2004/03/24 - I. ÚS 38/02: APPLICATION OF RESTITUTION ACT

HEADNOTES

In applying the restitution acts, a too restrictive, or formalistic, approach must not be taken, on the contrary, they must be applied in a very sensitive manner, always with the circumstances of the particular case in mind, and above all the cited purpose and significance of the act. As far as concerns the above-stated central question relating to the necessity of the precise individualization or specification of the items demanded, under the sanction that the claim would otherwise be extinguished, it would perhaps be possible to agree with the ordinary courts' conclusions if this matter had not concerned an enormous extent of moveable property, but about several items where it would be entirely and without any doubt evident that it was within the restituent's power to specify in detail the property in question within the time period allowed by the statute.
If there exists several possible interpretations of a particular legal enactment or of certain of its provisions, consideration must be given to the intent of the legal rule. In the case of Act No. 87/1991 Coll. that intent is doubtless the effort to mitigate the consequences of certain property injustices committed by the totalitarian state in the decisive period. If two equally valid interpretations are possible, one of which is broad and the other narrow, between them the court must select that which corresponds to further interpretive methods, in particular teleological reasoning. The ratio legis of the restitution acts is to redress, at least to a certain degree, the consequences of the infringement of the fundamental rights of natural and legal persons in the totalitarian era. Thus, a constitutionally conforming interpretation is generally a broad one: a statute and its individual provisions must be interpreted in such a way that, by applying them, it is possible to attain the aim pursued by the legislature.

When interpreting the relevant provisions of the restitution acts, it also cannot be overlooked that it was a totalitarian state which illegally stripped its citizens of their property and that subsequently state bodies dealt with that property in an arbitrary fashion for a period of nearly 40 years, in the course of which movable property was appropriated and in fact relocated to various places; therefore, the Constitutional Court is convinced that the consequences of these or similar transactions cannot now be interpreted, in principle, solely to the detriment of the entitled persons. It is necessary always to proceed on the basis of the circumstances of the particular, concrete case.

CZECH REPUBLIC

CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

On this day the Constitutional Court decided in a panel in the matter of the constitutional complaint of the complainant I.T., represented by JUDr. D. T., an attorney, against the 25 October 2001 judgment of the Regional Court in Brno, No. 13 Co 249/99, and against the 7 December 1998 judgment of the Municipal Court in Brno, No. 15 C 165/92, as follows:

I. The 25 October 2001 judgment of the Regional Court in Brno, No. 13 Co 249/99, is hereby quashed.

II. The remainder of the constitutional complaint is rejected on the merits.

REASONING

I.

With reference to an alleged infringement of Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms and of Art. 90 of the Constitution, the complainant requests in her constitutional complaint that the 25 October 2001 judgment of the Regional Court in Brno, file no. 13 Co 249/99 and the 7 December 1998 judgment of the Municipal Court in Brno, file no. 15 C 165/92, be quashed. In the complainant's legal matter against her opponents, the Institute of Monuments in Brno, the Regional Institute of Monuments in Pardubice and the Historical Museum of Slavkov by Brno the Municipal Court in the last-cited decision rejected her proposals that the opponents be obliged to enter with her into an agreement to turn over moveable items from the state castles Boskovice, Lysice, Milotice, Rájec Jestřebí, Lednice, Slatiňany and from the Museum of the City of Slavkov.

As the daughter of the original owner, A. S., the complainant claimed these moveable items in a proceeding initiated pursuant to Act No. 87/1991 Coll., on Extrajudicial Rehabilitation, as subsequently amended (hereinafter only "Act No. 87/1991 Coll."). In relation to the defendant, the Institute of Monuments in Brno, the claim was rejected on the merits, in part due to the fact that the items which the complainant requested passed to the State, as a part of the property of the complainant's father, by confiscation in accordance with the 21 June 1945 Decree of the President of the Republic, No. 12/1945 Coll., allegedly prior to the decisive period as laid down in § 1 para. 1 of Act No. 87/1991

