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

FIFTH SECTION

DECISION

Application no. 43562/07
Vlasta VÁVROVÁ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 7 July 2015 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 September 2007,

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

The applicant, Ms Vlasta Vávrová, is a Czech national, who was born in 1943 and lives in Prague. She was represented before the Court by Mr R. Němec, a lawyer practising in Prague.

The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm.

A. The circumstances of the case

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

In 2004 M.Š. died and the applicant arranged his funeral.

Designated as one of the testamentary heirs alongside M.Š.'s daughter, the applicant took part in the inheritance proceedings, in which she was represented by a lawyer, B.M.

On 11 January 2005, the applicant signed a preliminary report prepared on the basis of her statements by the notary by which she agreed to take possession of the "property of negligible value" in his estate. In particular, the report listed documents, watches, camera, clothing and a business share in a company, I., in which the applicant was an associate and which was being wound up.

On 16 February 2006, the applicant rejected the inheritance; so did M.Š.'s daughter. Consequently, they both ceased to be party to the inheritance proceedings and did not become heirs.

On 3 October 2006 the Louny District Court discontinued the inheritance proceedings and transferred the "property of negligible value" to the applicant pursuant to Article 175h of the Code of Civil Procedure. The decision listed, *inter alia*, business shares "without any value" in seven limited liability companies, two of which, I. and E.P., were being wound up. According to the documents submitted by the Government, B.M. had been acting as a liquidator of these companies since 2003.

The decision became final on 6 November 2006.

On 13 December 2006, the applicant challenged by an appeal the legality of the above decision, arguing that she had not agreed to obtaining shares in the companies and that under the Commercial Code the business shares could be transferred exclusively to the heirs in the inheritance proceedings, which did not include herself.

Relying on the same arguments and claiming that the chances of her appeal as well as of a plea of nullity were uncertain, the applicant challenged the decision also before the Constitutional Court. She further maintained that her role in the companies involved many duties she did not want to be responsible for, which was contrary to Article 4 of the Czech Charter of Fundamental Rights and Freedoms providing that duties could be imposed only by a law and within its limits. The applicant asked the Constitutional Court to hold that "her right guaranteed by the Constitution had been infringed" and to quash the decision of 3 October 2006 in the part transferring the impugned business shares to her.

By a decision of 7 March 2007 (served on 30 March 2007), the Constitutional Court rejected the appeal as manifestly ill-founded (but not premature, as the court found the appeal before the appellate court to have been inadmissible). It did not find any misconduct under Article 4 of the Charter relied on by the applicant. Irrespective whether or not the applicant had been aware of the actual extent of the property, the court held that the decision to transfer the business shares to her had been lawful because it had been based on her consent. According to the court she had had the opportunity to refuse to take possession of the property as a whole. As to the compatibility of the decision with the Commercial Code, the Constitutional Court left this issue unaddressed as it involved the interpretation of general laws and as such was outside its purview. However, it concluded that the

outcome of the proceedings had neither been arbitrary, nor had it interfered with the applicant's rights guaranteed by the constitutional order.

On 31 March 2008 the Ústí nad Labem Regional Court rejected the applicant's appeal as inadmissible, holding that the Code of Civil Procedure did not provide for an appeal against the decision to transfer the "property of negligible value" to the person who had arranged the funeral.

Since then, the two above-mentioned companies, I. and E.P., were wound up and erased from the Commercial Register. According to the extracts from the online Register dated from 2011, as submitted by the Government, the applicant was not listed as an associate of any of the companies involved in the commercial register, where the name of the deceased M.Š. still appeared.

After the case has been communicated to the Government, the Ministry of Justice filed motions for the winding up and subsequent liquidation of the five remaining companies. On 19 December 2014, the Government informed the Court that all these companies had been wound up by the competent court and remained to be erased from the Register following the liquidation by the appointed liquidators.

B. Relevant domestic law and practice

1. Code of Civil Procedure (Act no. 99/1963)

Under Article 175h § 1 the court may discontinue proceedings where the deceased has not left any property. Article 175h § 2 provides that where the deceased has left property of negligible value the court may transfer it to the person who arranged the funeral. Article 175h § 3 provides that it is not possible to lodge an appeal against decisions rendered pursuant to Articles 175h §§ 1 and (2).

