

2003/10/23 - I. ÚS 754/01: INTERPRETATION OF RESTITUTION LAWS

HEADNOTES

The Constitutional Court would emphasize that with the restitution laws the democratic law-based state is endeavoring at least partially to alleviate the consequences of past property injustices, and state bodies are obliged to conduct themselves in accordance with the applicable restitution law in harmony with the statutory interests of persons who should be at least partially compensated for injuries inflicted upon them by the totalitarian communist regime. This partial compensation cannot be seen, for example, in an outcome where, although the restitution claim is determined to be well-founded, the entitled persons merely receives free of charge another parcel of land owned by the state or is awarded financial compensation. The guiding principle must always be the above-stated intent of the restitution law, in the interpretation of which preference must in principle be given to turning over the original plot, or plots, of land, should the restituent pursue that outcome and should the law not rule it out.

Restitution Act No. 229/1991 Coll., also pursues above all the aim that entitled persons actually are given their original property. It is only exceptionally, that is if, without any doubt, all the requirements laid down in § 11 of this Act are met, that a plot of land cannot be handed over. If the plot of land, after the transfer or passage to the state, was build upon, § 11 para. 1 lit. c) of the Act introduces in total six separate exceptions, which when satisfied permit even a built-upon plot of land to be turned over. The built-upon part of the plot of land is considered to be that part upon which a structure stands and that part of the plot directly connected with this structure and indispensable to its operation. There are questions especially as to what “directly connected” and “indispensable” mean, and in each particular case they must be carefully and responsibly, in conformity with the primary purpose of the Land Act, examined and construed. In the Constitutional Court’s view these provisions cannot anyway be interpreted too broadly, thus it cannot be inferred that, if a recreational area is “self-contained”, it cannot be turned over, however extensive it is, and include within it all surface areas forming part of it, including (among others) open grounds with decorative greenery, pine ground cover, and children’s playgrounds. As far as concerns the asphalt parking lot, it is fitting to make reference to the Constitutional Court’s arguments (with reference to the conclusions expressed by the Supreme Court in its case no. 2 Cdon 1414/97), expressed for example, in its judgment No IV. ÚS 42/01 (Collection of Judgments and Rulings of the Constitutional Court of the Czech Republic, Vol. 26, Judgment No. 48), according to which in restitution cases reinforced asphalt surfaces, e.g., a parking lot, cannot be considered as a structure impeding the turning over of a plot of land pursuant to Act No. 229/1991 Coll.

It must be pointed out from a general perspective that pursuant to Act No. 229/1991 Coll. a plot of land can be transferred to an entitled person even though a structure is

built upon it that prevents the use of the plot for agricultural or forestry purposes, to the extent that, from the structural technology perspective, that structure can be classified as one of the types of structures enumerated in § 11 para. 1 lit. c) of the cited act (a structure that is movable, provisional, simple, minor, or one that is placed below the surface of the earth). It should further be noted that, while it was certainly intended that Act No. 229/1991 Coll. would safeguard the agricultural use of plots of land, it nonetheless follows from the preamble to the Act that this aim should be subordinated to the requirement of the alleviation of property injustices by the fact that it ties improved care of the land with the renewal of the original ownership relations in it (compare, for example, judgment no II. ÚS 747/2000, The Collection of Judgments and Rulings of the Constitutional Court of the Czech Republic, Vol. 26, judgment no. 63).

**CZECH REPUBLIC
CONSTITUTIONAL COURT**

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Constitutional Court decided today, in a panel, in the matter of the constitutional complaint of joint complainants Ing. C. Z., Ing. J. Z., Z. K., RNDr. M. V., Ing. L. Z.-P., MUDr. O. P., L. B., Š. R., MUDr. M. G., Ing. J. V., H. P., D. F. a Ing. A. B., all represented by JUDr. V. K., an attorney, against the 17 October 2001 judgment of the Municipal Court in Prague, file no. 28 Ca 268/2000, as follows:

The 17 October 2001 judgment of the Municipal Court in Prague, file no. 28 Ca 268/2000-50, and the 1 March 2000 decision of the District Office Příbram, Land Office, file no. 2940/92, R VIII 2/2000, are hereby quashed.

