

1995/06/08 - IV. ÚS 215/94: SLOVAK RESTITUTION CLAIM

HEADNOTES:

The principle of legal certainty and the protection of the citizens' faith in the law are without doubt among the hallmarks of a law-based state. The prohibition on retroactivity of legal norms, or the retroactive interpretation of them, then, also makes up a component of legal certainty. Thus, if someone acts in reliance on some statute, he should not be disappointed in his reliance. From this point of view, the application of law, which de facto divided restituants into two categories (i.e. those whose claims were decided before the state was divided, and those, whose claims were asserted before 31. 12. 1992, and were decided after 1. 1. 1993) cannot be considered to be in accordance with the Constitution.

CZECH REPUBLIC

CONSTITUTIONAL COURT JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

In the matter of J. Š, a citizen of the Slovak Republic, in the matter of a constitutional complaint against the 6 April 1994 decision of the District Office - District Land Office in Šumperk, action no. 1407/1716/94, and against the 27 September 1994 judgment of the Regional Court in Ostrava, file no. 22 Ca 264/94, with the Regional Court in Ostrava joined as a party and the District Office - District Land Office in Šumperk joined as a secondary party, the Constitutional Court of the Czech Republic, decided thusly:

The 27 September 1994 judgment of the Regional Court in Ostrava, file no. 22 Ca 264/94, is hereby annulled;

The 6 April 1994 decision of the District Office - District Land Office in Šumperk, action no. 1407/1716/94, is hereby annulled.

REASONING

In her timely filed constitutional complaint, the complainant sought the annulment of the final judgment of 27 September 1994 of the Regional Court in Ostrava and of the 6 April 1994 decision of the District Office - District Land Office in Šumperk. This judgment upheld the decision by the Land Office in Šumperk in which it refused to approve an

agreement on the surrender of real estate, an agricultural homestead, , the agreement having been concluded between J. Š. and the obligated person, the City of Jeseník.

On the basis of its legal analysis, the court reached the same conclusion as the District Office - District Land Office in Šumperk, that the complainant did not have the status of an authorized person under § 4 paras. 1 and 2 of Act No. 229/1991 Coll., on the Regulation of Ownership Relations to the Soil and to other Agricultural Property,1) as amended by later enactments, for she does not meet the criterion of Czech citizenship.

The main point made in the 15 December 1994 constitutional complaint is the complainant's objection that, as a consequence of the division of the former common state, the Czech and Slovak Federal Republic, she has been discriminated against with regard to her restitution claim. Her request for the surrender of the real estate was timely submitted and met all of the requirements. She further reasoned that, in accordance with Constitutional Act No. 4/1993 Coll., on Measures Relating to the Dissolution of the Czech and Slovak Federal Republic, the principle should apply that relations and claims arising prior to the division of the state should be governed by the enactments then in force. According to the complainant's assertion, the contested decision infringes the basic legal certainty of citizens laid down in Article 1 of the Constitution of the Czech Republic. It is likewise in conflict with Article 1, Article 2 para. 3, Article 3 para. 1, and Article 4 paras. 2 and 3 of the Charter of Fundamental Rights and Basic Freedoms (hereinafter „Charter“), with Article 10 of the Constitution of the Czech Republic, and with Article 1 para. 1 of the Additional Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms. In addition, she asserts that it is not in conformity with Article 11 para. 1 of the Charter for a state administrative body, rather than a court, to be empowered to decide such a significant issue as one concerning property. The argument that such decisions are reviewed by a court under the procedure for the judicial review of administrative decisions does not pass muster because a court reviews it only from the perspective of legality and the party has no appellate remedy against its decision. Such a decision-making system conflicts with the fundamental right to a fair procedure (Article 36 paras. 1 and 2 of the Charter), as well as with Article 6 para. 1 of the European Convention on the Protection of Human Rights. In addition, the court is empowered to decide without a hearing, as occurred in this very case.

