. On 24 July 2012 the district court decided that the applicant did not have *locus standi* as a co-owner in the unjust enrichment action. It stated, in particular:

> "It was established without any doubt, and not contested by the [applicant], that the State had taken possession of the property ... after 1948, without a legal basis. ... in fact, the property had been seized, even though [this] had not been backed up by law. ... It appears from decision no. 31 Cdo 1222/2001 of ... the Supreme Court that, in such a case, the entitled person should have claimed his right in restitution proceedings. ..."

11. The municipal court upheld that judgment on 11 April 2013, finding in particular:

> "A basic condition for an unjust enrichment claim is the existence of a share in the co-owned plot of land concerned. ... The Supreme Court, in its well-established case-law, has held for a long time that the lack of an agreement or other legal reason for an assumption (seizure) of property by the State entails a reason for restitution. ... The first-instance court ascertained the facts of the case in a sufficient manner and correctly assessed the case from the legal point of view. ..."

12. On 10 June 2014 the Supreme Court dismissed an appeal by the applicant on points of law. It reiterated that the legislature, in restitution laws, had expressly established that the taking over of an object without legal reason was one of the grounds for restitution. In the present case, the parties had records in the land register which they had lengthy neglected. Their efforts to seek redress by means of renewing the inheritance proceedings showed that the applicant had been unaware of the property and could not consider himself to be its rightful owner, and he therefore had to seek redress only by means of restitution laws.

13. The applicant filed a constitutional complaint, alleging that his right to a fair trial and right of property had been violated. On 9 April 2015 the Constitutional Court (in decision III. ÚS 2824/14), referring to its plenary opinion no. Pl. ÚS-st. 21/05, dismissed his complaint as manifestly ill-founded, holding that there was no reason for an exemption from the general rule of firstly applying restitution laws.

14. In addition to the above proceedings, there were separate court proceedings seeking the termination and settlement of the co-ownership arrangement (*zrušení a vypořádání podílového spoluvlastnictví*) in respect of the plot of land; those proceedings were initiated in April 2008 by the city of Prague. On 9 June 2016, having examined a preliminary question of whether the applicant and his sister had the capacity to be sued *in rem* in that dispute, the district court found that the property had been *de facto* managed by the State in a manner whereby it had been made known that the State considered itself to be in possession of the property. The court therefore rejected the action. The judgment was upheld by the municipal court on 29 September 2016.

15. At present, the applicant is listed in the land register, which is publicly accessible, as a co-owner who owns seventeen-fortieths of the plot of land,

together with his sister who possesses three-fortieths of the plot; the city of Prague is recorded as owning the other half of the plot of land.

THE COURT'S ASSESSMENT

16. The applicant alleged that his right of property had been violated, as the courts had applied an unforeseeable principle providing that the State became the owner of a *de facto* occupied immovable property at the moment when an entitled person failed to file a restitution claim. He relied on Article 1 of Protocol No. 1, which provides 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."

17. The Government maintained that the applicant had not been deprived of his property rights, since in the proceedings concerned the courts had examined the issue of his co-ownership of the plot of land as a preliminary question and had expressed their conclusion in the reasoning of their judgments, which did not have any binding effects. The Government considered that in order to confirm the applicant's property rights with certainty, he should bring an action to determine ownership of the plot of land. In those proceedings, the courts would decide, independently of earlier judgments, either that the applicant could and should have lodged a restitution claim in line with the plenary opinion, or that he was the rightful owner of the land.

18. Furthermore, the Government did not deny that the State had built the public constructions on the land in question. They considered, however, that the existence of these facilities constituted a restriction of the applicant's rights which had to be seen as control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. In any event, it would be for domestic courts to examine the question of compensation for the control of the use of property if they upheld the applicant's ownership rights over the plot of land (compare *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, ECHR 2005-VI.

19. The applicant, referring to the conclusions of the domestic courts on the preliminary question examined in the present case, disputed the effectiveness of an action to determine ownership. In his opinion, based on the plenary opinion, the State became the owner of land through *de facto* occupation from the moment when an entitled person failed to file a restitution claim, rather than from the day of occupation.

20. The Court acknowledges that, in the present case, the judgments delivered in the two sets of court proceedings, when read in their entirety, put the applicant's co-ownership title to the plot of land in doubt. It notes, however, that the courts assessed the applicant's status as a co-owner only as a preliminary question which had to be established so that the courts could deal with the merits of the disputes. Their conclusions were elaborated only in the reasoning of their judgments, but not voiced in the operative part, which alone is binding on all authorities and is deemed to be *res iudicata*. Accordingly, the courts' finding, which was decisive only for the purposes of the two sets of proceedings, did not have any impact on the records in the land register, where the applicant is still recorded as being the co-owner of the property concerned (see paragraph 15 above).

21. Relying on the principle of subsidiarity, which was inserted into the Preamble to the Convention by Protocol No. 15 (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022, with further references), and reiterating that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient (see *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, § 205, 22 December 2020), the Court considers that the applicant's current ownership title must firstly be validly established at national level through the legal avenue suggested by the Government (see paragraph 17 above). In this regard, the Court points out that the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see, *mutatis mutandis*, *Hanan v. Germany* [GC], no. 4871/16, § 148, 16 February 2021, with further references).

22. Thus, having regard to the circumstances of the present case, the Court finds that the applicant's application is premature.

23. It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 May 2023.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President