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

THIRD SECTION

DECISION

Application no. 19474/09
Katarína ŠEBEKOVÁ and Others
against Slovakia

The European Court of Human Rights (Third Section), sitting on 19 November 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 16 February 2009,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants are three Slovakian nationals who reside in Bratislava. Ms Katarína Šebeková (the first applicant) was born in 1955. The other two applicants, Ms Soňa Horvatovičová (the second applicant) and Mr Matúš Horvatovič (the third applicant), were born in 1985 and 1995 respectively.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

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

1. Background information

3. The ownership of a residential house containing two flats was restored to the first applicant and Ms E. Horvatovičová, the legal predecessor of the second and third applicants, under the Extra-Judicial Rehabilitations Act 1991. The flats were occupied under lease by two families. The rent payable by the tenants was regulated by law and was lower than that charged for comparable flats to which the rent-control scheme did not apply.

4. The owners sought a judicial ruling authorising the termination of the leases on the grounds that they needed the dwellings for themselves.

5. On 27 May and 16 December 1993 respectively, the termination of the leases was authorised by the Bratislava I District Court and, on appeal, by the Bratislava Regional Court with reference to Article 711 § 1(a) of the Civil Code. The leases were to expire three months after the month in which the ruling became final and binding. Under Article 712 § 2 of the Civil Code, the defendants were entitled to equivalent alternative accommodation. The courts accordingly ordered them to vacate the flats at issue within fifteen days after such accommodation had been provided to them, either by the plaintiffs or by the municipality concerned.

6. The judgment terminating the leases became final and binding on 12 March 1994. Consequently, the leases expired on 30 June 1994.

2. Enforcement proceedings

7. On 6 July and 31 October 1994 under the general provisions of the Code of Civil Procedure, the house owners applied to the District Court for enforcement of the judgment against the two families who lived in the flats.

8. On 25 September and 1 October 2002 the house owners commissioned a judicial enforcement officer (*súdny exekútor*) under special legislation – the Enforcement Act 1995 – to enforce the judgment against the two families occupying the flats. In parallel, the owners withdrew the petitions that they had filed in 1994 for enforcement by the District Court under the Code of Civil Procedure, as they considered that those proceedings had been ineffective. Consequently, on 18 October 2002 the judicial enforcement proceedings instituted in 1994 were discontinued.

9. On 21 November 2006 the Bratislava I District Court authorised enforcement of the judgment against Ms S. ordering her to vacate the applicants' flat. On 5 April 2007 the District Court declared the enforcement inadmissible and the proceedings were discontinued on 20 February 2008. It established that the enforcement proceedings had been conducted not against the tenant who had been ordered to vacate the flat but against her daughter, who had the same name.

10. On 21 May 2004 and 29 September 2004 respectively, the Bratislava I District Court and the Bratislava Regional Court refused to authorise enforcement of the judgment against the occupants of the other flat owned

by the applicants. The courts held that the latter had failed to offer equivalent alternative accommodation to the occupants. On that ground the Bratislava I District Court formally discontinued the enforcement proceedings on 21 September 2005.

3. Court's judgment in application no. 73233/01

11. On 14 February 2006 the Court found a breach of the first applicant's and Ms E. Horvatovičová's right, under Article 6 § 1 of the Convention, to a hearing within a reasonable time in respect of the above-mentioned enforcement proceedings before the Bratislava I District Court (see *Šebeková and Horvatovičová v. Slovakia*, no. 73233/01, § 47, 14 February 2006). The Court further declared inadmissible the complaint under Article 1 of Protocol No. 1. The relevant part of its judgment reads:

> "51. The Court observes that, in the present case, the families P. and S. were ordered to vacate the flats at issue after alternative accommodation of [a] certain standard was provided to them. The subject-matter of the enforcement proceedings was *inter alia* to determine whether the accommodation offered by the applicants was up to that standard. As this issue has actually never been determined, the applicants' legal position remained uncertain (see, *a contrario*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V).
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> 52. The Court further observes that what lies at the heart of this complaint is the material loss that the applicants claim to have incurred as a result of the improper conduct of the enforcement.
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> There is however no indication that the applicants would be unable to claim compensation in respect of such material damage under section 18(1) of the State Liability Act of 1969 or that such claim would be bound to fail (see *Csepyová v. Slovakia* (dec.), no. 67199/01, 8 April 2003).
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> 53. Thus, even assuming that the applicants' legal position as regards the flats in question in the specific circumstances of the present case amounted to "property" within the meaning of the Article invoked, the complaint made in reliance on it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies."

