

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

FIFTH SECTION

DECISION

Application no. 61927/11
Milada ŠUPOVÁ and others
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 2 July 2013 as a Committee composed of:

Angelika Nußberger, *President,*
André Potocki,
Aleš Pejchal, *judges,*
Stephen Phillips, *Deputy Section Registrar*,

Having regard to the above application lodged on 30 September 2011,

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

The applicants, Ms Milada Šupová, born in 1933, Mr Milan Šup, born in 1957 and Mr Jiří Šup, born in 1962 are Czech nationals and live in Prague. They are represented before the Court by Mr K. Kubíček, a lawyer practising in Prague.

A. The circumstances of the case

On 6 September 1972 the first applicant bought a house from the State that had been previously confiscated from a certain V. At that time, the first applicant was a junior civil servant working at the local municipal office.

Later, she transferred ownership of her parts of the house to her two sons, the second and third applicants.

In 1992 V. brought restitution proceedings against the applicants claiming the ownership of the property.

After previous judgments in the proceedings had been quashed by the Constitutional Court on 2 July 2008, the Prague 9 District Court upheld the claim on 12 February 2009. It found that all the conditions for restitution as laid down in Act no. 87/1991 were fulfilled, stating, in particular, that the first applicant had been unlawfully advantaged in the purchase of the house. As a civil servant, she had needed an exemption from applicable rules to obtain property from the State but such an exemption had not been issued. The court considered immaterial that the applicant had been entitled to the exemption and that it had not been her fault that it had not been granted.

On 27 May 2009 the Prague Municipal Court upheld the first-instance judgment agreeing with the findings and conclusions of the District Court.

On 20 January 2010 the Supreme Court dismissed the applicants' appeal on points of law.

On 31 March 2011 the Constitutional Court dismissed their constitutional appeal as manifestly ill-founded.

On 5 August 2011 the applicants brought proceedings against the State claiming compensation of CZK 16,000,000 (EUR 627,451). The proceedings are pending.

B. Relevant domestic law and practice

The relevant domestic law was set out in the Court's decision in *Umlaufová v. the Czech Republic* (dec.), no. 3794/08, 29 January 2013.

COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 that by depriving them of ownership of the house, their right to property had been violated.

Further, relying on Article 6 of the Convention, they disagreed with the decisions of the domestic courts.

THE LAW

1. The Government considered the complaint of violations of the right to property premature as domestic proceedings for compensation were pending.

The applicant did not comment.

The Court recently considered a similar objection of the Government in its decision in *Umlaufová v. the Czech Republic*, cited above, which concerned similar complaints and facts. It evaluated the evolution of the domestic remedies on the matter and held that due to several judgments of the Supreme Court, an action for compensation against the State had obtained sufficient effectiveness for the purposes of Article 35 § 1 of the Convention on 10 March 2010 when judgment no. 28 Cdo 2836/2009 was adopted.

The Court notes that the present application was lodged more than one year after that date. Therefore even allowing the applicants a certain amount of time to effectively get familiar with those judicial decisions (see, for example, *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, § 20, 21 October 2003 and *Depauw v. Belgium* (dec.), no. 2115/04, 15 May 2007) it was incumbent on the applicants to exhaust that remedy before lodging the present application.

The Court observes that the applicants in fact instituted such proceedings against the State in which they claim compensation. These proceedings are pending.

Accordingly, the complaint is premature and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The applicants further complained that the decisions of the domestic courts had been wrong, insufficiently reasoned and violated their right to fair trial under Article 6 of the Convention.

Having examined these complaints submitted by the applicant, the Court, having regard to all the material in its possession and in so far as the complaints fall within its competence, 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 the complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President