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

FOURTH SECTION

DECISION

Application no. 66721/14
Zdenka PERŠUH
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 28 November 2017 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Georges Ravarani,
Marko Bošnjak, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 October 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Zdenka Peršuh, is a Slovenian national, who was born in 1967 and lives in Loče. She was represented before the Court by Ms M. Končan Verstovšek, a lawyer practising in Trzin.

2. The Slovenian Government ("the Government") were represented by their Agents, Ms T. Mihelič Žitko and Ms V. Klemenc, State Attorneys.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is the owner of 1/3 of the plot of land no. 121 in the cadastral municipality of Vrhloga and her mother is the owner of 2/3 of that plot.

5. On 4 November 1998 the Municipality of Slovenska Bistrica (hereinafter "the Municipality") adopted the Ordinance on Classification of

Municipal Roads of the Municipality of Slovenska Bistrica (hereinafter "the Ordinance") and classified a road on that plot as public. The Ordinance was published in the Official Gazette on 10 February 1999 and came into force eight days later.

6. The Municipality neither concluded a contract (of sale) with the applicant or her mother nor instituted expropriation proceedings in order to obtain the ownership of the plot. The applicant was not informed of the Ordinance and the classification of the road on her land as public.

7. On 29 January 2007 the applicant requested a planning document (*lokacijska informacija*) concerning the plot of land no. 121 in the cadastral municipality of Vrhloga. The Municipality issued the requested document on 13 February 2007. This document indicated, among other things, that a public road was registered on the property in issue pursuant to the Ordinance.

8. On 7 June 2007 a life care contract and a deed of conveyance concerning the applicant's mother share in the property in issue were concluded by a notary. Consequently, on 19 November 2007 a restraint on alienation concerning the applicant's mother's share in plot no. 121 was entered, in favour of the applicant, in the Land Registry.

9. Following the applicant's request made on an unspecified date, on 19 December 2011 the Municipality issued a further document, this time an attestation concerning the possible usage of the plot of land in issue (*potrdilo o namenski rabi zemljišča*). The attestation indicated, among other things, that a public road was registered on the property in issue pursuant to the Ordinance.

10. On 23 January 2012 the applicant sent a letter to the Municipality's Local authority of Črešnjevec requesting the revocation of the classification of the road as public in so far as it concerned her land. On 19 March 2012 the Local Authority of Črešnjevec explained that they could not interfere in the proceedings between the applicant and her neighbour, as well as that the road in issue had been there historically and was necessary for accessing the neighbouring property. They also advised the applicant to settle her dispute with her neighbour.

11. On 17 September 2012 the applicant lodged a petition with the Constitutional Court for the review of the constitutionality and legality (hereinafter "petition for constitutional review") of the Ordinance, in so far as it designated the road, crossing her land, as a public road. She argued that the Municipality had interfered with her right to property because it had failed to conclude a contract of sale or carry out expropriation proceedings to obtain the land and offer compensation. Furthermore, she claimed that she had first learnt about the adverse consequences of the Ordinance on 19 December 2011 when she had obtained the attestation showing that a public road had existed on her land (see paragraph 9 above). She maintained that she had requested this attestation for the purpose of "some other legal

transaction". She also enclosed an excerpt from the Land Registry concerning the relevant plot of land.

12. On 12 August 2013 the Municipality submitted its observations on the applicant's petition, admitting that a contract had still not been concluded with the applicant and that expropriation proceedings had not been carried out. However, the Municipality argued that the applicant had failed to comply with the time-limit for lodging the petition for constitutional review and had not explained the circumstances in which she had learned of the adverse consequences of the Ordinance.

13. On 28 August 2013 the applicant replied to the above submissions. She argued that she could not have known about the Ordinance before 2011 as the Municipality had been acting unlawfully when enacting it in 1999. They had not informed her and had not offered her any compensation for the taking of the property. She had found out about the public road crossing her land only in 2011 when the attestation had been issued at her request. She alleged that since then she had suffered adverse consequences on a daily basis as she, among other things, had had to allow others to walk or drive over that part of her land. She further argued that it had not been her duty to check regularly if the Municipality had issued any ordinances which would have interfered with her property, but it had been for the Municipality to conclude an agreement with the owner in such a case. Therefore, the fact that she had found out about the Ordinance only twelve years after its enactment could not be held against her.

14. On 7 April 2014 the Constitutional Court rejected the petition for constitutional review as being lodged out of time. It held that, according to section 24 of the Constitutional Court Act (see paragraph 15 below), a petition for constitutional review could be lodged within one year from the enactment of the impugned act (objective limit) or within one year from when the petitioner had found out about the adverse consequences of the act (subjective limit). It further held that the petitioner relying on the subjective time-limit should convincingly explain the circumstances in which he or she had learned about the adverse consequences and state the facts which allow for his or her allegations to be verified and assessed. The Constitutional Court noted that the road in issue had been classified as public in 1999 and that the applicant, by stating that he had learned of it only in 2011 when obtaining the attestation for the purposes of "some other legal transaction", had not satisfied the aforementioned requirement. The decision rejecting the applicant's petition as being out of time was served on the applicant on 23 April 2014.

