



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1972/04
by Johanna KAMMERLANDER
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 4 May 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Registrar*,

Having regard to the above application lodged on 14 January 2004,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Johanna Kammerlander, is an Austrian national, who was born in 1947 and lives in Wien. She is the widow of Mr Karel Des Fours Walderode who owned real estate in northern Bohemia.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant's late husband was the owner of real estate in *Daliměřice, Bukovina, Besedice, Chlístov u Železného Brodu, Jenišovice u Jablonce nad Nisou, Koberovy, Líšný, Vranové, Vráť, Železný Brod and Žďárek (included in the domain of Hrubý Rohozec)*. These estates were confiscated from him pursuant to Presidential Decree no. 12/1945 on 21 June 1945 by the former Turnov District National Committee (*okresní národní výbor*) on 6 August 1945. In 1949 some of the estates were transferred to the ownership of natural persons in an assignment procedure.

In an official document issued on 16 December 1947, the former Ministry of the Interior (*ministerstvo vnitra*) certified, with reference to section 2(2) of Presidential Decree no. 33/1945, that the applicant's late husband had maintained his Czechoslovak citizenship. On 22 December 1947 the Prague Municipal Office (*magistrát hlavního města Prahy*) delivered a certificate of Czechoslovak citizenship (*osvědčení o československém státním občanství*) to the applicant's late husband.

On 25 August 1992 the Ministry of the Interior delivered an attestation of the applicant's husband's naturalisation (*listina o udělení státního občanství*), declaring that the latter had become a citizen of the Czech and Slovak Federal Republic by virtue of section 1(1) of Law no. 39/1969.

Restitution proceedings before the Semily Land Office

On 24 November 1992 the applicant's late husband entered into a restitution agreement with a legal person, which had used the estates in *Daliměřice* and *Bukovina* on the basis of the Land Ownership Act. By a decision of 10 March 1993, the Semily Land Office (*pozemkový úřad*) approved the agreement. On 28 September 1993 the applicant's late husband took possession of the estates, i.e. 87 ha of forest.

On 30 July 1993 the Ministry of Agriculture (*ministerstvo zemědělství*) declared inadmissible the Turnov Town's (*Město Turnov*) appeal against the Land Office's decision.

On 18 February 1994 the Minister of the Interior refused the Prosecutor General's (*Generální prokurátor*) request to declare null and void the certificate of naturalisation of the applicant's late husband.

On 16 June 1994 the Chief Executive (*přednosta*) of the Semily District Office (*okresní úřad*) excluded for bias the head of the Land Office from examining the restitution claim. On 22 November 1994 the Minister of Agriculture quashed this decision and, on 8 December 1994, he excluded for bias the Chief Executive from dealing with this restitution case.

On 22 December 1994 the Semily District Prosecutor (*okresní státní zástupce*) brought an action in the Semily District Court (*okresní soud*) seeking to declare the restitution agreement concluded between the applicant's late husband and the legal person null and void. He argued that the applicant's late husband did not satisfy the requirements laid down in section 2(1) of the Restitution Act.

On 19 April 1995 the Chief Executive of the District Office again excluded for bias the head of the Land Office from examining the restitution claim. In the meantime, on 18 April 1995 the applicant's husband had challenged the Chief Executive for bias. By a decision of 15 August 1995, the Minister of Agriculture rejected his motion, finding that the allegation of the applicant's husband was insufficient to ground a challenge for bias.

On 17 October 1995 the Central Land Office (*Ústřední pozemkový úřad*) dismissed a request by the Turnov Town to review the Land Office's decision of 10 March 1993.

By a decision of 23 November 1995, the Minister of Agriculture quashed the Land Office's decision of 10 March 1993 on the ground that the Land Office had not sufficiently examined the question of whether the applicant's husband had satisfied one of the conditions set out in section 2(1) of the Restitution Act, namely his "permanent abode" in the Czech Republic.

On 5 February 1996 the District Court stayed the proceedings on the District Prosecutor's action filed on 22 December 1994, finding that the Land Office's decision of 10 March 1993 had been, in the meantime, quashed by the Ministry of Agriculture, and that the restitution case was being dealt with again by the Land Office.