Sb, and in part, and this above all, due to the fact that the request to turn over items, addressed to a subject designated imprecisely as "the Administration of Monuments in Brno", allegedly did not meet the requirements laid down in § 5 para. 1, as it failed to duly specify the property to which the request relates and further designated solely items in the records of the Lomnice u Tišnova State Castle, and thus did not concern items from the Luhačovice Castle. The claim against the other defendants, the Regional Institute of Monuments in Pardubice and the Historic Museum of Slavkov by Brno, was rejected on the merits since a request to turn over items was not submitted as against these subjects, nor was it duly asserted before a court within the time period laid down in § 5 para. 2 of Act No. 87/1991 Coll.

Acting as the appellate court in this matter, the Regional Court in Brno declared in the reasoning of its decision, by which it affirmed the judgment of the first instance court, that an entitled person under Act No. 87/1991 Coll. must designate, already in the requests, items of moveable property in such a manner that it is evident that the claim concerns original items, taken over by the State. The requirement that requested items be individualized cannot be waived, so that if the moveable items are not already identified in the request, the request that they turned over cannot be successful. In her request that moveable property be turned over, served upon the Institute of Monuments in Brno, the complainant stated that the request related "to paintings, furniture and other valuable objects, which are located in various castles falling under your administration" (that is, of the Institute of Monuments in Brno). In the court's view such request was entirely non-concrete and did not enable the requested items to be matched with the original items which the State took. Therefore, the complainant's claim expired in accordance with § 5 para. 2 of Act No. 87/1991 Coll.

In its 28 January 2003 ruling, file no. 28 Cdo 262/2002, the Supreme Court of the Czech Republic rejected as inadmissible the complainant's extraordinary appeal against the mentioned Regional Court judgment, as it did not fulfill the requirements for admissibility as laid down in § 239 para. 2 of the Civil Procedure Code, in the version prior to the amendment to it introduced by Act No. 30/2000 Coll.

In the complainant's view, the interpretation of § 5 para. 1 of Act No. 87/1991 Coll., employed by the Regional Court in Brno, was "made to her extreme detriment", against the sense and purpose of that provision. She asserts that it cannot be deduced from the wording of that provision that an entitled person is obliged to meet the burden of producing evidence in relation to moveable items already in the written request and within a period of 6 months, under the sanction that the claim will otherwise be extinguished. In view of the extent and character of the property claimed by the complainant, in order for her to duly assert her claim, it was sufficient if, in conjunction with giving the reason for the demand, she stated in it the obliged and entitled persons and designated approximately the demanded items with a request they be turned over; the complainant's request, delivered to the Institute of Monuments in Brno on 30 September 1991, contained all of this information. To the extent that more concrete detail was given concerning individual items only afterwards in the courts of the judicial proceeding, as soon as she succeeded in obtaining the relevant list of inventory of moveable property from the Lomnice u Tišnova Castle, the complainant is convinced that her claim to have the items turned over could have expired. The complainant acknowledges that, if in the request for

the surrender she were to have requested "entirely abstractly designated items, such that it would not be possible to deduce to what the request relates, the (judicial) decision would evidently have been correct." That was not the case in the adjudged matter, however. It allegedly appears from the 24 March 1992 letter of the Institute of Monuments in Brno, addressed to the complainant, that it was entirely clear to that organ which specific property was being demanded, no doubts in this respect were cited, and this institute merely raised an objection concerning "the impossibility of proceeding in according with Act No. 87/1991 Sb". It can also be seen from expression of views on the complaint, submitted on 30 May 1994 by the Regional Institute of Monuments in Pardubice, that it was uncontested that the items listed in the complainant's request are in the Slatiňany State Castle and that that institute has the right of management in relation to them.

