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

THIRD SECTION

DECISION

Application no. 73020/10
Mária ŠIDLOVSKÁ
against Slovakia

The European Court of Human Rights (Third Section), sitting on 5 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 3 December 2010,

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 Mária Šidlovská, is a Slovak national who was born in 1969 and lives in Banská Bystrica.

She was represented before the Court by Ms Z. Bejdová, a lawyer practising in Banská Bystrica.

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

A. The circumstances of the case

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

1. Background

4. Since 1942, the applicant's father has owned 1,550 square meters of land classified in the Land Register as "garden" and situated in what is at present a built-up area in a regional capital.

5. Under a building permit issued in 1952 an electricity-distribution facility was built on an adjacent plot and, subsequently, an electricity main was established over the plot belonging to the applicant's father with three high voltage pylons erected on it. According to the applicant, owing to practical realities at the time, it was out of question for her father to oppose the project and to claim any compensation.

6. In the applicant's submission, because of these electrical installations the property in question has been rendered worthless, although the normal value of land in that area is approximately 50 euros (EUR) per square metre.

7. On 5 November 2004 the applicant's father gave the plot to the applicant. The gift took legal effect on registration in the Land Register on 13 December 2004, whereby the applicant became the legal owner.

2. Action

8. On 25 April 2005 the applicant's father lodged an action with the Banská Bystrica District Court (*Okresný súd*) against the local electricity company. He sought an order for the payment of the equivalent of approximately EUR 15,500 in compensation in respect of the limitations on his ownership rights as a result of the above-mentioned installations in the period between 25 April 2002, that is to say, three years before the introduction of the action, and 13 December 2004, that is to say, the effective date of the above-mentioned gift. The amount was calculated on the basis of the equivalent of approximately EUR 3.8 per square metre and per year. The applicant's father argued, *inter alia,* that the defendant was a commercial company and was using the installations in order to generate profit.

9. On 14 July 2005 the applicant's father died and the applicant, as his only heir, continued the proceedings in his stead. Among other things, she relied on Article 11 § 4 of Charter of Fundamental Rights and Freedoms (Constitutional Law no. 23/1991 Coll.) (*Listina základných práv a slobôd* – "the Charter"), which provides that expropriation and forcible restrictions on ownership rights are only possible in the public interest, on the basis of the law and for compensation.

10. On 11 June 2007 the District Court granted the action, on the grounds that may be summarised as follows.

According to the defendant and an expert witness, the relocation of the electric main was technically possible and that, in the view of the former, the cost would amount to the equivalent of approximately EUR 160,300, while the latter estimated the cost at the equivalent of approximately EUR 43,000.

The relocation necessitated the laying of new conductors, which was not unreasonable because the existing ones had exceeded their service life.

To the extent that the defendant had argued that any relocation costs should be borne by the applicant because it was she who had requested it, the District Court held that there was no basis in law for such a claim. It relied on Article 11 § 1 of the Charter, Articles 3, 123, 124 and 128 of the Civil Code (Law no. 40/1964 Coll., as amended), section 22(2) of the 1957 Electrification Act (Law no. 79/57 Coll.), and sections 38 and 69(10) of the 2004 Energy Act (Law no. 656/2004 Coll.).

In so far as section 22(2) of the 1957 Electrification Act provided for one-off compensation, to be applied for within three months of the entry into use of the installation, the District Court distinguished that compensation, which concerned the creation of an *ex lege* easement, from compensation in respect of subsequent limitations on property rights, as claimed by the applicant.

Section 69(10) of the 2004 Energy Act, pursuant to which easements created under the previous legislation remained intact, merely concerned the existence of such easements and contained no limitation on or exclusion of compensation.

The defendant had failed to show that the public interest could not have been served by ensuring an electricity supply by other means, and the means used interfered with the applicant's property rights beyond what was strictly necessary. There was thus no balance between the public interest pursued by the defendant and the public interest in ensuring respect for property rights relied on by the applicant.

The amount of compensation was determined with reference to an assessment provided by a real estate agency.

