

2007/03/22 - III. ÚS 516/06: REAL ESTATE APPEAL

HEADNOTES

The petitioner was given an obligation to hand over property under Act no. 87/1991 Coll., whose § 5 par. 5 allows so-called “overlooked” entitled persons to exercise their claims against those entitled persons to whom a thing was handed over.

The Constitutional Court considers it appropriate to point out that until the time when Constitutional Court judgment of 4 December 1996, no. 2/1997 Coll., was issued, inequality existed in the de facto opportunity of entitled persons to exercise restitution claims under Act no. 87/1991 Coll., because the same claims of entitled persons were satisfied in different ways.

As stated in the reasoning of Constitutional Court judgment no. 2/1997 Coll., Act no. 87/1991 Coll., in § 5 par. 5, assumed a possible conflict of the interests of several entitled persons, because it assumed that the claims of some persons entitled under the Act would be satisfied, while the claims of others would not be. The Constitutional Court respected the will of the legislature expressed in that Act, and emphasized that the Act offered a solution for the resulting conflict of interests or claims of entitled persons by expressly establishing the right of unsatisfied entitled persons to exercise their claims against satisfied entitled persons in court, though by a one-year preclusive deadline.

The fact that the legislature exposed satisfied entitled persons to that risk is, in the Constitutional Court’s opinion, quite appropriate, because it is done fully in accordance with the purpose of the statute, which pursues the mitigation of the consequences of property and other crimes from the period 1948-1989, and the trend to give priority to the constitutional principle of equality and allow all entitled persons to satisfy their claims in the scope granted them by law, regardless of the fact that a thing was already issued to some of them. The purpose and trend of Act no. 87/1991 Coll. are such important dominant features, that in light of them exercising one’s acquire rights or the principles of retroactivity, including in view of the already cited positions of expectation on the part of satisfied entitled persons, exposed by law to the disadvantageous risk of conflict with the interests of unsatisfied entitled persons, appears inappropriate.

CZECH REPUBLIC CONSTITUTIONAL COURT JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

A Panel of the Constitutional Court, consisting of the Chairman Vladimíra Kůrka and judges Jiří Mucha and Jan Musil, decided, on 22 March 2007, without a hearing, without the presence of the parties, in the matter of a constitutional complaint

from the petitioner Ing. M. H., represented by JUDr. L. Ch., attorney, against a decision of the Municipal Court in Prague of 28 June 2005 ref. no. 25 Co 126/2005-317, and against a decision of the Supreme Court of the CR of 31 May 2006 ref. no. 28 Cdo 3042/2005-336, with the participation of 1) the Municipal Court in Prague and 2) the Supreme Court of the CR, as parties to the proceedings, as follows:

The constitutional complaint is denied.

REASONING

I.

In the constitutional complaint, which was delivered to the Constitutional Court on 7 July 2006, the petitioner seeks the annulment of a judgment of the Municipal Court in Prague, of 28 June 2005 ref. no. 25 Co 126/2005-317, as well as a decision of the Supreme Court of the CR, of 31 May 2006 ref. no. 28 Cdo 3042/2005-336, due to violation of Art. 11 and Art. 36 par. 1 of the Charter of Fundamental Rights and Freedoms (the “Charter”), and Art. 6 par. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the “Convention”) and Art. 1 of Protocol no. 1 to the Convention.

The Constitutional Court states that the timely filed constitutional complaint meets all the statutory formal requirements, and therefore nothing prevents it from reviewing and deciding the matter on the merits.

To review the justification of the petition, the Constitutional Court requested the file kept at the Municipal Court of Prague 5 as file no. 7 C 151/2003.

From the file, the Constitutional Court determined that in a complaint filed with the District Court for Prague 5, the plaintiff, MUDr. Milada Marková, in her final proposed judgment, sought from the defendant, Ing. Miloš Havlas (the “petitioner” in the proceeding before the Constitutional Court) payment of CZK 2,429,666.60 with late payment interest of 26% from 22 December 1997 until payment; the plaintiff also asked the court to order the defendant to hand over to her 3/16 of building reg. no. 1064 with land parcel no. 87, of 633 m², recorded on title deed no. 2235 for Prague 5, land registration zone Smíchov, at the Land Registry Office Prague-City. The matter was successively decided by courts of all three levels.