On 9 February 1996 Law no. 30/1996 entered into force by which the Restitution Act was amended. Following the judgment of the Constitutional Court of 13 December 1995, which had found unconstitutional the condition of permanent residence within the territory of the Czech Republic for persons claiming restitution laid down in the Land Ownership Act and in the Restitution Act, the Act removed this requirement but made absolute the condition of Czechoslovak or Czech citizenship for claimants of restitution. The new section 2(3) of the Restitution Act provided the following:

"A rightful claimant under sub-section 1 [i.e. person who is a citizen of the Czech and Slovak Federal Republic and lost his or her property under Presidential Decrees nos. 12/1945 and 108/1945, and was loyal to the Czechoslovak State and reacquired (Czechoslovak) citizenship either under Acts nos. 245/1948, 194/1949 and 34/1953 or Act no. 33/1945] can claim restitution provided that he or she was a Czech citizen on 31 January 1996 and acquired Czech citizenship either pursuant to Acts nos. 245/1948, 194/1949 or 34/1953, or pursuant to Presidential Decree no. 33/1945, and who did not lose Czech citizenship before 1 January 1990."

On 8 March 1996 the Land Office, having applied the amended Restitution Act, refused to approve the restitution agreement made by the applicant's late husband. It held that he had acquired Czech citizenship on 25 August 1992, pursuant to section 10(3) of Law no. 39/1969, which was not cited in section 2 of the Restitution Act. By a judgment of 25 March 1998, the Prague Municipal Court (*městský soud*) upheld the Land Office's decision.

The case was referred back to the Land Office which gave a new decision on 4 September 1998, finding that the applicant's late husband was

not the owner of the real estate at issue. On 28 January 2000 the Municipal Court upheld the Land Office's decision.

On 6 February 2000 the applicant's late husband died, designating the applicant as his universal heir.

On 2 November 2001 the United Nations Human Rights Committee considered communication (no. 747/1997) of 21 November 1996 made by the applicant and her late husband, concerning the *Hrubý Rohozec* estates, and in which the claimants submitted, *inter alia*:

“3.1 ... that the restitution of property ... was annulled for political and economic reasons and the legislation was amended to exclude [the applicant's late husband] from the possibility of obtaining redress for the confiscation of his property. ... this constitutes a violation of Article 26 of the Covenant, as well as Article 14, paragraph 1, because of political interference with the legal process (such as the Minister's decision of 23 November 1995). In this context, the author also refers to the long delays in hearing his case.”

3.2 Further, he claims that the requirement of continuous citizenship for the restitution of property is in violation of Article 26 of the Covenant ...

5.2 He emphasizes that he retained his Czech citizenship under Beneš Decree no. 33/1945, and that thus all the requirements of the original Law no. 243/1992 had been fulfilled when the Land Office approved the return of his property. The author notes that the State party remains silent about amendment no. 30/1996, introducing a further condition of continuous Czech citizenship, which did not apply when his restitution contract was approved in 1993. ...

5.5 With regard to the petition received by the Ministry of Agriculture from local residents, the author points out that the decision of the Semily Land Office was handed down on 10 March 1993 and the petition against it was submitted on 7 August 1995, ... The Minister of Agriculture's order quashing the Semily Land Office's earlier decision followed on 23 November 1995 ...

5.7 On 25 March 1998, the Prague City Court rejected the author's appeal against the refusal of the restitution of his property by the Land Office in 1996, since he no longer fulfilled the requirements added to the law in amendment no. 30/1996. On 24 July 1998, the author filed a complaint ... with the Czech Constitutional Court.

5.8 ... even if the Constitutional Court would find in his favour, the decision would again be referred to the first instance (the Land Office), thus entailing considerable further delay ... According to the author, the whole procedure could easily take another five years. He considers this to be unjustifiably long, also in view of his age.”

The United Nations Human Rights Committee concluded that the Czech Republic had violated Article 26 of the Covenant, in conjunction with Article 2 of the Covenant. It held in particular:

“8.2 The Committee has noted the author's claims that the State party has violated Article 14, paragraph 1, of the Covenant because of alleged interference by the executive and legislative branches of government in the judicial process ... and because of the adoption of retroactive legislation aimed at depriving the author of rights already acquired by virtue of prior Czech legislation and decisions of the Semily

Land Office. With regard to the adoption of retroactive legislation, the Committee observes that, whereas an allegation of arbitrariness and a consequent violation of Article 26 are made in this respect, it is not clear how the enactment of Law no. 30/1996 raises an issue under Article 14, paragraph 1. ...