The Justice Rapporteur requested that the other parties to the proceeding, that is, the Regional Court in Ostrava and the District Land Office in Šumperk, give their views on the constitutional complaint. In its 13 February 1995 submission, the District Land Office stated that in deciding the complainant's restitution claim under Act No. 229/1991 Coll., as amended by later enactments, it relied above-all on the provisions of Article 1 para. 2 of Constitutional Act No. 4/1993 Coll., on Measures Relating to the Dissolution of the Czech and Slovak Federal Republic,2) which provides that, after 1 January 1993, statutes that tie rights and duties to the territory of the Czech and Slovak Federal Republic and to citizenship of the Czech and Slovak Federal Republic must be interpreted such that these terms shall be understood to mean the territory of the Czech Republic and citizenship of the Czech Republic, unless otherwise provided by statute. In view of the fact that the Office was not aware of any statute that would provide otherwise in the case of the assertion of a claim under the Act on Land, it reached the conclusion that, as the applicant did not meet the requirement of citizenship of the Czech Republic, she had no claim,

regardless of the fact that she asserted her claim at a time when she met all the requirements, citizenship of the Czech and Slovak Federal Republic in particular.

In its submission, the Regional Court in Ostrava stated that it did not consider the complainant's assertion to be well-founded so far as concerns the asserted violation of the fundamental rights and basic freedoms cited in the constitutional complaint. To the extent that the complainant makes reference to the 23 November 1992 Agreement between the Governments of the Czech Republic and the Slovak Republic, on the Support and Mutual Protection of Investments, the Regional Court stated in its submission that this Agreement is not a generally binding legal enactment, for it was not promulgated in the Collection of Laws (in contrast with the situation in the Slovak Republic, where it was promulgated under No. 231/1993 Z.z.).

The Director of the Central Land Office expressed the views of the Ministry of Agriculture on the matter. His submission stated that, when a state ceases to exist, the private law claims of citizens who become citizens of one of the successor states should not be affected. Stated otherwise, whether certain persons should be classified under the heading of an „authorized person under the Act on Land“, must be determined from whether that person was a citizen of the former Czech and Slovak Federal Republic at the time he asserted his restitution claim and whether he had permanent residence within the country. The Central Land Office communicated this position to the district land offices in an Information of 22 March 1993 and 15 December 1993. In reality, however, certain regional courts, especially in Moravia, maintain a different opinion and do not recognize citizens of the Slovak Republic as having the status of authorized persons, even if they made a timely assertion of their claims and if, at that time of asserting the claim, they met all the conditions therefor. In the view of the Central Land Office, the fact that the responsible district land office did not manage to issue a decision by the time the common state was divided, whether from the excessive quantity of submitted requests or from other objective reasons, can not work to the detriment of claimants. The Ministry of Agriculture's efforts to resolve this problem by means of legislation were not successful. It further stated in its submission that, after the dissolution of the federation, the Slovak Republic acknowledged restitution claims made by Czech citizens to the same degree as it did those of Slovak citizens. At the beginning of 1994, the Czech side proposed to the Slovak side that they conclude a new agreement on the support and mutual protection of investments, however, these negotiations have not as yet been concluded.

When considering the actual contents of the constitutional complaint itself, the Constitutional Court proceeded from the following legal considerations:

The principle of legal certainty and the protection of the citizens' faith in the law without doubt are among the hallmarks of a law-based state. The prohibition on retroactivity of legal norms, or the retroactive interpretation of them, then, also makes up a component of legal certainty. This prohibition, which for the field of substantive criminal law is explicitly stated in Article 40 para. 6 of the Charter of Fundamental Rights and Basic Freedoms,³⁾ may be deduced from Article 1 of the Constitution of the Czech Republic⁴⁾ with regard to other legal fields. The Constitutional Court of the Czech and Slovak Federal Republic has previously adopted this position in the matter Pl. ÚS 78/92, and it has been reiterated in the judgment of the Constitutional Court of the Czech Republic, file no. Pl. ÚS 16/93, as well as in several other judgments. Thus, if someone acts in reliance on

some statute, he should not be disappointed in his reliance. Among the principles of the law-based state should be counted also the principle that the period during which a proceeding did not go forward can not be counted to the detriment of a party, with the exception of cases when the party to the proceeding did not take proper steps to advance it.

