SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: John Darcy
Tel: 03 88 41 31 56

Date: 18/04/2018

DH-DD(2018)409

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (16/04/2018)

Communication from the Slovak Republic concerning the cases of BOROVSKA and MRAZ AND OTHERS v. Slovak Republic (Applications No. 48554/10, 44019/11)

* * * * * * * * * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1318e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la République slovaque concernant les affaires BOROVSKA et MRAZ ET AUTRES c. République slovaque (requêtes n° 48554/10, 44019/11) ***(anglais uniquement)***

ACTION REPORT

Application No. 44019/11 *Mráz and others v. Slovakia* judgment of 25/11/2014, final on 25/02/2015

Application No. 48554/10 *Borovská v. Slovakia* judgment of 16/02/2016, final on 16/05/2016

I. Introductory case summary

Both judgments concern the same property in issue – plots of land, expropriated in the 1980s by the (then socialist) State. Later a public sports centre was built on it. The applicants are successors in title to a plot of land in the above-mentioned area, having inherited their title from the original owners and seeking to obtain a court order for the removal of the constructions on the land. Their action was examined and determined by the domestic courts and also by the Constitutional Court under Article 127 § 1 of the Constitution. The Constitutional Court declared the complaints inadmissible as being manifestly ill founded. However, in a related case, the proceedings ultimately leading to the Constitutional Court's judgment (III. ÚS 16/2012 of 28 March 2012) concerned claims that were essentially the same as those of the applicants, except that they had been made by a different group of claimants and concerned different plots of land under the same sports centre. In this judgment, the Constitutional Court noted that the restitution laws had not been enacted to terminate the ownership rights of those entitled to restitution, but rather to facilitate their reactivation. Therefore, if property had passed to the State in the given period as a consequence of appropriation without legal title, the original owners had not lost their title and nothing prevented them or their legal successors from asserting it under the general provisions of the Civil Code.

Before the Court, the applicants complained that the proceedings in respect of their property claim had been unfair in that the domestic courts had wrongfully dismissed their claim and had failed to give an adequate response to the argument that, in other similar cases, they had reached a different conclusion. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In its judgment the Court observed that the claimants had a common history and their claims were made through the same legal representation, at around the same time, before the same courts and on the basis of the same arguments. In such circumstances it would appear natural that the claims have analogous outcomes. However, that has not been the case, as the claims have had at least three different types of outcome. In the present and another case, no easement was established at all on the grounds that the claimants had no standing to sue over that matter under the general provisions of the Civil Code. In so far as the present case is concerned, the Court observed that the position ultimately taken by the domestic courts directly contradicted that taken in the first and second categories, in which the courts found no obstacle to establishing an easement under the general provisions of the Civil Code. The Court also observed that the Constitutional Court's judgment of 28 March 2012 was given after the judgments in the present case and that it reveals a continuing and fundamental divide in approaches to an essential legal question within the highest levels of the respondent State's judiciary. This appears all the more striking since the divide concerns a rather fundamental piece of legislation on transformation of the respondent State's legal and constitutional systems, which has been in force for about two decades. The Court concluded that the lack of certainty to which the applicants have been exposed with regard to the case-law pertaining to their standing to sue has had the consequence of

depriving them of one of the fundamental guarantees of a fair trial within the meaning of Article 6 § 1 of the Convention. Other complaints of the applicants were dismissed.

II. Payment of just satisfaction and individual measures

Just satisfaction

Case	Application No.	Date of judgment	Just satisfaction (EUR)	Paid on
Mráz and others	44019/11	25/11/2014	43 100	18 May 2015
Borovská	48554/10	16/02/2016	6 640	18 May 2015, 16 August 2016

Concerning the case of *Mráz and others*, the relevant sum consists of the just satisfaction that was awarded to eight applicants as non–pecuniary damage (EUR 8 x 5 200, in total EUR 41 600) and of the costs and expenses in the sum of EUR 1 500 plus VAT (EUR 300, claimed by the applicants´ lawyer and consequently calculated from the sum of EUR 1 500).

Concerning the case of *Borovská,* the relevant sum consists of the just satisfaction awarded to the applicant Ms. Borovská in the sum of EUR 5 200 as non-pecuniary damage, cost and expenses, in the sum of EUR 1 200 plus VAT (EUR 240 claimed by the applicant´s lawyer consequently calculated from the sum of EUR 1 200).

The Government note that pursuant to section 228 § 1 (d) of the Code of Civil Procedure, civil proceedings can be reopened on the ground that the Court has found a violation of the requesting party's Convention rights where the civil proceedings in question were concluded by means of a judgment. As the violations found by the Court concerned the right of the applicants to a fair trial, the applicants have taken the advantage of the possibility to request the reopening of the impugned proceedings, referring to the present judgments of the Court. The request was assessed by the Košice I District Court and granted on 3 November 2016. The respondent party to the proceedings lodged an appeal and the case-file was submitted to the Košice Regional Court, which on 13 July 2017 dismissed the appeal and the original proceedings have been reopened with final and binding effect.

III. General measures

a) Publication and dissemination

The judgments have been published in the Judicial Revue (*Justičná Revue*) No. 4/2015 and No. 2/2016. The judgments were sent by the letter of the Minister of Justice to the President of the Constitutional Court and to the President of the Supreme Court to inform all constitutional and supreme-court judges about the judgments. They were also sent to the relevant domestic court (Košice I District Court).

b) Legislation

According to the Court´s Act (Law No. 757/2004 Coll.), the Supreme Court of the Slovak Republic four divisions: criminal, civil, commercial and administrative. According to Article 21 of this Act,

these divisions give opinions with the aim of unifying interpretation of laws and other generally binding legal regulations upon a proposal presented by the presiding judge of a division, the Supreme Court President or the Minister of Justice if there are interpretative differences in the decisions of the lower courts.

c) Practice of the Supreme Court

In a civil case similar to that of the applicants, the plaintiffs claimed the removal of the constructions on the plot of land previously expropriated by the state for a sports centre, or alternatively, the establishing of the easement of access to the plot of land, whose ownership had been disputable. Even though the District Court of Košice I, with a judgment delivered in August 2008, established the ownership of the plot of land in favour of the plaintiffs, it eventually dismissed their claim on the ground that neither the defendants were the owners of the constructions, nor the construction could be defined as "real property" protected under the Civil Code. The Regional Court upheld this judgment in May 2010, albeit on different grounds, pointing out that the restitution law was *legis specialis* in such cases in respect of the general rules under the Civil Code. The plaintiffs lodged an appeal on points of law to the Supreme Court claiming that their ownership should have been provided with the protection according to the Civil Code. In its decision (No. 4 Cdo 448/2013 of 20 January 2015), the Supreme Court pointed out the conclusions of the judgment of the Constitutional Court (no. III. ÚS 16/2012) in respect of property that had passed to the State as a consequence of appropriation without legal title, quashed the decision of the Regional Court and returned the case back to the lower level.

In another similar case, the plaintiffs sought to establish the easement of access to the plot of land. The District Court granted their action, however, the Regional Court cancelled this judgments and ultimately dismissed their claim. The plaintiffs lodged an appeal on points of law to the Supreme Court. By the decision of 19 July 2011 the Supreme Court quashed the judgment of the Regional Court and returned the case to the lower level. Afterwards, the Regional Court granted the action of the plaintiffs. However, the Prosecutor General lodged an extraordinary appeal on points of law in favour of the defendants, arguing with the case-law preceding this case. By the judgment (No. 2M Cdo 4/2014 of 29 February 2016) the Supreme Court dismissed the extraordinary appeal of the Prosecutor General. In its reasoning it pointed out the development of the relevant case-law in these matters and ultimately observed that in the cases of confiscation of the person´s property without any legal title by the state, this person did not lose his/her right to such property and still has a possibility to claim the protection of the ownership to this property according to the general civil law rules.

As evident from the aforementioned case-law of the Supreme Court, the latter has consolidated its practice with that of the Constitutional Court in accordance with judgment no. III. ÚS 16/2012.

d) Other general measures

The Judicial Academy regularly organises seminars and workshops concerning the application of the judgments of the Court, focusing on problems specifically highlighted in the present judgments of the Court. The lecturer is the Agent of the Government of the Slovak republic, alternatively the Co-Agent of the Government of the Slovak republic. The following seminars were held:

- 12 January 2015 (Pezinok) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts organized for the civil judges;

- 29 January 2015 (Banská Bystrica) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 9 February 2015 (Košice) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 24 September 2015 (Košice) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges;
- 26 October 2015 (Pezinok) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts organized for the civil judges;
- 26 November 2015 (Omšenie) – taking part at the meeting of the judges of the region of the Žilina Regional Court;
- 10 December 2015 (Banská Bystrica) – the seminar concerning the latest case-law of the Court and its impact on the case-law of the domestic courts, organized for the civil judges.

IV. Conclusions of the respondent State

It follows from the above-mentioned that the problem highlighted by the Court in the present judgments was not based in the legislation but rather in the different case-law of the domestic courts and the courts of higher instance did not remedy the situation. Therefore, the Government are of the opinion that the reopening of the proceedings is the most effective way of execution of this judgment. As to the occurring of the similar violations in the future, the Government state that measures taken (informing of the judges about the present judgments and organizing regular seminars concerning the newest case-law of the Court, as well as the development in the recent case-law of the Supreme Court cited above) are to prevent similar violations in the future.

As follows, the Government consider that the Slovak Republic has thus complied with their obligations under Article 46 § 1 of the Convention.

In Bratislava, 16 April 2018

Marica Pirošíková
Agent of the Slovak Republic
before the European Court of Human Rights