In its statement of views on the constitutional complaint, the Regional Court in Brno repeated that it could not waive the requirement that moveable items be designated individually in the request made within the required period under § 5 para. 1 of Act No. 87/1991 Coll. In the view of the party to the proceeding, that request had to contain an individualization of the particular requested items as such is a requirement to preserve the claim that they be turned over. The Regional Court agreed that oral hearing in the matter be dispensed with.

In its statement of views on the constitutional complaint, the Municipal Court in Brno, referred to the content of its case file and stated that it agrees to dispensing with an oral hearing.

The National Monument Institute (territorial expert workplace in Pardubice) informed the Constitutional Court that, as a result of the 1 January 2003 decision of the Ministry of Culture, file no. 11.617/2002, the state allowance organizations established by the Minister of Culture in the area of the care of monuments were merged into the National Monument Institute with its seat in Prague. In its statement of views on the constitutional complaints, the National Monument Institute itself then entirely concurred with the legal views expressed by the party to the proceedings, namely that the item whose surrender is demanded must, already in the restitution request for the surrender of property, in the sense of § 5 para. 1 of Act No. 87/1991 Coll., be identical with the item originally taken away, that is, described (individualized) in such as to make it impossible for the item to be confused with another; the term employed, "item", cannot be otherwise interpreted than as concerning an individually designated item – not a category, but an item that cannot be confused with some other. The Act places upon entitled persons a duty, failure to fulfill by the deadline results in loss of the claim. In the view of the secondary party to the proceeding, the 6 month time period allowed for the submission of the request was sufficiently long, and it was allegedly possible, within the given period, to obtain even a precise specification of the items at the then State Institute for the Care of Monuments. The complainant's restitution request did not individualize a single concrete item, and in consequence of its entirely (according to the statement of views) uncertain designation of items, the surrender of which was requested, it did not meet the condition of concretization of the claim in relation to individually designated items. Thus, the

secondary party to the proceeding entirely concurred with the ordinary courts' interpretation in this case. The secondary party agreed that an oral hearing before the Constitutional Court could be dispensed with.

II.

The Constitutional Court has many times stated that it is not competent to review the overall legality of decision-making by ordinary courts, neither to substitute its evidence taking and evaluation of the admitted evidence. As the judicial body for the protection of constitutionalism, it is however authorized, or obliged, to adjudge whether there has been, in the earlier proceeding, a violation of constitutionally-guaranteed basic rights, among which is included the right to judicial and other legal protection and to fair process.

After acquainting itself with the materials in the file and after evaluating the essential circumstances of the case, the Constitutional Court has come to the conclusion that the constitutional complaint is well-founded in part.

In that matter under consideration, it is of basic significance to assess the issue whether the request to turn over property, delivered on 30 September 1991 to the Institute of Monuments in Brno, can be considered a proper request in the sense of Act No. 87/1991 Coll., and whether the requested items of movable property were precisely individualized in this request. As is evident from the reasoning of the decision contested in the constitutional complaint, the ordinary courts, primarily the appellate court, considered this to be the crucial issue and the complainant's arguments contained in the constitutional complaint are directed against the conclusions adopted by them on it.

In the case under review, the Constitutional Court learned, both from the contested decisions of the ordinary courts and from the relevant file material (the file of the Municipal Court in Brno, No. 15 C 165/92), that in the request received by the Institute of Monuments in Brno, the complainant requested "the surrender of the items of movable property which, on 25 February 1948, where contained in the register of the state castle Lommice u Tišnova"; she further stated that "it concerns paintings, furniture and valuable objects which are located in various castles which you are administering". The complainant added that she herself could not determine precisely where particular items could be found at present but that she was convinced that the said organization must have a precise record detailing to where particular items had been transferred. By way of conclusion she offered to cooperate in identifying those items and gave as an example that when visiting the castle in Milotice with her sister, they recognized paintings that were originally their property. In the course of the court proceeding, it was ascertained from, among others, archival material of the State Administration of Monuments (No.l. 13 of the file) that from the castle Lomnice u Tišnova alone items were distributed to the buildings of Jemniště in Central Bohemia, Lysice and Rájec nad Svitavou in Southern Moravia and Kratochvíle in Southern Bohemia; according to contemporary materials (the 10 September 1992 statement of the State Institute for the Care of Monuments), these movable asserts are located in Slatiňany, Kratochvíle, Lysice, Rájec nad Svitavou and Náměšti nad Oslavou. In reasoning its decision, the first instance court merely stated briefly of the