What is particular to the case at hand is that it does not concern the issuance of a new legal enactment; rather it concerns the fact that the division of the state has resulted in the situation where a legal enactment, the text of which has not be amended, begins to be interpreted differently. The legal relations existing prior to 1 January 1993, as well as legal transactions carried out prior to that date, thus, did not remain a forbidden sphere. The key issue is whether such a practice on the part of administrative bodies can be considered to be in conformity with the Constitution where restitutions are de facto divided into two categories: those who asserted their claims within the prescribed period, who met the prescribed requirements when they asserted their claim, and whose claims were decided upon before the moment when the state was divided, and those who, after 1 January 1993, were informed that they actually ceased to be authorized persons ex post, even though these persons did everything that was required of them for the assertion of their claim. At the same time, it is necessary to emphasize the fact that the general deadline for the assertion of claims under the Act on Land was set as 31 January 1993 (§ 13 para. 1) and the vast majority of applicants asserted their claims while the common state still existed, when the conditions were citizenship of the federation and permanent residence within the federation.

The legal position adopted by the Land Office, and later also by the Regional Court, in the case under consideration, with reference to Article 1 para. 2 of Constitutional Act No. 4/1993 Coll., on Measures Connected with the Dissolution of the Czech and Slovak Federal Republic,2) thus actually leads to the consequence that conduct which was legally relevant in accordance with the preceding legal rules became, on the basis of the effect of the new legal rules (more precisely said, on the basis of the new legal situation), legally irrelevant, so that an unjustifiable inequality was established between authorized persons. In this way, the constitutional principles of the protection of the citizen's faith in law, of the law-based state, and of equality, as they are laid down in Article 1 of the Constitution of the Czech Republic4) and in Article 1 of the Charter,5) were infringed.

The Court also agrees with the complainant's view that if, in such a significant case and in one that is certainly not simple, a court makes a decision without the participation of the party, the principle of fair procedure, set down in Article 36 paras. 1 and 2 of the Charter4) and in Article 6 para. 1 of the Convention on the Protection of Human Rights and Basic Freedoms, has been violated.

Last but not least, the Constitutional Court then proceeds from the fact that the purpose of all restitution acts was to alleviate the consequences of certain property injustices which occurred during the decisive period. Even if the legislature was aware that it was unrealistic to try to remedy all injustices, so that it is necessary to be satisfied with righting only some of them, still these legal enactments cannot be interpreted so dogmatically and non-conformably to the Constitution as to de facto give rise, in relation to certain persons, to new injustices.

Thus, for the above-stated reasons, the Constitutional court has set aside the contested decisions.

IV. US 215/94

Overview of the most important legal regulations

1. § 4 par. 1 of Federal Assembly Act no. 229/1991 Coll., on the Regulation of Ownership of Land and other Agricultural Property, provides that an entitled person is a citizen of the Czech and Slovak Federal Republic, whose land, buildings and structures, belonging to the original agricultural establishment, were transferred to the state or another legal entity in the period from 25 February 1948 to 1 January 1990 in a manner specified in this Act. Par. 2 provides the order of entitled persons in case of the death of the person whose real estate was transferred in the decisive period to the state or another legal entity in cases specified in this Act.

2. Art. 1 par. 2 of Czech National Council Constitutional Act no. 4/1993 Coll., on Measures Related to the Termination of the Czech and Slovak Federal Republic, provides that where statutes, constitutional acts and other legal regulations adopted before the dissolution of the CSFR tie rights and obligations to the territory of the Czech and Slovak Federal Republic and citizenship of the Czech and Slovak Federal Republic, this is understood as the territory of the Czech Republic and citizenship of the Czech Republic, unless the law provides otherwise.

3. Art. 40 par. 6 of Act no. 2/1993 S., the Charter of Fundamental Rights and Freedoms, provides that the question whether an act is punishable or not shall be considered, and penalties shall be imposed, in accordance with the law in effect at the time the act was committed. A subsequent law shall be applied if it is more favorable to the offender.

4. Art. 1 of Act no. 1/1993 Coll., the Constitution of the CR, provides that the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens.

5. Art. 1 first sentence of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that all people are free, have equal dignity, and enjoy equality of rights.

6. Art. 36 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that everyone may assert, through the legally prescribed procedure, his rights before an independent and impartial court or, in specified cases, before another body. Par. 2 provides that unless a law provides otherwise, a person who claims that his rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision.