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

FIRST SECTION

DECISION

Application no. 29233/15
Vince NAGY and Lászlóné KOVÁCS
against Hungary

The European Court of Human Rights (First Section), sitting on 21 May 2024 as a Committee composed of:

Alena Poláčková*, President*,
Péter Paczolay,
Gilberto Felici*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 29233/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 June 2015 by two Hungarian nationals, Mr Vince Nagy and Ms Lászlóné Kovács ("the applicants"), who were born in 1960 and 1944 respectively, live in Tiszavalk and were represented by Mr Cs. Kiss N., a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' plot of land which could not be used, on account of pre-existing waste pollution, following its acquisition in 2001. It raises issues under Article 1 of Protocol No. 1 read alone and in conjunction with Article 13 of the Convention.

2. On the basis of Act no. II of 1993 on Land Reallocation and Land Distribution Committees, in 2001, after a draw selection procedure, the applicants acquired a 1.66-hectare plot of land in Tiszavalk, valued at 8.63 "gold crowns" (*aranykorona*). From the 1970s, local inhabitants used

part of the land as an illegal landfill. Between 1998 and 2001, the Municipality of Tiszavalk ("the Municipality") designated this area for the collection and deposition of municipal waste. Until 2001, an estimated 7,200 cubic metres of waste was disposed on part of the plot of land in question. The landfill was not entered into the land register.

A. Administrative proceedings

3. In 2002 the applicants submitted a complaint to the North-Hungary Environmental Inspectorate ("the Environmental Inspectorate"), because of the previous use of the land as a municipal landfill.

4. In February 2005, after a remittal, the Environmental Inspectorate obliged the Municipality to cease the endangerment of environment caused by the illegal landfill, and to provide an environmental review until 30 September 2005, then extended the deadline of the review until 31 December 2006.

5. In December 2007 the Environmental Inspectorate approved the environmental review of the Municipality, prohibited any waste disposal at the landfill from 31 December 2007 onwards, and ordered the Municipality to eliminate the landfill before 31 December 2009. The decision was upheld by the National Environmental Protection and Water Management High Inspectorate ("the High Inspectorate").

6. The applicants challenged the decisions arguing that they were not enforceable. In January 2009 the Borsod-Abaúj-Zemplén County Regional Court rejected their claim. The court emphasised that the decisions on the approval of the environmental review were in compliance with the applicable law and made clear that the elimination of the landfill was the Municipality's obligation.

7. Meanwhile, the Environmental Inspectorate gave permission for the elimination of the landfill and determined the requirements of the aftercare.

8. In March 2010 the Environmental Inspectorate ordered enforcement, extended the deadline of the elimination and aftercare of the landfill by one year, and imposed a fine of 30,000 Hungarian forints (HUF – about 110 euros (EUR) at the time) on the Municipality. The High Inspectorate upheld the decision.

9. As the Municipality took no action, in September 2011 the administrative authority imposed a fine of HUF 150,000 (EUR 550) and extended the deadline by 10 months. The High Inspectorate upheld the decision.

10. In March 2013 the deadline of the elimination was extended until 30 November 2013. Again, the Environmental Inspectorate imposed a fine of HUF 200,000 (EUR 680) on the Municipality and obliged it to submit the plans for the recultivation and aftercare of the landfill within 60 days. On

appeal, the High Inspectorate in essence upheld the decisions, but set a new deadline of 30 July 2014 for the elimination of the landfill.

11. In February 2014 the Environmental Inspectorate imposed a fine of HUF 300,000 (EUR 1,000) on the Municipality, since it had failed to submit a plan for the recultivation and aftercare of the landfill, and extended the deadline by 45 days. In April 2014 the High Inspectorate reversed the provisions of the decision on the deadline and ordered the Municipality to submit its plans until 15 July 2014.

12. In March 2014 the Borsod-Abaúj-Zemplén Governmental Office initiated proceedings against the Municipality for the use of the applicants' property without permission, and called on it to submit a soil protection plan. The Governmental Office subsequently imposed a fine of HUF 80,000 (EUR 260) on the Municipality, since it had not complied with the obligation imposed.

13. In February 2015 the Environmental Inspectorate gave the Municipality permission for the recultivation and aftercare of the landfill, and set the aftercare period at 5 years.

B. Criminal proceedings

14. Meanwhile, the applicants initiated criminal proceedings against the Mayor of Tiszavalk. In October 2005 the Mezőkövesd District Court found the mayor guilty of the offence of damaging the environment, and sentenced him to one year's probation. The first-instance court concluded that the disposal of waste on the applicants' plot of land without permission or monitoring, and thus the possible pollution of the area, was partly attributable to the omission of the mayor.