REASONING

I.

In their constitutional complaint the complainants (with reference to the asserted infringement of Arts. 1, 4 para. 1, 11 para. 1, and 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms in conjunction with Arts. 90 and 95 of the Constitution) request that this Court quash the 17 October 2001 judgment of the Municipal Court in Prague, file no. 28 Ca 268/2000, which affirmed the 1 March 2000 decision of the District Office Příbram, Land Office, file no. 2940/92, R VIII 2/2000. The Land Office decided in accordance with § 9 para. 4 of Act No. 229/1991 Coll., on the Regulation of

Ownership Rights in the Land and other Agricultural Property, as subsequently amended (hereinafter “Act No. 229/1991 Coll.”), that the complainants are not the owners of the immovable property in the cadastral district of Čelina, Municipality of Borotice (land parcel no. 902/16) with a surface area of 7038 meters. It is the Land Office’s position that, in view of § 11 para. 1 lit. c) of Act No. 229/1991 Coll., the immovable property cannot be turned over, as they are surface areas built upon with a road, a sewage water treatment plant, and areas directly connected with structures that are necessary to the operation of structures of a residential facility. In accordance with § 11 para. 2 and § 17 of Act No. 229/1991 Coll., the Land Fund shall, in exchange for such plots, convey to the entitled persons title to some other plots of land owned by the State, or to provide them with compensation.

It appears from the contested decision of the Municipal Court in Prague that an asphalt parking lot, a sewage water treatment plant, and open grounds with decorative greenery, benches, children’s playgrounds, pine ground cover, and an access to a mooring which belongs to the recreational center, are also situated on the plot of land. The Municipal Court stated that, in the case of structures of a residential facility, a storage area and a parking lot must be constructed and that a sewage water treatment plant is also necessary to the operation of the structure. The Municipal Court considers it a self-contained, recreational facility, and in its view the purpose of recreation is not satisfied merely by a road ensuring the arrival of guests, and by the provision of accommodation and food, but even the remaining parts of the plot of land at issue, which are made up of open grounds with decorative greenery, benches, children’s playgrounds including pine ground cover, perform a function. It is an enclosed recreational facility within which its individual parts are functionally interconnected.

The complainants are of the view that, in adjudicating the matter, the Municipal Court in Prague used an incorrect legal analysis. They take the position, in particular, that, according to the intent of in the Land Act, the term “area directly connected with the structure or area indispensable to its operation” cannot be interpreted in the manner as was done by the Land Office and the Municipal Court. In the complainants’ opinion, with § 11 para. 1 lit. c) of Act No. 229/1991 Coll., the legislature prohibited the turning over only of that portion of a plot of land which can be brought within the definition, and this definition was not intended to include the entire parcel upon which a structure stands, including the surrounding areas which are not functionally interconnected with it. If some other interpretation is to be adopted, the owners of a land parcel with an extensive surface area would be disadvantaged as against the original owners of small parcels, for the turning over of extensive parcels would be impeded even by a structure which would take up only an insignificant part of the parcel. They further stated that for the operation of a structure as a recreational facility, it is certainly appropriate to have a certain functional base which enables the recreational guest meaningfully to spend their free time in the vicinity of the structures, but such a base is not indispensable to the operation of the structure for the above-stated purpose; the absence thereof merely results in a diminishment of its attractiveness. The legislature did not intend to include within the term, “operation of the structure”, also its economic utilization, rather merely the assurance of its functionality from a building technology perspective. The complainants concluded that the relevant provisions of Act No. 229/1991 Coll. must be interpreted in

the spirit consistent with the views they have expressed. The complainants consent to dispensing with an oral hearing.

In its statement of views on the constitutional complaint stated that the complaint is not well-founded and in essence merely repeated in brief the arguments contained in the reasoning of the contested decision. In the court's opinion, it is necessary to take into consideration the character and purpose of the use of the structures, according to which the related and indispensable areas should be delimited; it agreed with the complainants' view that only that part of the plot of land which enables access to the structures and which allows for their maintenance should be assessed in this fashion. It consented to dispensing with an oral hearing.