B. Relevant domestic law and practice

15. The relevant provisions of the Constitutional Court Act (hereinafter "the CCA", Official Gazette no. 15/94 with relevant amendments) read as follows:

Section 22

"(1) The procedure for the review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority is initiated by the submission of the written request of an applicant or by a Constitutional Court order on the acceptance of a petition to initiate a review procedure.

..."

Section 24

"...

(3) When an executive regulation or a general act issued for the exercise of public authority is effective immediately and interferes with rights, legal interests or legal position of a petitioner, a petition may be filed within one year after its entry into force or within one year from the date the petitioner learned about its adverse consequences."

Section 48

"(1) If the Constitutional Court deems a law, other regulation, or general act issued for the exercise of public authority unconstitutional or unlawful as it does not regulate a certain issue which it should regulate or it regulates such an issue in a manner which does not enable annulment or abrogation, a declaratory decision is adopted.

(2) The legislature or authority which issued such unconstitutional or unlawful regulation or general act issued for the exercise of public authority must remedy the established unconstitutionality or unlawfulness within a period of time determined by the Constitutional Court."

16. The Constitutional Court has found in numerous cases that some municipal ordinances classifying as public the roads on private lands failed to comply with the Constitution (see, for example, decision no. U-I-208/10 of 20 January 2011 and decision no. U-I-289/12 of 24 January 2013).

17. The relevant provisions of the Spatial Planning Act (Official Gazette no. 110/02 with relevant amendments) read as follows:

Section 92

"(1) Ownership of the property may be taken against monetary compensation or compensation in kind ..."

Section 97

"(1) The expropriation beneficiary can submit a proposal for expropriation in case of failing to obtain property by entering into a contract, within 30 days after service of the offer for the purchase of the property to the owner.

..."

18. Moreover, section 88.a of the Local Governance Act (Official Gazette no. 94/07 with relevant amendments) provides that if a municipal body issues an act incompatible with the Constitution or legislation, the relevant ministry should warn it and should propose an appropriate solution. If the relevant municipal body fails to harmonise its act with the requirements of the Constitution or legislation, the ministry should request the Government to initiate the procedure for the constitutional review of that act before the Constitutional Court (see paragraph 15 above).

COMPLAINTS

19. The applicant complained, in substance under Article 6 of the Convention, about an alleged lack of access to the Constitutional Court.

20. The applicant also complained under Article 1 of Protocol No. 1 to the Convention that the Municipality of Slovenska Bistrica had *de facto* expropriated her property by classifying a road on her plot of land as public without awarding her any compensation.

THE LAW

21. The applicant's first complaint relates to the access to the Constitutional Court and concerns, in substance, Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

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

22. The applicant's further complaint relates to the alleged unlawful expropriation of her property in breach of Article 1 of Protocol No. 1 to the Convention, which reads 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."

A. The parties' arguments

1. The Government

23. The Government argued that both complaints were inadmissible. They maintained that the one-year time-limit for lodging the petition for constitutional review was a permissible restriction on access to court. The applicant's petition for constitutional review was properly rejected as she had failed to sufficiently indicate the circumstances in which she had learned of the adverse consequences of the impugned municipal ordinance (hereinafter "adverse consequences"). Moreover, it was clear from the Land Registry's excerpt, which she had enclosed to her petition, that she had known since 2007 about the public road and by not disclosing this to the Court she abused her right of petition.

24. The Government moreover submitted that, in the absence of convincing explanations to the contrary, the above context led the Constitutional Court to conclude that the applicant had known about the public road already in 2007.

25. As regards the complaint under Article 1 of Protocol No. 1, the Government argued that the applicant had failed to properly exhaust domestic remedies. They submitted that the petition for constitutional review would have been an effective remedy, had the applicant complied with the one-year time-limit and convincingly explained the moment she had learned of the adverse consequences. Moreover, pursuant to section 88.a of the Local Self-Government Act (see paragraph 18 above) the applicant could have informed the Ministry for Infrastructure and Environment of the impugned ordinance. The Ministry would have in turn issued a warning to the respective municipality asking it to remedy the unlawfulness and, if that had been unsuccessful, advised the Government to institute the constitutional review procedure.

26. In this connection, the Government submitted six warnings that had been issued, either on the basis of the individuals' requests or requests of the Ministry of Interior, by the Ministry for Infrastructure and Environment to different municipalities concerning the classification of roads as public on private property. In one of those cases, the Government had also initiated the constitutional review procedure, but later, following the revocation of the impugned provisions of the relevant municipal ordinance, withdrew the request.