15. In March 2006 the Borsod-Abaúj-Zemplén County Regional Court, acting as a court of appeal, reversed the judgment and acquitted the mayor. The court emphasised that the mayor had contributed to the introduction of the organised waste treatment in Tiszavalk which had reduced the environmental hazards. Therefore, his acts did not pose a danger to the society.

C. Civil proceedings

16. In November 2011 the applicants lodged a civil claim for damages against the Municipality. They argued that, despite the administrative decisions, the Municipality had not fulfilled its obligations to eliminate the environmentally harmful situation, which led to their inability to use their property.

17. In January 2014 the Mezőkövesd District Court rejected the applicants' claim. The court held that an unlawful conduct on the Municipality's side could indeed be deduced from its non-compliance with

the administrative decisions. This resulted in damage suffered by the applicants, but since they had failed to prove the amount of damage (in that they had not requested the appointment of an expert despite the court's notice), the court rejected the claim. Subsequently, the judgment was upheld by the Miskolc High Court.

D. Expropriation proceedings

18. In the meantime, the Municipality filed a request for the expropriation of the applicants' property. In October 2015 the Borsod-Abaúj-Zemplén Governmental Office expropriated the whole property on the ground of "environmental protection, the recultivation of a waste management facility", and granted the applicants a total amount of HUF 1,698,160 (EUR 5,400) in compensation.

19. The applicants applied for judicial review of the decision. The Miskolc Administrative and Labour Court suspended the enforcement of the decision until an interim judgment on the issue of legal ground had become final.

20. In January 2016 the court adopted an interim judgment finding that the legal ground relied on for the expropriation was well-founded.

21. In April 2017 the court partly reversed the decision on the expropriation and established the total amount of compensation at HUF 1,804,743 (EUR 5,800).

E. Complaints

22. The applicants complained under Article 1 of Protocol No. 1, read alone and in conjunction with Article 13 of the Convention, that the compounded actions/inactions of the authorities amounted to a long-lasting situation in which their property could be neither used nor disposed of.

THE COURT'S ASSESSMENT

23. The Government argued that the applicants had not exhausted domestic remedies. The applicants disagreed.

24. The Court reiterates that, according to its established case-law, the purpose of the rule on the exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014). However, the only remedies that the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not

only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 142, ECHR 2006-V, with further references).

25. In the present case, the Government, first, relied on the possibility of an appeal under the Land Allocation Act and the State Administrative Procedure Act against the very decision in 2001 conveying the ownership of the plot of land on the applicants (see paragraph 2 above). The Court observes that, under section 13 of the Land Allocation Act, information on the plots of lands to be allocated by drawing lots was to be published in the Official Gazette at least 30 days prior of the draw selection. However, it appears that the applicants did not necessarily know about the contamination at that time, since the landfill did not figure in the land register. They argued that by the time the contamination had become evident to them (that is to say, when the plot was measured up in order for the applicants to take possession), no remedy was available any longer. Given that the relevant deadline for an appeal was a mere eight days, the Court is not convinced that there was an effective remedy at the applicants' disposal at that juncture.

26. The Government further argued that as long as the expropriation proceedings were pending, domestic remedies could not possibly be regarded as exhausted and that, on their completion, the applicants had lost victim status. The Court considers that although the expropriation indeed put an end to the material situation complained of, it did not constitute either an implicit acknowledgment of a breach of the Convention or redress for the period during which the applicants were unable to use their plot of land due to the incriminated omissions (see *Bognár v. Hungary*, no. 75757/14, § 32, 20 October 2020, and *Barcza v. Hungary*, no. 50811/10, § 35, 11 October 2016).

27. Lastly, the Government argued that the applicants had failed to avail themselves of a constitutional complaint under section 26 or 27 of the Constitutional Court Act, notably in regard to the judgments given in the civil proceedings (see paragraphs 16 and 17 above), adopted after the entry into force of the Constitutional Court Act on 1 January 2012. In these proceedings, the applicants pursued an action in damages, that is to say, claiming damages incurred precisely because of their inability to use the property due to the inactions of the Municipality. Indeed, the domestic courts established that the Municipality's conduct was unlawful, which caused damage to the applicants; however, since the amount of the damage was not proved by them, their claim was ultimately rejected.

28. For the Court, if the applicants' reluctance to substantiate the claim by way of an expert as instructed did not *per se* amount to non-exhaustion of domestic remedies, their subsequent failure to pursue a constitutional complaint certainly did so (see *Szalontay v. Hungary* (dec.), no. 71327/13, 12 March 2019).

29. It follows that the applicants have not exhausted domestic remedies as required by Article 35 § 1 of the Convention and that the application must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 June 2024.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President