The Municipal Court for Prague 5, bound by the legal opinion of the Supreme Court of the CR stated in the judgment of the Supreme Court of the CR of 28 January 2003 ref. no. 28 Cdo 258/2002-195, and the judgment of 12 January 2005 ref. no. 7 C 151/2003-293, ruled to stop the proceedings in the part wherein the plaintiff sought from the defendant 1/48 of building no. 1064 with land parcel no. 87, measuring 633 m², registered on title deed no. 2235 pro for the municipality of Prague 5, registration area Smíchov, at the Land Registry Office Prague-City. The judgment also separated out for separate treatment the part of the complaint in which the plaintiff sought from the defendant payment of CZK 2,429,666.60. At the same time, the court of the first level granted the complaint by ordering the defendant to hand over to the plaintiff 9/48 of building no. 1064, built on land

parcel no. 87 and 9/48 of land parcel no. 87, measuring 633 m² - built-up area and courtyard, registered on deed no. 2235 in the municipality Prague 5, registration area Smíchov, at the Land Registry Office Prague-City. The court also decided that the plaintiff was required to pay the defendant CZK 46,475 in compensation of court costs, and the defendant was required to pay the Czech Republic court fees of CZK 1,000.

The contested judgment of the Municipal Court in Prague of 28 June 2005 ref. no. 25 Co 126/2005-317 confirmed the judgment of the first-level court in the verdict granting the matter on the merits and in the verdict on court fees. The first-level court's verdict concerning court costs was changed, to not grant the plaintiff compensation of court costs. The appellate court's judgment also decided that the plaintiff would not be granted costs of the appeal proceedings.

The defendant filed an appeal on a point of law against the appellate court's judgment, which was denied by decision of the Supreme Court of the CR of 31 May 2006 ref. no. 28 Cdo 3042/2005-336; it was also decided that neither of the parties was entitled to compensation of court costs for the appeal.

II.

In the constitutional complaint the petitioner objects that the contested decision of the Supreme Court of the CR, inconsistently with the right to a fair trial and the principle of parties being equal in proceedings, prevented him from exercising his right to file an appeal on a point of law [in Czech "dovolání" - also referred to in the translation as a "second appeal"] in the statutory scope specified in § 237 par. 1 let. b) of the Civil Procedure Code (the "CPC"), i.e. on the grounds that the decision was based on factual findings that, according to the file, have no substantial support in the evidence presented, only with reference to the previous judgment of the Supreme Court of the CR issued in the same matter, which, however, was issued on the basis of the plaintiff's appeal on a point of law, where the second appellate court was bound by the scope of the grounds stated for that second appeal.

The petitioner states that in his appeal on a point of law against the judgment of the second-level court he expressly stated that an appeal on a point of law is permissible under § 237 par. 1 let. b) CPC, because the judgment of the second-level court confirmed the decision of the first-level court, in which that court decided the matter on the merits differently than it had in an earlier (not the foregoing) judgment, because it was bound by the legal opinion of the second appellate court that had annulled the earlier decision. In addition, the petitioner applied the grounds for an appeal on a point of law under § 237 par. 1 let. c) in connection with § 237 par. 3 CPC, because the contested judgment of the appellate court is of fundamental legal importance to the merits of the matter, in particular because it resolves a legal issue inconsistently with substantive law, and a legal issue that had not yet been resolved in the decision-making of the second appellate court, or had been resolved differently by the second appellate court for the appeal on a point of law and the appellate court for the ordinary appeal. The petitioner also states that in his appeal on a point of law against the judgment of

the appellate court he expressly stated, as grounds for the appeal on a point of law, that the proceedings are afflicted by a defect that could result in an incorrect decision on the merits under § 241 and par. 2 let. a) CPC, that the judgment of the appellate court rests on an incorrect legal assessment of the matter under § 241a par. 2 let. b) CPC, as well as the fact that the judgment of the appellate court is based on factual findings that, according to the file, do not have substantial support in the presented evidence, under § 241a par. 3 CPC.

The petitioner believes that the decision of the Supreme Court of the CR contains an incorrect legal opinion regarding the permissibility and scope of grounds for an appeal on a point of law and is inconsistent with § 237 and § 241a of the CPC. The second appellate court allegedly did not evaluate the petitioner's grounds for the appeal on a point of law in their full scope and only repeated the conclusions of the first appellate court, without giving an opinion on them. The petitioner believes that if the second appellate court, inconsistently with § 237 par. 1 let. b) CPC in connection with § 241a par. 3 of the CPC evaluated his appeal on a point of law as regards permissibility and as regards the scope of the grounds to the detriment of the appellant, it violated his right to a fair trial under Art. 36 par. 1 of the Charter.