inventories of movable items, sent by the State Institute for the Care of Monuments, that "the complainant could have obtained them in the archives"; in the court's view the petition was properly particularized only after the deadline in § 5 para. 4 of Act No. 87/1991 Coll. (within one year of its entry into force, that is, from 1 April 1991). Thereafter the appellate court considered the mentioned request – as is analyzed in more detail above - "as entirely unspecific" and declared that, in conformity with § 5 para. 2 of the restitution act the complainant's claim lapsed.

The Constitutional Court, which in its decision-making gives preference to the substantive conception of the law-based state and the interpretation of legal enactments from the perspective of their purpose and significance, and recalls that, by means of the restitution acts, the democratic society is endeavoring at least to mitigate the consequences of past property and other injustices, and the State and its bodies are obliged to proceed in accordance with the restitution acts in harmony with the statutory interests of the persons whose injury should be at least partially compensated. In applying the restitution acts, a too restrictive, or formalistic, approach must not be taken, on the contrary, they must be applied in a very sensitive manner, always with the circumstances of the particular case in mind, and above all the cited purpose and significance of the act. As far as concerns the above-stated central question relating to the necessity of the precise individualization or specification of the items demanded, under the sanction that the claim would otherwise be extinguished, it would perhaps be possible to agree with the ordinary courts' conclusions if this matter had not concerned an enormous extent of moveable property (compare No. 1. 13 of the file), but about several items where it would be entirely and without any doubt evident that it was within the restituent's power to specify in detail the property in question within the time period allowed by the statute. It is appropriate to recall the age-old general principle that nobody may be obliged to do the impossible (nemo tenetur ad impossibile). It cannot categorically be stated that, in the given case, it was entirely out of the question for the complainant to be able, in the original request, to individualize the items, in the Constitutional Court's view, this fact was not demonstrated in the proceeding in a sufficiently persuasive manner. If such factual findings as would be in harmony with the ordinary courts' conclusions could not safely be drawn from the evidence admitted, than it can be concluded that this constituted a violation of the principles of fair process. In essence it does not suffice to make a mere reference to the content of the file and to the views expressed by the State Institute for the Care of Monuments (compare the contested judgment of the Municipal Court, No.1 176 of the file), or to the opinions of the obligated persons.

If there exists several possible interpretations of a particular legal enactment or of certain of its provisions, consideration must be given to the intent of the legal rule. In the case of Act No. 87/1991 Coll. that intent is doubtless the effort to mitigate the consequences of certain property injustices committed by the totalitarian state in the decisive period. If two equally valid interpretations are possible, one of which is broad and the other narrow, between them the court must select that which corresponds to further interpretive methods, in particular teleological reasoning. The ratio legis of the restitution acts is to redress, at least to a certain degree, the consequences of the infringement of the fundamental rights of natural and legal persons in the totalitarian era. Thus, a constitutionally conforming interpretation is generally a broad one: a statute and its

individual provisions must be interpreted in such a way that, by applying them, it is possible to attain the aim pursued by the legislature.