8.3 With regard to the author's allegation of a violation of Article 26 of the Covenant, the Committee begins by noting that Law no. 243/1992 already contained a requirement of citizenship as one of the conditions for the restitution of property and that the amending Law no. 30/1996 retroactively added a more stringent requirement of continued citizenship. The Committee notes further that the amending Law disqualified the author and any others in this situation, who might otherwise have qualified for restitution. This raises an issue of arbitrariness and, consequently, of a breach of the right to equality before the law, equal protection of the law and non-discrimination under Article 26 of the Covenant.”

The Committee referred in this respect to its Views in cases nos. 516/1993 (*Simunek et al.*), 586/1994 (*Josef Adam*) and 857/1999 (*Blažek et al.*) that a legal requirement of citizenship for the restitution of property previously confiscated by the authorities made an arbitrary - and consequently discriminatory - distinction between individuals who were equal victims of prior State confiscation, in violation of Article 26 of the Covenant. In its conclusions, the Committee held:

“9.2 In accordance with Article 2, paragraph 3(a) of the Covenant, the State party is under an obligation to provide the late author's surviving spouse, Dr. Johanna Kammerlander, with an effective remedy, entailing in this case prompt restitution of the property in question or compensation there for, and, in addition, appropriate compensation in respect of the fact that the author and his surviving spouse have been deprived of the enjoyment of their property since its restitution was revoked in 1995. The State party should review its legislation and administrative practices to ensure that all persons enjoy both equality before the law as well as the equal protection of the law.

9.3 The Committee recalls that the Czech Republic, by becoming a State party to the Optional Protocol, recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to Article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. Furthermore, the Committee urges the State party to put in place procedures to deal with Views under the Optional Protocol.

9.4 In this connection, the Committee wishes to receive from the State party, within 90 days following the transmission of these Views to the State party, information about the measures taken to give effect to these Views. ...”

On 14 March 2002 the Constitutional Court (*Ústavní soud*), upon the applicant's constitutional appeal (*ústavní stížnost*), held that the Land Office's decision of 4 September 1998 and the Municipal Court's subsequent judgment of 28 January 2000 violated the principle of equality in law (*zásada rovnosti v právech*) as provided for in Article 1 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*)

(hereinafter “the Charter”), and the principle of the rule of law (*zásada právního státu*). The court therefore quashed the decisions of both the lower administrative and judicial instances.

By an extensively reasoned decision of 19 March 2003, the Land Office decided that the applicant was not the owner of the real estate at issue.

It appears that the case is pending before the Municipal Court, to which the applicant appealed.

Restitution proceedings before the Jablonec nad Nisou Land Office

On 14 July 1992 the applicant's late husband lodged a claim for the restitution of the real estate in *Besedice, Chlístov u Železného Brodu, Jenišovice u Jablonce nad Nisou, Koberovy, Líšný, Vranové, Vráty and Železný Brod* with the Jablonec nad Nisou Land Office.

On 17 June 1996 the Land Office decided that he was not the owner of these estates, finding that he had not reacquired Czech citizenship by virtue of one of the statutes specified in section 2(1) of the Restitution Act, as amended by Law no. 30/1996.

On 25 March 1998 the Prague Municipal Court upheld this decision.

On 13 June 2001 the Constitutional Court, upon the applicant's constitutional appeal, held that the Land Office's decision of 17 June 1996 and the Municipal Court's subsequent judgment of 25 March 1998 violated the principles of legal certainty and the protection of acquired rights inherent to Article 36 §§ 1 and 2 of the Charter. The court therefore quashed the decisions of both the lower administrative and judicial instances. At the same time, it dismissed the applicant's request to repeal sections 2 and 2(3) of the Restitution Act, as amended by Law no. 30/1996.

Restitution proceedings before the Liberec Land Office

On 23 November 1992 the applicant's late husband lodged a claim for the restitution of the estate in *Žďárek u Sychrova* with the Liberec Land Office, which dismissed it on 8 October 1996 on the ground that the applicant's late husband did not satisfy the requirement for restitution claimants laid down in sections 2(1) and 2(3) of the Restitution Act, as amended by Law no. 30/1996.

By a judgment of 28 January 1998, the Municipal Court quashed this decision and returned the case to the Land Office which, on 9 December 1998, again decided that the applicant's late husband was not the owner of the real estate at issue.

On 28 January 2000 the Municipal Court upheld this decision.