According to the petitioner, the first appellate court's judgment is non-reviewable under § 157 par. 2 of the CPC, and incomplete in the factual findings that are decisive for the result of adjudication on the merits, because it lacks a factual finding on the date when a call was delivered to the particular addressee, although the claim was not undisputed. In addition, according to the petitioner, the first appellate court's judgment is extremely inconsistent with substantive law, and rests on an incorrect legal evaluation of the matter also regarding the issue of the plaintiff's failure to exercise a claim under § 5 par. 5 of Act no. 87/1991 Coll., on Extra-Judicial Rehabilitation, as amended by later regulations (Act no. 87/1991 Coll.).

The petitioner states that the plaintiff did not call on the defendant to hand over things under § 5 par. 5 of Act no. 87/1991 Coll. in the preclusive period beginning with the issuance of the original judgment denying her claim to have a thing handed over, or the date of legal effect of that judgment, i.e. from 16 August 1996 to 15 July 1997, whereby her claim to have a thing handed over expired. Because the plaintiff did not claim, either in the complaint or in the supplement to it (as the factual findings of the judgments of the first- and second-level courts indicate), that she did not file, or did not deliver, after issuance of the legally effective judgment of the District Court for Prague 5 of 16 August 1996 ref. no. 16 C 228/95-24, or after the judgment went into legal effect, i.e. 4 November 1996, the defendant a new call to hand over things, that those that were the subject matter of the original proceeding, according to the petitioner this is a matter *res judicata*, which can not be newly adjudicated under § 159a par. 4 a par. 5 of the CPC.

Finally, the petitioner objects that the first appellate court's judgment is extremely inconsistent with the simple law and the presented evidence as regards the issue of whether the plaintiff is an heir under a will, which contains an exclusive list of things to be handed over, to the benefit of the defendant, and

which could not be submitted by an entitled party under § 3 par. 4 let. a) of Act no. 87/1991 Coll., or under § 3 par. 4 let. b) second sentence after the semi-colon of the Act, due to the probate matter being stopped due to insufficient assets under § 32 of the Notarial Code, as amended.

According to the petitioner the appellate court's judgment is inconsistent with Art. 11 of the Charter and with Art. 1 of the Protocol to the Convention, because it orders the petitioner, after the Convention went into effect, and with the coming into effect of a new legal framework as of 15 January 1997, to hand over a thing without compensation to another person, a thing that was issued to his ownership, and which was bequeathed to the petitioner as the sole owner by the true will of the original owner, even though the probate proceedings concerning the original owner's will did not take place, as a result of the property to be handed over being taken away.

III.

The Constitutional Court points out that its role is the protection of constitutionality (Art. 83 of the Constitution of the CR). The Constitutional Court is not part of the system of general courts, and does not have the right to oversee the decision-making activities of the general courts. It does not examine possible violation of ordinary rights protected by simple law, unless that violation is simultaneously a violation of a constitutionally guaranteed fundamental right or freedom. The Constitutional Court is entitled to intervene in the decision-making activity of the general courts only if a legally effective decision by these bodies violated constitutionally guaranteed fundamental rights or freedoms.

Thus, the Constitutional Court reviewed the contested decisions, as well as the proceedings that came before them, from the point of view of the objections raised by the petitioner in the constitutional complaint, and taking into account the fact that it could review only constitutionality, it concluded that the constitutional complaint is unjustified.

As regards the petitioner's objections and his claim of violation of his fundamental rights and freedoms under Art. 11, Art. 36 par. 1 of the Charter, as well as Art. 1 of Protocol no. 1 to the Convention, the Constitutional Court considers it appropriate to point out again that until the time when Constitutional Court judgment of 4 December 1996, no. 2/1997 Coll., was issued, inequality existed in the de facto opportunity of entitled persons to exercise restitution claims under Act no. 87/1991 Coll., because the same claims of entitled persons were satisfied in different ways. In other words, in view of the deadline specified in § 5 par. 5 of Act no. 87/1991 Coll. (the version in effect from 1 April 1991 to 15 January 1997), the cited provision was an "obstacle" to the equal rights of persons who were granted the status of entitled persons by Constitutional Court judgment of 12 July 1994, no. 164/1994 Coll.