11. Following an appeal (*odvolanie*) by the defendant, the Banská Bystrica Regional Court (*Krajský súd*) overturned the first-instance judgment and dismissed the action on 24 January 2008. An appeal on points of law (*dovolanie*) by the applicant was dismissed by the Supreme Court (*Najvyšší súd*), on 21 December 2009.

12. The Regional Court and the Supreme Court were united in holding that the applicable law, in particular sections 22(2) of the 1957 Electrification Act and 69(10) of the 2004 Energy Act, provided no basis for allowing the action. As to general principles of law, such as respect for human rights and fundamental freedoms, the prohibition of retroactivity did

not allow the three-month time-limit for compensation claims under section sections 22(2) of the 1957 Electrification Act to be disregarded.

The Supreme Court also referred to the decision of the Constitutional Court (*Ústavný súd*) of 28 September 2005 in case no. PL. ÚS 28/05, pursuant to which section 69(10) of the 2004 Energy Act merely concerned the continued existence of *ex lege* easements and provided for no new possibility to claim compensation. Providing for new compensation claims would amount to enabling new restitution claims, which the lawmaker was free under the Constitution (Constitutional Law no. 460/1992 Coll., as amended) to choose not to do.

However, while accepting that an *ex lege* easement was a *sui generis* notion within public law, the Supreme Court held that the impugned easement also had some of the characteristics of an easement under private law.

In particular, under Article 151n § 3 of the Civil Code, unless the parties agreed otherwise, the beneficiary of an easement had to contribute towards the cost of the maintenance and preservation of the object of the easement on a *pro rata* basis.

According to the Supreme Court, this position was consonant with the judgment (*nález*) of the Constitutional Court (*Ústavní soud*) of the Czech Republic in case no. PL. US 25/04. That judgment concerned, *inter alia*, the continued application of the 1957 Electrification Act, which had been adopted at the time of the Czechoslovak Republic. The Czech Constitutional Court observed an ideological distinction between the "old law", that is to say that of the "old (communist) regime" prior to November 1989, and the law applicable under the subsequent democratic constitution. This distinction reflected the political and economic changes that had taken place. While there was a general continuity with the old law, there was a discontinuity in respect of the values of the old regime. Therefore, the interpretation and application of the old rules had currently to take due account of the need for the protection of human rights and fundamental freedoms, including the protection of property. The latter consideration was all the more relevant when the beneficiary of an *ex lege* easement was making use of it in order to obtain economic gain. While the lawfulness of the creation of an *ex lege* easement as such was undisputed, where the applicable public-law legislation contained no provision for compensation in respect of expenses relating to the exercise of the easement, the relevant provisions of private law were to be used as an alternative. Such provisions provided for compensation in respect of running costs, which was to be agreed on by those concerned, or to be ordered by a court. A lack of compensation for such expenses would constitute unjustified enrichment on the part of the beneficiary of the easement.

However, no such claim had been made in the present case.

3. Constitutional complaint

13. On 3 March 2010 the applicant challenged the judgments of the Regional Court and the Supreme Court by way of a complaint to the Constitutional Court, relying, *inter alia*, on Articles 127 of the Constitution and 6 § 1 of the Convention, as well as the constitutional counterpart of Article 1 of Protocol No. 1, contending that the impugned judgments were unfair and arbitrary.

14. On 7 April 2010 the Constitutional Court declared the complaint inadmissible.

In so far as the complaint was aimed at the judgment of the Regional Court, the Constitutional Court observed that its review fell within the jurisdiction of the Supreme Court. Therefore, in accordance with the subsidiarity principle, the Constitutional Court had no jurisdiction to entertain that part of the applicant's complaint.

As to the judgment of the Supreme Court, the Constitutional Court found no constitutionally relevant procedural unfairness or arbitrariness. Concerning the substance of the Supreme Court's ruling, the Constitutional Court reiterated its established case-law to the effect that a general court could not bear "secondary liability" for a violation of fundamental rights and freedoms of a substantive nature unless there had been a constitutionally relevant violation of the rules of procedure.

Viewed from that perspective, the Constitutional Court found the remainder of the applicant's complaint manifestly ill-founded.

B. Relevant domestic law and practice

*1. The Charter (*Listina základných práv s slobôd*)*

15. The Charter (Constitutional Law no. 23/1991 Coll.) was introduced into the legal order by way of a constitutional law which was enacted by the Federal Assembly of the Czech and Slovak Federal Republic on 9 January 1991 and which entered into force on 8 February 1991. The law remains in force in Slovakia today.

16. The relevant part of Article 11 provides:

> "1. Everyone has the right to own property. Each owner's property right shall have the same content and enjoy the same protection. [The right of] inheritance is guaranteed.
>
> 2. The law shall designate the property necessary for securing the needs of society as a whole, the development of the national economy, and public welfare, which may be owned exclusively by the State, a municipality, or by designated legal persons; the law may also provide that certain items of property may be owned exclusively by citizens or legal persons with their headquarters in the Czech and Slovak Federal Republic.

3. Ownership entails obligations. It may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. It may not be exercised so as to cause harm to health, nature, or the environment beyond the limits laid down by law.

4. Expropriation or some other mandatory limitation upon property rights is permitted in the public interest, on the basis of law, and for compensation."

2. The Constitution

17. The relevant part of Article 20 provides:

"1. Everyone shall have the right to own property. The property rights of all owners shall be uniformly construed and equally protected by law. The right of inheritance is guaranteed.

...

4. Expropriation or restrictions to the right of property may be imposed only to the extent necessary and in the public interest, in accordance with the law and for adequate compensation."

3. Civil Code (Law no. 40/1964 Coll., as amended)

18. Article 3 § 1:

"The exercise of rights and fulfilment of duties under civil law must not interfere with the rights or legally protected interests of others without a lawful ground and may not be *contra bonos mores*."

19. Article 123:

"The owner shall be entitled, within the limits prescribed by law, to hold the object of his ownership, to use it, to benefit from its fruits and proceeds and to make dispositions in respect of it."

20. Article 124:

"All owners shall have the same rights and duties and shall be granted the same legal protection."

21. Article 128:

"1. The owner of a thing must endure the use of his thing [by another person] in a state of emergency or in a pressing public interest, for the necessary time, to the necessary extent, and in return for compensation, if the purpose cannot be achieved otherwise.

2. In the public interest, ... the ownership of [a thing] may be restricted if the purpose cannot be achieved otherwise, provided that the expropriation or restriction has a basis in law, and only for that purpose and for compensation."

22. Article 151n et seq. provides for basic rules in relation to easements:

"1. Easements shall constitute a restriction on the owner of real property for the benefit of someone else, so that the owner must endure, refrain from doing or do something. The rights constituting an easement shall be linked to and originate from

the ownership of particular real property or be linked to and belong to a particular person.

2. Easements linked to and originating from the ownership of real property shall pass to the acquirer together with the acquisition of the ownership of the property.

3. Unless the participants agree otherwise, the person who is entitled to use somebody else's thing on the basis of a right constituting an easement must bear an adequate share of the costs of its maintenance and repair; however, if the thing is co-used by its owner, the owner must bear these costs in proportion to the extent of the joint use."

23. The relevant part of Article 151o § 1 provides:

"Easements can arise on the basis of a written contract, on the basis of a will, in connection with the outcome of inheritance proceedings, on the basis of an approved agreement among the heirs, on the basis of a decision by the competent authority, or by operation of law."

4. Energy laws

24. Under section 22(1) of the 1957 Electrification Act, an enterprise active in the energy sector was entitled: (a) to build and operate electrical installations on other persons' real property to the extent permitted under the building permit, to erect support pylons, to connect the plots by conductors and to establish the electricity main on them; (b) to access the real property directly concerned for the purposes of the construction, operation, maintenance, and modification or removal of the main; and (c) to remove or prune trees obstructing the main.

25. Subject to section 22(2), the exercise of the entitlements pursuant to section 22(1) was subject to no compensation. However, if the owners or users of real property not belonging to the (socialist) State were significantly encumbered in the use of the property because of the establishment of the main, they could a claim with the construction authority for the company concerned to pay them adequate one-off compensation. The claim was to be submitted within three months of the entry of the installation into permanent use on the pain of expiry.

26. The 1957 Electrification Act was abolished and replaced on 1 July 1998 by the 1998 Energy Act, which in turn was abolished and replaced as of 1 January 2005 by the 2004 Energy Act, which in its turn was eventually abolished and replaced on 1 September 2012 by the 2012 Energy Act (Law no. 251/2012 Coll.).

Under all the Acts, however, entitlements in respect of other persons' real property, and limitations on the use of it, which had been established previously remained intact.

27. Section 10 of the 2004 Energy Act, as applicable at the relevant time, provides for a number of safeguards and guarantees to the owners of real property affected by industrial activities in the energy sector, including:

- rules on elimination and limitation to the minimum possible of any interference, restrictions, expenses and losses on the part of the owners due to activities of holders of licences to carry out business in the energy sector;
- regulation of access to the real property affected;
- regulation of measures to be taken and compensation for expenses incurred in connection with such measures in respect of vegetation undermining the security or reliability of the operation of energy facilities;
- rules on one-off compensation payable to the owners if they are restricted in the ordinary use of their real property; and
- rules on one-off compensation for the creation of an easement *in rem* on the property concerned, such easement consisting of the duties and restrictions imposed under section 10 of the 2004 Energy Act.

28. Section 38 of the 2004 Energy Act, applicable at the relevant time, deals with the relocation of facilities for the distribution of electricity, which includes the rerouting or displacement of some elements of a facility. The costs of the relocation are to be borne by the party which gave rise to the need for it, unless that party and the owner of the electricity distribution facility agree otherwise. The relocation has no impact on the ownership of the electricity distribution facility.

29. Similar provisions to those referred to in the precedent paragraph are contained in the 2012 Energy Act. The easements in question are to be registered with the Land Registry and the licence holder is to inform the owner of the real property concerned of the registration in writing (section 11(10) and (12) of the 2012 Energy Act).

COMPLAINTS

30. The applicant considered the outcome of the proceedings unfair, arbitrary and, as such, contrary to her rights under Articles 6 § 1 of the Convention and 1 of Protocol No. 1.

THE LAW

A. Article 1 of Protocol No. 1

31. The applicant alleged a violation 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."

32. In reply, the Government objected that the easement on the applicant's property had been created long before 18 March 1992, when the Convention entered into force in respect of Slovakia. In their submission, therefore, the relevant part of the application was incompatible *ratione temporis* with the provisions of the Convention.

The Government pointed out that the applicant had only acquired title to the property in question in 2004. Prior to that time, the property had belonged to her father and any complaints now brought by the applicant about alleged violations of his Convention rights were incompatible *ratione personae* with the provisions of the Convention

Moreover, the Government submitted, the Convention did not contain any guarantee of a right, as such, to compensation for grievances suffered before the entry into force of the Convention in respect of the country concerned.

33. In addition, the Government pointed out that the applicant had acquired the title to the property by way of a gift, that she had been free to accept the gift or not, and that she had of her own free will decided to accept it. At that time, the contested easement had already existed and the applicant must have been aware of it and could not have had any legitimate expectation that the situation would change to her advantage.

34. Nevertheless, according to the Government, the existing framework for *ex lege* easements such as that in the present case contained various safeguards, guarantees and limitations with a view to reducing to the minimum any negative impact on the owners of the property concerned, including one-off compensation at the time of the creation of the easement and compensation in respect of damage and expenses associated with its creation and presence.

35. In sum, according to the Government, the impugned easement and the contested judicial rulings in respect of it clearly had a legal basis, were in the public interest, and were proportionate.

36. The applicant, for her part, advanced no specific counter-arguments.

37. The Court would point out at the outset that its task is not to review the relevant domestic law and practice *in abstracto* but rather to determine, at this stage of the proceedings, whether the case satisfies the requirements of admissibly under Article 35 of the Convention (see, *mutatis mutandis*, *Fruni v. Slovakia*, no. 8014/07, § 133, 21 June 2011, with further references).

38. From this perspective, the Court observes that the electrical installations in question were established before the entry into force of the Convention in respect of Slovakia; that the right to compensation for damage or wrongs caused prior to the entry into force of the Convention with respect to the Contracting Party concerned is not, as such, guaranteed by the Convention or its Protocols; and that until the gift of 2004 the owner of the property in question was the applicant's father.

Any complaint in respect of the creation of the easement, the lack of compensation for its creation, any other event having occurred prior to 18 March 1992, and any loss suffered by the applicant's father is thus not compatible with the provisions of the Convention *ratione personae*, *temporis* or *materiae*.

39. As to the applicant herself, she became directly concerned with the impugned easement on the property in question in 2004. At that time, the easement had long been in place and there is no indication that any more restrictions were imposed on the applicant's use of the property thereafter, or that her situation deteriorated in any way.

Therefore, and taking into account the situation of the applicant's property as a whole, the Court considers that the present complaint has to be examined under the second paragraph of Article 1 of Protocol No. 1, which allows for Contracting States to control the use of property in accordance with the general interest.

40. For any such control of the use of property to comply with the requirements of Article 1 of Protocol No. 1, it must first and foremost be lawful, and furthermore pursue a legitimate aim.

In this regard the Court observes that, in the present case, there has been no dispute between the parties about the fulfilment of these two criteria, that the legal basis for the contested easement was undoubtedly the energy laws of 1957, 1998, 2004 and 2012, and that the aim of supplying the population with electricity was both in the general interest and legitimate.

41. The Court reiterates, however, that not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden.

In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of, although the existence of procedural and other safeguards may be of a certain relevance (for a summary of the applicable principles see, for example, *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 167-8, ECHR 2006 VIII, with further references).

42. Turing again to the specific circumstances of the present case, the Court observes at the outset that, as the aim of the impugned domestic proceedings clearly indicates, the main issue in the present case is the lack of continuous compensation in respect of the diminished value of the applicant's land stemming from the easement in question.

43. In this regard, however, the Court finds it of relevance that, at the time of the acquisition of the property in question by the applicant, it was already encumbered by the contested easement; the applicant should and must have known of its existence and the legal regime in respect of it, and yet of her own free will she decided to accept the gift and thereby to become its owner (see *Łącz v. Poland* (dec.), no. 22665/02, 23 June 2009).

44. Furthermore, in so far as the present case has been substantiated, the Court has found no elements in favour of a conclusion that the applicant could at any stage have entertained a legitimate expectation within the meaning of the Convention case-law that the applicable rules would change so as to provide a basis for compensation such as the applicant was claiming in the impugned proceedings (see, for example, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35 and 45-52, ECHR 2004 IX, with further references).

45. In addition, the Court observes that the applicant in the present case has not complained specifically that she has been prevented from using the property in question or that, as a result of the impugned easement, she has incurred any damage, expenses or any other form of actual loss.

46. Moreover, and in any event, the Court observes that, under the applicable legislation, the owner of the electrical installations situated on the applicant's land is under the duty to reduce any interference with the applicant's use of her property to a minimum and that, should the presence and operation of these installations result in any actual damage or expenses on the applicant's part, she would have a direct claim for compensation.

47. In view of the above considerations, there is no indication that the legal regime in respect of the applicant's property and the easement over it entails actual financial losses for the applicant, or otherwise constitutes a disproportionate and excessive burden for her (for contrast and comparison see *Hutten-Czapska*, cited above, § 223-225).

48. In sum, within the parameters of admissibility under Article 35 of the Convention, and in so far as the matters complained of have been substantiated, the Court has found no indication that in the specific

circumstances of the applicant's case the dismissal of her claim for compensation in respect of the presence and operation of the electric installations on her property was incompatible with her right to the peaceful enjoyment of her possessions.

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

B. Remainder of the application

49. The applicant also alleged that the outcome of the proceedings in her action had been arbitrary and, as such, in violation of her right to a "fair" hearing under Article 6 § 1 of the Convention.

50. However, in the light of all the material in its possession, and in so far as the matters complained of have been substantiated and are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant's rights protected under Article 6 § 1 of the Convention. It follows that the remainder of the application 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