4. Actions against the occupants of the flats

(a) Action of 8 February 2005

12. On 8 February 2005 the first applicant and Ms E. Horvatovičová sued Ms S., the occupant of one of the flats in their house, for 70,000 Slovak korunas (SKK) with reference to Article 451 of the Civil Code. They argued that the defendant had continued paying the same sum for the use of the flat (equal to the rent determined under the rent-control scheme) even after the lease agreement had been terminated by a final decision. Referring to an expert opinion, they argued that monthly rent in comparable flats to which the rent-control scheme did not apply amounted to SKK 17,000 whereas the defendant had been paying only SKK 2,725 a month. The sum

claimed corresponded to the unjust enrichment of the defendant on that basis in the period from August to December 2004.

13. On 28 February 2006 the Bratislava I District Court dismissed the action. It held that the defendant had the right to use the flat and that under the law in force, the plaintiffs were not entitled to modify the terms of the original lease agreement unilaterally.

14. At the court hearing the defendant said that the owners had cut off the heating and water supply in the flat and that she had been obliged to move to the one-room flat of her daughter. The owners had let the flat to a different tenant thereafter.

15. On 18 September 2007 the Bratislava Regional Court upheld the first-instance judgment. It concluded that the defendant was entitled to use the flat until equivalent alternative accommodation had been offered to her, on the same terms as those in the lease agreement prior to its termination. The plaintiffs were not entitled, under the law in force, to increase the rent of their own volition.

16. On 23 February 2008 Ms E. Horvatovičová died. The second and third applicants succeeded to her rights and obligations as heirs.

17. On 29 April 2008 the applicants complained to the Constitutional Court that the dismissal of the above action had breached Article 1 of Protocol No. 1.

18. On 29 July 2008 the Constitutional Court rejected the complaint for lack of jurisdiction. It held that the ordinary courts could be held liable for the alleged breach of the applicants' right to peaceful enjoyment of their possessions only if they had acted in disregard of their right to judicial or other legal protection within the meaning of Articles 46-50 of the Constitution. The applicants had not complained that their right to a fair hearing had been breached and the dismissal of their claim did not, as such, amount to a breach of Article 1 of Protocol No. 1. The decision was served on 4 September 2008.

(b) Action of 29 December 2006

19. On 29 December 2006 the first applicant and Ms E. Horvatovičová sued Mr and Mrs P., who occupied the other flat in their house, for SKK 157,025 with reference to Article 451 of the Civil Code. They argued that the defendants were paying SKK 2,725 a month for the use of their flat. That amount had been determined under the rent-control scheme, which the plaintiffs considered to be no longer applicable to their flat. The plaintiffs further argued that similar flats to which the rent-control scheme did not apply could be let for SKK 17,000. The amount claimed corresponded to the difference between those sums for the period from January to November 2005.

20. On 16 March 2007 the Dunajská Streda District Court dismissed the action. It held that the defendants were protected in that they had the right to

continue using the flat after the termination of the lease until comparable accommodation had been found for them. It would be contrary to their right to housing and the principle of their legal protection if they were obliged to pay a higher sum for the use of the flat than they had paid under the lease agreement.

21. In the proceedings the defendants indicated that, as a result of the flat owners' actions, they had been denied access to the flat and had stopped using it in December 2005. A criminal investigation had been initiated in that context. The owners had concluded a rental contract with a different person on 13 December 2005.

22. On 31 October 2007 the Trnava Regional Court upheld the District Court's judgment. It allowed the plaintiffs to lodge an appeal on points of law with a view to determining whether the rent-control scheme was also applicable to similar cases where the lease had been terminated but the former tenants had the right to use the flat.

23. On 25 June 2009 the Supreme Court dismissed the appeal on points of law lodged by the house owners. With reference to Articles 685 § 1 and 853 § 1 of the Civil Code, it concluded that, by analogy, the defendants had the right to use the flat on the same terms until they were provided with substitute accommodation.

24. There was no regulation, within the meaning of Article 696 § 1 of the Civil Code, entitling landlords to increase rent unilaterally. The plaintiffs were therefore not entitled to claim a higher sum for the use of the flat than the defendants had paid under the lease agreement.

25. An interpretation of the relevant regulation governing rent control was not called for, as it applied exclusively to the use of flats on the basis of a lease agreement.

5. Claim for damages under the State Liability Act 2003

26. In February 2009 the applicants lodged an action for damages under the State Liability Act 2003. They claimed compensation on the ground that their property rights had been breached as a result of the decisions in the proceedings leading to the Regional Court's judgment of 18 September 2007. On 24 March 2009 the Ministry of Justice dismissed the claim as the judgment at issue was final and effective. The view was expressed that the applicants had not shown that it was unlawful under the relevant provision.

B. Relevant domestic law

27. The following provisions of the Civil Code are relevant to the present case.

28. Article 451 § 1 obliges those who have enriched themselves without justification and to the detriment of others to restore such enrichment. Under paragraph 2 of Article 451, unjust enrichment is patrimonial benefit which

has been obtained, *inter alia*, without any legal ground, or on the basis of a legal ground which is void or which has become obsolete.

29. Article 671 § 1 obliges lessees to pay rent in accordance with the contract; otherwise the rent payable must correspond to rent that was usual at the time of conclusion of the contract, with due regard to the value of the rented object and the manner of its use.

30. Article 685 § 1 provides that tenancy of a flat is protected. Unless the parties to a lease agreement reach an agreement, the tenancy can be ended only on one of the grounds set out in statute.

31. Article 696 § 1 provides that the determination of rent and other payments for the use of a flat, as well as cases where the landlord is entitled to unilaterally increase the rent, are to be set out in special regulations.

32. Article 711 § 1(a) entitles a landlord to terminate a lease agreement, subject to approval by a court, where the landlord needs the flat for himself or herself or for his or her spouse, children, grandchildren, children-in-law, parents or siblings.

33. Article 712 § 2, in force at the time the tenancy of the applicants' flats was terminated, entitled former tenants to equivalent alternative accommodation. The provision was subsequently replaced by Article 712(a) § 1. In cases falling under Article 711 § 1(a), former tenants are entitled to substitute accommodation that is comparable, in terms of its surface area, equipment and location, to the flat which they are obliged to vacate. The former tenants' living standards and professional needs are to be taken into account in that context.

34. Pursuant to Article 712c § 1, unless the law provides otherwise, a tenant is not obliged to move out of a flat until he or she has been provided with appropriate substitute accommodation.

35. Article 853 § 1 allows for application by analogy, in respect of civil-law relations which are not regulated by the Civil Code or any other law, of other provisions of the Civil Code governing relations which are as similar as possible in nature and purpose.

COMPLAINTS

36. The applicants complained under Article 1 of Protocol No. 1 that they had had to bear a disproportionate burden in that they had been obliged to let other persons use their flats for a low rent after those persons' tenancy rights had been terminated by a final decision.

37. The applicants further complained that they had thereby been required to perform forced labour, contrary to Article 4 § 2 of the Convention.

THE LAW

A. Alleged breach of Article 1 of Protocol No. 1

38. The applicants complained that they had been obliged to let their flats for a disproportionately low compensation, in breach of 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."

39. The Government objected that the applicants had failed to respect the six-month time-limit laid down in Article 35 § 1 of the Convention. The relevant decisions in the enforcement proceedings in respect of the judgments ordering the occupants to vacate the flats had been given on 21 September 2005 and on 20 February 2008, whereas the application had been introduced on 16 February 2009. The proceedings in respect of the applicants' actions against the occupants could not affect the position, as under Slovak law such claims were devoid of any prospect of success. In addition, in respect of the enforcement proceedings which had been discontinued as a result of their failure to correctly identify the occupant concerned, the applicants had failed to exhaust domestic remedies.

40. In any event, the Government considered that the interference resulting from the obligation to let the occupants continue using the applicants' flats was compatible with the requirements of Article 1 of Protocol No. 1.

41. The applicants argued that they had observed the six-month time-limit. In particular, the position as regards the terms under which the occupants were authorised to continue using their flats had been clarified in the civil proceedings brought by the applicants. The final decision in respect of those proceedings had been given by the Constitutional Court, and it had been served on 4 September 2008.

42. By having recourse to the Constitutional Court, the applicants claimed to have exhausted all available remedies as regards the interference resulting from the obligation to let the occupants continue using their flats at a disproportionately low price. That interference failed to strike a fair balance between the interests at stake. As a result, the applicants considered that they had had to bear an excessive burden for which there was no relevant justification.

43. Under Article 35 § 1 of the Convention the Court may deal with individual applications subject to the applicants' compliance with the requirements to exhaust domestic remedies and to introduce their application within the time-limit of six months. In applications against Slovakia the applicants have usually been required to lodge a complaint to the Constitutional Court with a view to exhausting domestic remedies. Cases where the determination of a complaint raised the preliminary issue of conflict of legal rules have been an exception as the Constitutional Court has held that it cannot determine such issues in the context of proceedings on complaints under Article 127 of the Constitution (see *Urbárska obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 80 and 88, 27 November 2007).

44. In the present case the Court notes that the above Constitutional Court's decision relates to a separate legal avenue to which the applicants had recourse in parallel to their efforts to having the judicial orders of 1993 enforced. In particular, in 2005 and 2006 they instituted civil proceedings on the ground that the defendants had used the flats at a low price during the period from August to December 2004 and from January to November 2005 respectively. The plaintiffs relied on Article 451 of the Civil Code, claiming that the defendants had thereby enriched themselves without any justification.

45. The domestic courts dismissed those claims. With reference to the relevant provisions of the Civil Code the Supreme Court confirmed the lower courts' finding that the occupants had been entitled to continue using the flats under the same conditions as prior to the termination of the tenancy agreement until they were provided with appropriate alternative accommodation (see paragraphs 23-24 above above). The statutory requirements for granting their claims had not been met.

46. The Court reiterates that it has only limited power to deal with alleged errors of fact and law committed by domestic courts and it cannot substitute its view for that of those courts (see *Jantner v. Slovakia*, no. 39050/97, § 32, 4 March 2003, and *Nenkova-Lalova v. Bulgaria*, no. 35745/05, § 77, 11 December 2012). It finds that the above conclusion in respect of the applicants' civil actions is not arbitrary.

47. Thus the applicants' expectations to be granted additional sums on the grounds that the occupants had enriched themselves without justification were based on a hope that did not have a sound basis in Slovak law or the practice of the domestic courts. The Court has already drawn attention to the difference between a hope of securing an asset, however understandable that hope may be, and a legitimate expectation, which must be of a more concrete nature than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see, *mutatis mutandis*, *Gratzinger and Gratzingerova* v. the Czech Republic [GC] (dec.), no. 39794/98, § 73,

ECHR 2002-VII, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 49, ECHR 2004‑IX).

48. In these circumstances the dismissal of the applicants' civil actions against the occupants cannot be considered as an interference with their existing property rights attracting the guarantees of Article 1 of Protocol No. 1. Their complaint in respect of those proceedings is therefore incompatible *ratione materiae* with the provisions of the Convention.

49. The Court further notes that the substance of the applicants' complaint concerns the fact that they were not able to avail themselves of their flats and that they were obliged to let other persons continue using the flats after the termination of the tenancy at a price which was considerably below the market rent.

50. The documents submitted indicate that the occupants left the applicants' flats before the end of 2005 under circumstances which the Court is not called upon to examine in the context of the present case. The owners of the house subsequently concluded a rental contract with a different person (see paragraphs 14 and 21 above). Thus the situation complained of ended in fact more than six months before the introduction of the application on 16 February 2009.

51. The applicants do not submit and the documents before the Court do not indicate that, after 2005, the former dwellers attempted to exercise their right to continue using the applicants' flats. This is indirectly confirmed by the fact that the applicants did not retry to have the judgment against one of the defendants enforced after the District Court had established that the latter had not been correctly identified in the motion (see paragraph 9 above). In view of the above, the Court is not required to examine whether the judicial orders of 1993 have still had any legal effects. In any event, since the former tenants no longer use the flats, any existing rights and obligations as regards the orders of 1993 would have to be first determined by domestic courts as required by Article 35 § 1 of the Convention.

52. The claims for unjust enrichment filed by the applicants could only succeed if it had been shown that the defendants had used their flats without any legal ground (see paragraph 28 above). Since the judicial orders entitled the defendants to continue using the flats until they were provided with alternative accommodation, those claims were devoid of a sound legal basis in Slovak law (see also paragraph 46 above). Those proceedings were therefore not capable of affecting the position of which the applicants complained before the Court, namely the obligation to let the occupants continue using their flats at a low price. The courts' decisions on their civil actions cannot therefore affect the running of the time-limit of six months laid down in Article 35 § 1 of the Convention in respect of that complaint (see also, *mutatis mutandis*, *M.C. v. Germany* (dec.), no. 25510/94, 18 May 2000).

53. Finally, to the extent that the applicants may be understood as complaining about the refusal to enforce the orders of 1993, they have not shown to have sought redress before the Constitutional Court. Even assuming than certain aspects of the enforcement resulted from the state of domestic law and were thus excluded from the Constitutional Court's review, the judicial decisions given in connection with the applicants' attempts to enforce the orders of 1993 were given on 21 September 2005 and 20 February 2008 respectively (see paragraphs 9-10 above), which is more than six months before the introduction of the application.

54. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

B. Alleged breach of Article 4 § 2 of the Convention

55. The applicants further complained that the obligation to let their flats at a disproportionately low rent amounted to forced labour. They relied on Article 4 § 2 of the Convention which reads as follows:

> "No one shall be required to perform forced or compulsory labour."

56. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President