When interpreting the relevant provisions of the restitution acts, it also cannot be overlooked that it was a totalitarian state which illegally stripped its citizens of their property and that subsequently state bodies dealt with that property in an arbitrary fashion for a period of nearly 40 years, in the course of which movable property was appropriated and in fact relocated to various places; therefore, the Constitutional Court is convinced that the consequences of these or similar transactions cannot now be interpreted, in principle, solely to the detriment of the entitled persons. It is necessary always to proceed on the basis of the circumstances of the particular, concrete case. If in view of the above-described situation, the complainant drafted her original request in a not entirely specific fashion, precisely with regard to the unusual nature of the given case this can be accepted, unless it has been proven without any doubt that it was within her power by the end of the statutory period to learn precisely which specific items were concerned and where these items could be found. A notion that is not at all unmeritorious is possible as well: were the complainant, due to time pressures, to designate certain items imprecisely then she could scarcely later claim items specified in a different fashion, as an objection in that respect would obviously be forthcoming. On the contrary, the complainant has from the beginning presumed and stated that the property she is demanding would be specified during the course of the proceeding as soon as there would no longer be doubts as to where the items were actually located, and that occurred by her 26 April 1994 supplement to the "proposal of the complaint". Otherwise, even the manner in which the obligated persons have conducted themselves and the very course of the proceeding itself have confirmed the complainant in her view that further legal transactions were not needed and that it was obviously entirely evident to the obligated persons which items she was claiming be turned over (compare, for example, the record of the 22 July 1992 hearing, No. 1. 5 of the file).

If then the appellate court, in relation to the defendant Institute of Monuments in Brno, proceeded on the basis of the above-described conclusions (that is, that the complainant did not serve a proper request upon the obliged person) and affirmed the negative judgment of the first instance court, and if, in addition, it literally stated that it did not find it necessary to concern itself with further objections contained in the complainant's appeal, or to give its views on the other grounds which led the first instance court to reject the action on the merits, then the Constitutional Court is persuaded that this constitutes a violation of the right to fair process which the complainant claims.

As far as concerns the contested judgment of the first instance court, the Constitutional Court did not ascertain from the constitutional law perspective any error of such a character, or intensity, that it would be imperative to react by quashing this decision as well. While it might be admitted that the reasoning of the given judgment, despite being extensive, could have been more persuasive and even more comprehensible for a layman, nonetheless that court addressed the matter in detail and, in the written version of its decision, captured the main points in a sufficient manner; it appears from the reasoning of this judgment the relations between, on the one hand, the factual findings and the considerations when weighing the evidence and, on the other hand, the Municipal Court's legal conclusions. The Constitutional Court is proceeding here primarily on the principle of

the minimalization of intrusion into the jurisdiction of other public authorities; by annulling even the first instance decision, it would be placing itself into the role of an appellate court and would scrutinize this decision from the perspective both of process and substance.

In conclusion then, the Constitutional Court emphasizes that it did not concern itself with other grounds upon which the complainant's restitution claim was rejected on the merits by the first instance court. Since in the proceeding the courts and the complainant considered as the fundamental question, whether the request to turn over the items of movable property; the appellate court itself explicitly stated that it did not consider it necessary to concern itself with others of the complainant's objections nor to give its views also on other grounds which led to the rejection of the action on the merits. If they observe the principles of fair process, the adjudication of these grounds falls within the exclusive jurisdiction of ordinary courts, and the Constitutional Court is in no way anticipating, nor may it anticipate, their final resolution. It will be up to the appellate court to hear this matter again and, in the reasoning of its decision, persuasively to respond to all of the relevant objections made by the complainant in the matter. Merely as obiter dictum, the Constitutional Court would recall that naturally the appellate court might even annul the decision of the first instance court, if in further proceedings it comes to the conclusion, for example, precisely on the basis of a careful review of the complainant's objections, that such is necessary in order to reach a just resolution of the matter.

Since the Constitutional Court ascertained, on the basis of the above-stated grounds, that in the given case there was a violation of Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms, it granted the complainants in relation to the contested decision of the Regional Court in Brno and quashed that court's contested decision [§ 82 para. 3 lit. a) of Act No. 182/1993 Sb, on the Constitutional Court, as subsequently amended].

As for the remainder, that is as far as concerns the first instance decision, on the above-stated grounds the petition was rejected on the merits.

Notice: A Constitutional Court decision can not be appealed.

Brno, 24. March 2004