In its statement of views, the Land Office Přebram summarized the course of the proceeding in the given matter, during which recalled that it had first of all taken a decision on 10 November 1997, file no. 2940/92 R VIII 92/97, in which, in accordance with the geometric plan determining encumbrances, it turned over to the entitled persons portions of the plot of land at issue. That decision was, however, quashed by the 24 February 1998 judgment of the Regional Court in Ústí nad Labem, file no. 15 Ca 647/97, 15 Ca 648/97, and the matter was remanded to the Land Office with instructions in further proceedings to deal with the issue of whether the plot of land is built upon and to ascertain sufficiently the facts of the case. The Land Office then ordered a local investigation in which the entitled and obliged persons took part, as did representatives of the municipality and of the building office. Afterwards it issued the above-mentioned decision, in which it determined that the complainants are not the owners of the immovable property at issue, affirmed in the Municipal Court's contested judgment. The Land Office further stated that this case cannot be compared with cases involving structures of agricultural facilities which, in contrast to recreational or residential structures, do not hamper the agricultural utilization of a plot of land. In its view, the legislative intent was, first and foremost, that property restituted pursuant to Act No. 229/1991 Coll. continue to serve agricultural purposes, which is ruled out for the plot of land under consideration owing to its location. It agrees to dispense with an oral hearing.

The secondary parties to the proceeding, D. and ú. K., st. p., in their statement of views on the constitutional complaint, stated in essence that there has been no encroachment upon any of the complainants' fundamental rights or basic freedoms, made reference to the content of the file and to the admitted evidence, and proposed that the constitutional complaint be rejected on the merits. They also agree to dispense with an oral hearing.

In conformity with § 28 para. 2 of, the Land Fund of the Czech Republic relinquished its status as a secondary party to the proceeding.

II.

The constitutional complaint is well-founded.

The heart of the matter is the issue whether and to what extent the plot of land at issue, upon which the complainants are asserting a restitution claim, is a tract of land that is

directly connected, and indispensable, to the operation of structures of a residential facility which are situated upon it (§ 11 para. 1 lit. c) of Act No. 229/1991 Coll.).

From the assembled documents in the instant case, which the Constitutional Court requested be sent to it (in particular from the file material of the Municipal Court in Prague, file no. 28 Ca 268/2000, and from the relevant file of the Land Office in Přeborn), as well as from the contested decisions, it is evident that the structures of the residential facility are situated on building parcels no. 84, 85, and 86; it had already been finally decided not to hand over these building parcels. However, the adjudicated case concerns parcel no. 902/16, forming an area surrounding the mentioned building parcels, which is made up of an asphalt parking lot, a road connecting the buildings on the building plot, a sewage water treatment plant and also open grounds with decorative greenery, benches, children's playgrounds, pine ground cover, and an access to a mooring which belongs to the recreational center. As was already stated above, the ordinary court came to the conclusion that this space was directly connected with structures designated for recreation and indispensable to their operation.

However conscious the Constitutional Court is of the possibility that, due to their distinctive circumstances, it will be complicated to resolve concrete cases, in the first place it would call to mind and emphasize that with the restitution laws the democratic law-based state is endeavoring at least partially to alleviate the consequences of past property injustices, and state bodies are obliged to conduct themselves in accordance with the applicable restitution law in harmony with the statutory interests of persons who should be at least partially compensated for injuries inflicted upon them by the totalitarian communist regime. This partial compensation cannot be seen, for example, in an outcome where, although the restitution claim is determined to be well-founded, the entitled persons merely receives free of charge another parcel of land owned by the state or is awarded financial compensation. The guiding principle must always be the above-stated intent of the restitution law, in the interpretation of which preference must in principle be given to turning over the original plot, or plots, of land, should the restituent pursue that outcome and should the law not rule it out.

Restitution Act No. 229/1991 Coll., also pursues above all the aim that entitled persons actually are given their original property. It is only exceptionally, that is if, without any doubt, all the requirements laid down in § 11 of this Act are met, that a plot of land cannot be handed over. If the plot of land, after the transfer or passage to the state, was build upon, § 11 para. 1 lit. c) of the Act introduces in total six separate exceptions, which when satisfied permit even a built-upon plot of land to be turned over. The built-upon part of the plot of land is considered to be that part upon which a structure stands and that part of the plot directly connected with this structure and indispensable to its operation. There are questions especially as to what "directly connected" and "indispensable" mean, and in each particular case they must be carefully and responsibly, in conformity with the primary purpose of the Land Act, examined and construed. It is precisely in this respect that the public authorities deciding in this matter interpreted the cited provisions in a manner which is unacceptable from the constitutional law perspective; otherwise, in view of the complexity of the matter, from the perspective of their procedural approach they cannot in any significant manner be faulted. In the

Constitutional Court's view these provisions cannot anyway be interpreted too broadly, thus it cannot be inferred that, if a recreational area is "self-contained", it cannot be turned over, however extensive it is, and include within it all surface areas forming part of it, including (among others) open grounds with decorative greenery, pine ground cover, and children's playgrounds. It can be asserted that in this case the ordinary court in essence proceeded more on the basis of the "purpose of the recreational area" or the "purpose of recreation" than from the above-interpreted, paramount purpose of the restitution law itself. As far as concerns the asphalt parking lot, it is fitting to make reference to the Constitutional Court's arguments (with reference to the conclusions expressed by the Supreme Court in its case no. 2 Cdon 1414/97), expressed for example, in its judgment No IV. ÚS 42/01 (Collection of Judgments and Rulings of the Constitutional Court of the Czech Republic, Vol. 26, Judgment No. 48), according to which in restitution cases reinforced asphalt surfaces, e.g., a parking lot, cannot be considered as a structure impeding the turning over of a plot of land pursuant to Act No. 229/1991 Coll.

As far as concerns the objection of a secondary party to the proceeding, to the effect that the plot of land cannot be employed for agricultural purposes, it must be pointed out from a general perspective that pursuant to Act No. 229/1991 Coll. a plot of land can be transferred to an entitled person even though a structure is built upon it that prevents the use of the plot for agricultural or forestry purposes, to the extent that, from the structural technology perspective, that structure can be classified as one of the types of structures enumerated in § 11 para. 1 lit. c) of the cited act (a structure that is movable, provisional, simple, minor, or one that is placed below the surface of the earth; from the scholarly literature on this issue compare, for example Pekárek, M.: Commentary on the Amendment to the Land Act, Masaryk University Brno, 1993, p. 23 and following). It should further be noted that, while it was certainly intended that Act No. 229/1991 Coll. would safeguard the agricultural use of plots of land, it nonetheless follows from the preamble to the Act that this aim should be subordinated to the requirement of the alleviation of property injustices by the fact that it ties improved care of the land with the renewal of the original ownership relations in it (compare, for example, judgment no II. ÚS 747/2000, The Collection of Judgments and Rulings of the Constitutional Court of the Czech Republic, Vol. 26, judgment no. 63).

Since neither of the public authorities concerned itself with the complainants' restitution case in the light of the above-mentioned analysis, the Constitutional Court came to the conclusion that, in the instant case, this inaction constituted a violation of Art. 36 para. 1 of the Charter of Fundamental Rights and Basic Freedoms, in which is enshrined the right to fair process. Accordingly, the Constitutional Court granted the constitutional complaint in full and decided to quash the contested 17 October 2001 judgment of the Municipal Court in Prague, file no. 28 Ca 268/2000. Due to considerations of procedural economy, at the same time it also quashed the 1 March 2000 decision of the District Office Přebíram, Land Office, file no. 2940/92, R VIII 2/2000.

The Constitutional Court did not, however, find the infringement of any other of the complainants' fundamental rights. In response to the objection that Art. 11 para. 1 of the Charter has been violated, it suffices to briefly call to mind that this article protects already-existing and constituted property rights, and not mere asserted claims to them. For completeness, the Constitutional Court would add that Arts. 90 and 95 of the

Constitution, which the complainants have asserted were also infringed, do not directly and immediately guarantee fundamental rights and basic freedoms, for in essence they merely govern the principles of court activities. They are then merely a reflection and do not enshrine individual public-law rights.

Notice: A judgment of the Constitutional Court may not be appealed.

Brno, 23 October 2003