As stated in the reasoning of Constitutional Court judgment no. 2/1997 Coll., Act no. 87/1991 Coll., in § 5 par. 5, assumed a possible conflict of the interests of several entitled persons, because it assumed that the claims of some persons

entitled under the Act would be satisfied, while the claims of others would not be. The Constitutional Court respected the will of the legislature expressed in that Act, and emphasized that the Act offered a solution for the resulting conflict of interests or claims of entitled persons by expressly establishing the right of unsatisfied entitled persons to exercise their claims against satisfied entitled persons in court, though by a one-year preclusive deadline. Thus, if the legislature quite intentionally exposed satisfied entitled persons to the risk that their satisfied claims would subsequently be reduced by the claims of as yet unsatisfied entitled persons, the Constitutional Court emphasized, it did so with the knowledge that this was taking place in accordance with the purpose and essence of Act no. 87/1991 Coll., i.e. to allow not only a theoretical, but also an actual opportunity for all entitled persons to satisfy their restitution claims, in the scope recognized by statute, because it took as its starting point the fact that property can be returned only to its rightful owners.

The fact that the legislature exposed satisfied entitled persons to that risk is, in the Constitutional Court's opinion, quite appropriate, because it is done fully in accordance with the purpose of the statute, which pursues the mitigation of the consequences of property and other crimes from the period 1948-1989, and the trend to give priority to the constitutional principle of equality and allow all entitled persons to satisfy their claims in the scope granted them by law, regardless of the fact that a thing was already issued to some of them. The purpose and trend of Act no. 87/1991 Coll. are such important dominant features, that in light of them exercising one's acquire rights or the principles of retroactivity, including in view of the already cited positions of expectation on the part of satisfied entitled persons, exposed by law to the disadvantageous risk of conflict with the interests of unsatisfied entitled persons, appears inappropriate. In this context, if it were even possible to consider so-called "acquired" rights, because conceptually these are more newly-constituted rights, newly because it takes place primarily on the basis of other substantive law regulations, then evidently there is an appropriate argument that even at the time they were constituted the rights of these entitled persons, in view of the possibility of the statutorily foreseen conflict with the interests of other entitled persons, a "risk" subtext; in other words, these entitled person necessarily had to expect the consequences specified in § 5 par. 5 of the Act. Therefore, analogously, the objection of retroactivity will also not stand, because the claims of satisfied entitled persons, given the existence of § 5 par. 5 of the Act, were recognized on the condition that the extent of satisfaction of these claims will be reduced if they conflict with the claims of unsatisfied entitled persons (see Constitutional Court judgment no. 2/1997 Coll., Constitutional Court decision file no. III. US 131/04, and Constitutional Court decision file no. I. US 60/2000).

As regards the petitioner's claim that Article 1 of Protocol no. 1 to the Convention was violated, we must point out that Article 1 of Protocol no. 1 to the Convention primarily requires that intervention by the state authorities into the exercise of a right to protect property be lawful. The second sentence of the first paragraphs allows the possibility of deprivation of possessions only "subject to the conditions provided for by law," and the second paragraph recognizes the state's right to control the use of property through "laws." Moreover, the principle of a law-based state, as one of the foundations of every democratic society, permeates all the

articles of the Convention [see, e.g. the decision of the European Court of Human Rights (the “European Court” in the matter Pincová and Pinc v. the Czech Republic, 2002, par. 45 et seq.).

As regards the restitution laws of the Czech Republic being in accordance with the Convention, the European Court of Human Rights takes the position that the Convention does not impose any restrictions on states’ liberty as regards regulating the scope of legal regulations that they may enact concerning property restitution and setting conditions under which they will permit the return of ownership rights to persons who have been deprived of them.

The petitioner was given an obligation to hand over property under Act no. 87/1991 Coll., whose § 5 par. 5 allows so-called “overlooked” entitled persons to exercise their claims against those entitled persons to whom a thing was handed over. We must conclude from this that the condition of lawfulness was met. However, in this regard the Constitutional Court states that evaluation of whether individual conditions set by law were met in a particular case is exclusively in the jurisdiction of the general courts. The Constitutional Court has already considered the legality of this legal framework in the abovementioned judgment no. 2/1997 Coll.

