CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 54811/00
by Marta VESELÁ and Tobiáš LOYKA
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 12 October 1999,

Having regard to the partial decision of 23 November 2004,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the remainder of the case together,

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 Marta Veselá and Mr Tobiáš Loyka, are Slovakian nationals, who were born in 1939 and 1947 respectively and live in Bratislava. They are represented before the Court by Mr P. Kočička,

a lawyer practising in Banská Bystrica. The respondent Government are represented by Mrs A. Poláčková, their Agent.

A. The circumstances of the case

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

1. The company

The applicants set up a commercial limited liability company ("the company") with a seat in Bratislava. Under Article 18 § 2 of the Civil Code in conjunction with the applicable provisions of the Commercial Code the company has a distinct legal personality. The company was later transformed into a joint stock company, its name was changed and its seat was moved to Banská Bystrica and than back to Bratislava. Since 23 October 2001 the name of the company has been PEAT GROUP Inc., a.s.

The applicants each own 50% of shares in the company and the first applicant is the chairperson of its board of directors and the second applicant is the chairperson of its supervisory board.

On 27 February 2001 the Banská Bystrica Regional Court (*Krajský súd*) made an insolvency order against the company. The order was however quashed on appeal by the Supreme Court (*Najvyšší súd*) on 31 July 2001.

On 20 December 2001 a new insolvency order was made. Under Article 14 § 1 (a) and (l) of the Bankruptcy and Composition Code (Law no. 328/1991 Coll., as amended), the declaration of insolvency entailed an automatic transfer of the right to make any dispositions in respect of the company's estate and its operational affairs to the bankruptcy trustee. Pursuant to subparagraph 1 (d) in conjunction with subparagraph 5 of Article 14 of the Code, any pending judicial or other proceedings involving the company were automatically stayed and could only continue on the trustee's request.

The insolvency proceedings are still pending.

2. The proceedings

In 1996 the company bought certain real property including a peat plant. The property was subject to a claim by a group of original owners and legal successors of original owners for restitution of their ownership title under the Land Ownership Act (Law no. 229/1991 Coll., as amended).

The restitution claim was granted by the Dolný Kubín Land Office (*Okresný úrad, odbor pozemkový, poľnohospodárstva a lesného hospodárstva*) in July 1996 and by the Tvrdošín Land Office in May 1997.

The decisions of July 1996 and May 1997 were quashed on the company's administrative-law appeals by the Banská Bystrica Regional Court on 29 November 1996 and the Košice Regional Court on 15 March 2003 respectively.

In the proceedings leading to the judgment of 15 March 2003 the bankruptcy trustee informed the Košice Regional Court by a letter of 15 November 2002 that she was the person entitled to act in the name of the company. By a letter of 16 December 2002 she requested under Article 14 § 5 the Bankruptcy and Composition Code that the proceedings continue.

In the meantime, on 31 January and 3 March 2000, respectively, the Tvrdošín Land Office had again granted the restitution claim in so far as brought by two categories of claimants. The trustee challenged these decisions by an administrative-law appeal which is still pending in the Košice Regional Court.

On 3 September 2003 the Tvrdošín Land Office dismissed the whole of the restitution claim. Several of the claimants challenged the dismissal by an administrative-law appeal which is also still pending in the Košice Regional Court.

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention taken both alone and in conjunction with Article 13 of the Convention that the length of the proceedings concerning the restitution claim had been excessive and that there had been no effective remedy available in respect of the overall length of those proceedings.

THE LAW

Relying on Article 6 § 1 taken both alone and together with Article 13 of the Convention, the applicants complained of the length of the proceedings concerning the restitution claim and of the lack of an effective remedy in that respect.

In so far as relevant, Article 6 § 1 of the Convention provides that:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

Article 13 of the Convention provides 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."

The Government argued that the applicants were not victims in the Convention sense in respect of the violations which they alleged. It was the company which was the buyer of the peat plant and a party to the domestic proceedings. The applicants themselves neither had any title to the property in question nor were they parties to the proceedings. The different legal personalities of the applicants and of their company had to be respected.

The applicants contested this argument and repeated their complaints.

As regards the applicants' "victim" status, the Court reiterates that, under Article 34 of the Convention, it may receive applications from individuals and others "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see, for example, *Buckley v the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 128, §§ 56-59).

The concept of "victim" in Article 34 must be interpreted autonomously and independently of domestic law concepts, such as a capacity to bring or take part in legal proceedings (see, for example, *Greek Federation of Customs Officers, Gialouris and others v. Greece*, no. 24581/94, Commission decision of 6 April 1995, Decisions and Reports 81-B, p. 127).

The Court reiterates further that, as a general rule, shareholders of a company, including the majority shareholders, cannot claim to be victims of an alleged violation of the company's rights under the Convention (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72 and, most recently, *Terem Ltd, Chechetkin and Olius v. Ukraine*, no. 70297/01, § 28, 18 October 2005).

The Court has found before in particular that "the piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or, in the event of liquidation, through its liquidators" (see *Agrotexim and Others*, cited above, § 66 and, for example, *CDI Holding and Others v. Slovakia* (dec.), no. 37398/97, 18 October 2001).

In the present case, the company - which is a distinct legal entity - entered into a private transaction concerning property which was the subject of a legal dispute. The company, in its own name, asserted its rights in respect of the property in the administrative and court proceedings. There is nothing to suggest that the applicants themselves acquired any substantive title to the peat plant or any procedural rights in the proceedings in issue.

It is true that the company is wholly owned by the applicants and that they are members of its boards. However it must also be noted that in 2001 the company was declared insolvent. By virtue of the insolvency order all powers to make dispositions in respect of the company's estate and operations were automatically transferred to the bankruptcy trustee.

The present case must therefore be distinguished from that of *Ankarcrona v. Sweden* ((dec.), no. 35178/97, ECHR 2000-VI) in that there exist, at least potentially, competing interests of the applicants on the one hand and the trustee of the company on the other.

It is also noted that there is no indication that the trustee has failed to represent the company's interests properly or that the company has been impaired in the due exercise of its rights in any other way (see, *a contrario*, *G.J. v. Luxembourg* no. 21156/93, § 24, 26 October 2000).

It must further be noted that the present case does not concern the applicants' interests in the company as such (see, *a contrario*, *Olczak v. Poland* (dec.), no. 30417/96, ECHR 2002-X (extracts)).

In the light of the above the Court concludes that the present application falls within the principles established by the *Agrotexim and Others* judgment (cited above) and finds no reason for departing from them (see, *a contrario*, *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004).

It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and *declares* the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President