The Government referred in their observations to the case-law and legal literature related to the concept of transfer of property of negligible value, from which it follows, *inter alia*:

- property of negligible value means in principle that the deceased's property does not exceed reasonable costs incurred for arranging his funeral;
- around 2003, property consisting of assets not exceeding approximately CZK 15 000 to 20 000 was usually considered as having negligible value within the meaning Article 175h § 2;
- the transfer under Article 175h § 2 must always involve the whole property of the deceased;
- the person acquiring such property is not an heir and is not liable for any debts of the deceased;
- the decision under Article 175h § 2 has only procedural character and does not create an obstacle of *res judicata*: if it is found later that the

deceased had left property which is not of negligible value, it is necessary to examine it within new inheritance proceedings.

Article 229 § 1 as in force until 31 December 2007 provided that a final court decision could be challenged by means of a plea of nullity on the grounds that, *inter alia*, (a) it had been decided on a matter which did not fall within the courts' competence, (c) a party to the proceedings lacked legal capacity to act or could not act before the court and was not properly represented.

2. The [Old] Commercial Code (Act no. 513/1991, as in force at the material time

Pursuant to Article 56 § 6, shareholders were liable for the company's debts also after the company had been wound-up. In case of liquidation, they were liable up to the amount of their liquidation share, but at least to such extent as during the existence of the company.

The new Act no. 90/2012 on Commercial Corporations, in force since 1 January 2014, contains a similar provision in Article 39.

Under Article 68 § 3 a company shall be wound-up, inter alia:

- on the day mentioned in the decision of the members on the winding-up of the company or on the day of adoption of such decision;

- on the day mentioned in a court decision on the winding up of the company or on the day when such decision becomes final;

- upon cancellation of bankruptcy after having performed the decision on distribution or cancellation of bankruptcy on the ground that the debtor's property is entirely insufficient.

Under Article 68 § 6 a court could, upon a motion of a State authority or a person showing legal interest, decide on the winding-up of the company and on its liquidation if:

- bodies of the company whose term of office ended more than one year ago have not been elected, or the company has not pursued any activity for more than two years;

- the company could not pursue its activities due to insurmountable differences between its members.

Article 116 § 2 provides for the inheritance of the business shares of a limited liability company by heirs.

COMPLAINTS

1. The applicant complained under Article 6 of the Convention that the transfer of the business shares to her when she was not an heir had no legal basis.

2. The applicant contended that there has been a violation of Article 13 in view of the fact that there was no avenue in domestic law enabling her to challenge the decision to transfer the business shares to her.

3. Finally, the applicant asserted under Article 1 of Protocol No. 1 that becoming the owner of the business shares involved numerous responsibilities, for example, contacting other partners in the business who live abroad, communicating with the authorities, submitting tax and other reports, which may also entail the payment of administrative fees or hiring a lawyer. She emphasised that she is seriously ill and stated that she has to bear an excessive burden as a result of the illegal decision to transfer the shares to her.

THE LAW

A. Complaint related to the transfer of the business shares

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 about the bureaucratic and statutory responsibilities arising from the fact that she had been transferred the business shares against her will and without any legal basis, and about the adverse effects of such decision on her health.

The Court invited the respondent Government to comment on the above complaint under Article 8 of the Convention, which provides as follows:

> "1. Everyone has the right to respect for his private (...) life (...).
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The Government

The Government were of the view that the application should be declared inadmissible for three different reasons.

First, they considered that the Court should not extend the application of Article 8 to the applicant's case.

Second, the Government observed that in her constitutional appeal the applicant did not refer to Article 8 of the Convention, nor did she complain in substance about any interference with her private life. She thus failed to duly exhaust available domestic remedies in this respect.

Third, taking into account not only the pecuniary interest at stake but also the overall impact of the alleged violation of the Convention on the applicant's rights (see *Holub v. the Czech Republic* (dec.), no. 24880/05,

14 December 2010), the applicant did not suffer any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. While the applicant received some personal property of positive value, she was not transferred any liability for the companies' debts. She also had the opportunity to terminate her participation in the companies. Furthermore, she did not prove that she had incurred financial costs related to the impugned transfer of shares or that she had been sanctioned by the State authorities for not having performed any obligations in respect of the companies in question (see *Kovalová v. the Czech Republic* (dec.), no. 57319/00, 30 November 2004).