2. The applicant

27. The applicant disputed the Government's arguments, submitting that the only relevant fact was that of her obtaining the attestation on 19 December 2011 (see paragraph 9 above). This was the date when she had become aware of the violation of her property rights. She moreover maintained that the legal events that had been registered in the Land Registry in 2007 had not required any attestation showing the restrictions on the property such as the public road.

28. As regards the supervisory role of the Ministry for Infrastructure and Environment to which the Government referred (see paragraphs 25-26 above), the applicant argued that this was a merely discretional avenue, which contained no safeguards and no possibility of judicial review. The only judicial remedy available was the petition for constitutional review. She was also of the view that a one-year time-limit for lodging such petition was too short and that there was no other legal way to force municipalities to conclude legal contracts for the properties they *de facto* expropriated.

29. Under Article 1 Protocol No. 1 the applicant, relying on domestic case-law, argued that she was a victim of *de facto* expropriation. She also argued that the value of the remainder of the plot of land had decreased due to the Ordinance. As she would like to sell the land in issue, she needed to remove the restriction imposed by the public road or, alternatively, the Municipality should buy it.

B. The Court's assessment

30. The Court does not find it necessary to examine the Government's objection concerning the alleged abuse of the right of petition (see paragraph 23 above), as the application is in any event inadmissible, for the reasons set out below.

31. Turning to the complaint under Article 6 of the Convention, the Court notes that the applicant alleged that the one-year time-limit for the lodging of the petition for constitutional review and the way it had been applied in her case had excessively restricted her right to access to court. In particular she maintained that she had learned of the Ordinance only on 19 December 2011 (see paragraph 9 above). Since she filed her petition for constitutional review on 17 September 2012 (see paragraph 11 above), she considered that, contrary to the finding of the Constitutional Court, she had complied with the aforementioned time-limit.

32. The Court, at the outset, notes that the rules governing the time-limits for lodging the petition for constitutional review (see paragraph 15 above) were clearly aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty. Petitioners should expect those rules to be applied (see, *mutatis mutandis*,

Miragall Escolano and Others v. Spain, nos. 38366/97 and others, § 33, ECHR 2000-I with further references).

33. The Court further considers that the one-year time-limit, which runs from the moment the petitioner becomes aware of the adverse consequences of the impugned act, does not appear an excessive restriction on the access to the Constitutional Court. Nor does the Constitutional Court's position, that the petitioner should demonstrate convincingly the circumstances in which he or she had learned of the adverse consequences (see paragraph 14 above), appear unreasonable. In this connection the Court reiterates that it is in the first place for the national courts to interpret and apply domestic law. This applies in particular to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for instance, *Klauz v. Croatia*, no. 28963/10, § 86, 18 July 2013).

34. As regards the application of the time-limit in question to the applicant's case, the Court notes that the applicant alleged in her petition for constitutional review that she had learned of the Ordinance published in 1999 only in December 2011 when she had obtained the attestation (see paragraphs 9 and 11 above). However, she did not provide any further detail on that and did not specify the purpose for which she had obtained the attestation, in spite of the fact that, in its reply to the petition, the Municipality had raised the issues of compliance with the time-limit and of the absence of any explanation as to the circumstances in which the applicant had learned of the adverse consequences (see paragraph 12 above).

35. Having regard to the foregoing and the documents in the case file (see paragraphs 7 to 14 above), the Court does not find anything arbitrary in the Constitutional Court's decision declaring the applicant's petition out of time on the grounds that she had failed to sufficiently explain the circumstances in which she had learned of the Ordinance. It also does not find the Constitutional Court's decision unreasonable or disproportionate to the aim sought to be achieved (see the general principles exposed in *McElhinney v. Ireland* [GC], no. 31253/96, § 34, ECHR 2001-XI (extracts)). It therefore considers that the applicant's complaint under Article 6 § 1 of the Convention should be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

36. As regards the complaint under Article 1 of Protocol No. 1, the Court, relying on the above considerations, notes that the applicant had failed to comply with the time-limit for submitting a petition for the constitutional review of the Ordinance. This consequently precluded her complaint under Article 1 of Protocol No. 1 to be examined on the merits by the Constitutional Court. She thus failed to properly exhaust a remedy, which, as undisputed by the parties, would have had reasonable chances of

success (see paragraph 16 above). The applicant's complaint under Article 1 of Protocol No. 1 should therefore be declared inadmissible for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention. This conclusion makes it unnecessary for the Court to examine the Government's argument concerning the possibilities opened to the applicant under section 88.a of the Local Self-Government Act (see paragraph 25 above).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 December 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President