Another issue to evaluate is whether this deprivation of property had a legitimate aim, whether there were grounds of “the general interest” under the second paragraph of Art. 1 of Protocol no. 1 to the Convention. Concerning the term “general interest,” and concerning the freedom of the parties to the Convention when deciding on their own economic and social policy, see the abovementioned judgment of the European Court in the matter Pincová and Pinc (par. 47 et seq.). According to the European Court, a legitimate aim of restitution is to correct the previous illegality of a transfer or other interference in property rights by returning a thing to its original legal state, with consequences *ex tunc*. Thus, restitution does not become forced expropriation of property, but an obligation to establish the original legal situation. At the same time, however, the European Court stated the opinion (see par. 58 et seq. of the cited judgment), that the legitimate aim of restitution laws must be implemented so that the mitigation of previous wrongs not cause new disproportionate wrongs. In its opinion, for that purpose the legal framework should make it possible to take into account the circumstances of every individual case so that persons who acquired their property in good faith would not be forced to bear the burden of the responsibility of the state that previously confiscated the property. In that sense, it is necessary to further review whether the petitioner, by handing over the real estate in question, was forced to bear a special and excessive burden, which disrupted the just balance that should exist between the requirements of the general interest on one side and the preservation of the right to protection of property on the other. Of course, the constitutional complaint contains no arguments in that regard. In the Constitutional Court’s opinion, in the present case it is significant that both of the entitled persons, i.e. the petitioner and Milada Marková, were children of the original owner, and thus had the same family relationship to him. In a situation where the Constitutional Court annulled the condition of permanent residence in the Czech Republic (judgment no. 16/1994 Coll.), it can then be considered fair for neither of the entitled persons to be disadvantaged in the circumstances of the case, as regards their share of the restituted property (see also Constitutional Court decision file

no. IV. US 157/05).

The Constitutional Court concludes from the foregoing that the petitioner was not forced, as a result of the decisions contested in the constitutional complaint, to bear a special and excessive burden that would disturb the just balance between the requirements of the general interest on one side and the preservation of the right to protection of property on the other. Thus, there was no violation of Art. 11 of the Charter or Art. 1 of Protocol no. 1 to the Convention.

As regards the contested decision of the Supreme Court of the CR, we can not agree with the petitioner that it deprived him of his right to file an appeal on a point of law in the scope of review defined in § 237 par. 1 let. b) of the CPC. In that decision the Supreme Court of the CR clarified in detail for the petitioner the reasons why it could not agree to the scope of review requested by the petitioner.

As regards the petitioner's other objections [non-reviewability of the judgment of the appellate court, the lack of factual findings about the date of delivery of the call, the objection of incorrect legal evaluation of the matter, the objection of the obstacle of a suspended matter or *res judicata*, the objection concerning meeting the requirements specified in § 3 par. 4 let. a), b) of Act no. 87/1991 Coll. on the part of the petitioner], we can summarize that the petitioner repeats in the constitutional complaint the same objections that he already raised in the previous proceedings before the general courts. The Municipal Court in Prague considered these objections, and explained in detail in its decision why it did not agree with them. As the Municipal Court dealt exhaustively with the petitioner's specific objections, the Constitutional Court does not consider it necessary to repeat the arguments already presented, and refers to the reasoning of that court's decision.

In view of the foregoing, the Constitutional Court states that in this matter the general courts met the requirement of transparency and persuasiveness of the reasoning in their decisions. The Constitutional Court found that the legal conclusions on which the general courts based their decisions were not the result of application and interpretation of legal regulations that went outside the bounds of constitutionality. Obviously, the legal conclusions of the general courts are likewise not extremely inconsistent with the factual determinations made, nor can one conclude that the factual findings were extremely inconsistent with the evidence presented.

The Constitutional Court considers the arguments of the general courts, as presented in the decisions issued in the matter, to be constitutional and understandable, and the Constitutional Court did not find their deliberations to be in any way disproportionate or extreme, which would be the only thing that could justify it in intervening.

Thus, we can not agree with the petitioner that his right to a fair trial was not respected. His complaint was considered by an independent and impartial court that followed procedural regulations that reflect the principles contained in the Convention and in Part Five of the Charter. It is necessary to realize that the scope of the right to a fair trial, per Art. 36 of the Charter, can not be interpreted as a guarantee of success in proceedings. The right to a fair trial means ensuring the

right to fair judicial proceedings, in which all the principles of correct decision-making under the law, in accordance with constitutional principles, are applied.

Based on these facts, the Constitutional Court denied the complaint as an evidently unjustified petition, without a hearing and without the presence of the parties, under § 43 par. 2 let. a) of Act no. 182/1993 Coll., on the Constitutional Court, as amended by later regulations.

Instruction: Decisions of the Constitutional Court can not be appealed.

Brno, 22 March 2007