Should the Court consider that there was an interference with the applicant's right to respect for her private life, the Government asserted that it was in accordance with the domestic law, i.e. Article 175h §§ 2 and 3 of the Code of Civil Procedure as interpreted by the case-law and the legal theory. Pursuant to this provision, it does not seem unreasonable, unforeseeable or arbitrary to consider shares in companies with no property as being of negligible value. The interference pursued legitimate aims of effectiveness of the inheritance proceedings and of preserving some of the companies' obligations in relation to the State (namely tax) authorities. Finally, the interference can be considered to be reasonable, given that the applicant agreed to the transfer of the deceased's property to her, that the legal system offered her several means of resolving the situation and that she did not face any intense negative consequences.

2. The applicant

The applicant maintained that she had exhausted all possible remedies but to no avail. Namely, she had informed the District Court about her refusal to take over the business shares, and lodged an appeal as well as a constitutional appeal, which was considered on the merits. She had substantiated it by the facts which had been known to her at that time, i.e. in particular violation of her right to a fair trial, as she could not have foreseen further development and all the consequences on her private life.

The applicant further asserted that, as she was herself an entrepreneur at that time, she was aware that a deceased person's business share in a limited liability company could be validly transferred only by inheritance. She only agreed to have transferred the property listed in the preliminary report of 11 January 2005, without having received any further information about M.Š.'s shares in other companies or about their value. Therefore she considers the court decision transferring business shares to her as a property of negligible value as totally unpredictable, not in accordance with the law in force and not pursuing any general interest.

Instead of being offered opportunity to consider whether or not to accept the shares, the applicant was compelled to consult various advisors and lawyers in order to deal with the unexpected situation, which required

financial means and time. Her private life could be disturbed even more in that the court decision compels her to enter into or to cease numerous business relations, the scope of which remains unknown to her. With reference to Article 56 § 6 of the Commercial Code, she asserted that she was still liable for the companies' debts even after they had been wound-up. The applicant confirmed that she has not been sanctioned so far for any non-fulfilment of duties related to the companies concerned.

3. The Court

First, the Court, as master of the characterisation to be given in law to the facts of the case, maintains that it is appropriate to examine the complaint from the standpoint of Article 8 of the Convention. It considers this provision to be applicable due to the bureaucratic and statutory responsibilities alleged by the applicant and the adverse effects on her health, and thus dismisses the Government's objection of incompatibility *ratione materiae*.

Second, the Government raised a non-exhaustion plea on the grounds of the applicant's failure to rely on Article 8 in her constitutional appeal. The Court notes in this context that the question is also susceptible of arising as to whether the applicant should have had recourse to a plea of nullity under Article 229 § 1 of the Code of Civil Procedure as in force until 31 December 2007.

However, the Court does not consider it necessary to decide whether the applicant satisfied the condition of exhaustion of domestic remedies, nor does it consider it necessary to deal with the Government's objection raised under Article 35 § 3 (b) of the Convention, because this part of the application is in any event inadmissible for the following reasons.

The Court observes that the applicant does not accept being the owner of the shares and does not seem to be acting as such, and that she is not liable for any debts of the deceased. The Court also notes, in view of all the information available and the submissions made by the parties, that there is no evidence that the applicant was indeed called upon to exercise any of the responsibilities she mentioned in her application, or that she was sanctioned for non-fulfilment of any duties related to the companies concerned. The threat of a sanction thus remains theoretical (see, *mutatis mutandis*, *Kovalová* (dec.), cited above). Finally, it is worth noting that all the companies have already been wound up, upon the motion of the Ministry of Justice, that two of them have already been erased from Commercial Register and that the liquidation of the five remaining companies is ongoing. In such situation, the applicant's allegations of the risk incurred become even more hypothetical.

In these circumstances, the applicant's complaint in this regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint related to the lack of an effective remedy

The applicant complained that there was no avenue in domestic law enabling her to challenge the decision to transfer the business shares to her. She alleged a breach of Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Referring to their arguments concerning inapplicability of Article 8 and the absence of interference with the applicant's private life, the Government believed that the applicant does not have any arguable claim for the purposes of her complaint under Article 13. In any event, they considered that the constitutional appeal constitutes an effective remedy.

The applicant observed that Article 175h of the Code of Civil Procedure provided only for one-instance proceedings, and that she had had no possibility of expressing her opinion before the courts or of producing evidence. Moreover, the Constitutional Court concluded that it was not competent to interpret general laws and thus did not consider the compliance of the disputed decision with the Commercial Code.

Having declared the applicant's complaint under Article 8 inadmissible, the Court concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention.

It follows that the applicant's complaint under Article 13 of the Convention 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.

Done in English and notified in writing on 30 July 2015.

Milan Blaško
Deputy Registrar

Boštjan M. Zupančič
President