On 14 January 2003 the Constitutional Court, on the applicant's constitutional appeal of 2 July 2001, quashed both the lower administrative and judicial decisions, holding that they violated the applicant's rights

guaranteed by Article 36 §§ 1 and 2 of the Charter, as well as the principles of the rule of law, legal certainty and the protection of acquired rights.

On 19 November 2003 the Land Office stayed the administrative proceedings on the ground that a preliminary question had been submitted to the Ministry of the Interior on 11 November 2003.

B. Relevant domestic law

The Restitution Act (no. 243/1992)

This Act is a *lex specialis* in relation to the Land Ownership Act.

Section 2(1) provides that any natural person who is a citizen of the Czech and Slovak Federal Republic and lost his or her property under Presidential Decrees nos. 12/1945 and 108/1945, and was loyal to the Czechoslovak State and reacquired (Czechoslovak) citizenship either under Laws nos. 245/1948, 194/1949 and 34/1953 or Law no. 33/1945, is entitled to claim restitution of any of his or her property which passed into State ownership in the circumstances referred to in the Land Ownership Act.

Section 2(3) provides that, if such an entitled person died or was declared to be presumed dead before the time-limit set out in Section 11a, restitution can be claimed by natural persons who are citizens of the Czech and Slovak Federal Republic and who are at the same time, in order of precedence, a) testamentary heirs who acquired the whole of the estate, b) testamentary heirs who acquired part of the estate, c) children or spouses, d) parents, or e) brothers or sisters or their children. Section 11a provides that a person who satisfied the requirements set out in this Act on 29 May 1992 could file a restitution claim until 31 December 1992. His or her right lapsed if a claim was not lodged within this time-limit.

Law no. 30/1996 amending the Land Ownership Act and the Restitution Act

Under section 2(2), amending section 2(3) of the Restitution Act, any natural person satisfying the condition of section 2(1) [i.e. a person who is a citizen of the Czech and Slovak Federal Republic and lost his or her property under Presidential Decrees nos. 12/1945 and 108/1945, and was loyal to the Czechoslovak State and reacquired (Czechoslovak) citizenship either under Laws nos. 245/1948, 194/1949 and 34/1953 or Law no. 33/1945] can claim restitution provided that he or she was a Czech citizen on 31 January 1996 and acquired Czech citizenship either pursuant to Laws nos. 245/1948, 194/1949 or 34/1953, or pursuant to Presidential Decree no. 33/1945, and who did not lose Czech citizenship before 1 January 1990.

Presidential Decree no. 12/1945 on the Confiscation and Expedited Allocation of the Agricultural Property of Germans, Hungarians, traitors and enemies of the Czech and Slovak nations

The decree provides for expropriation, with immediate effect and without compensation, of agricultural property for the purposes of programmed land reform. It concerns agricultural property, including buildings and movable goods, owned by persons of German and Hungarian origin irrespective of their citizenship status.

For the purposes of the land reform, section 1(1) provides, with immediate effect and without compensation, that the property of the following persons shall be confiscated:

a) persons of German and Hungarian origin, irrespective of their citizenship, and b) traitors and enemies of the State.

Section 1(2) provides that the property of persons of German and Hungarian origin who were active in the struggle for the liberation of Czechoslovakia are eligible for exemption from confiscation. Section 1(3) provides that decisions as to whether the property referred to in section 1(2) is exempt from confiscation shall be taken by the District National Committees.

Presidential Decree no. 33/1945 on the Adjustment of the Czechoslovak Citizenship of Persons of German and Hungarian Nationality

By section 1 (1), Czechoslovak citizens of German or Hungarian nationality lost their Czechoslovak citizenship on the day when they acquired German or Hungarian citizenship, pursuant to the legislation enacted by the occupying power. Section 1(2) provided that other Czechoslovak citizens of German or Hungarian nationality lost their Czechoslovak citizenship on the day when the decree came into effect. By section 1(3), the decree was not applicable to Germans and Hungarians who applied for registration as Czechs or Slovaks during the German occupation.

By section 2(1), the Czechoslovak citizenship of the persons referred to in section 1 of this Decree was retained, provided that they proved that they had been loyal to the Czechoslovak State and active in the struggle for its liberation, or had suffered under Nazi or fascist terror, and that they had not done any wrong to the Czech and Slovak nations. Section 2(2) provided that applications to retain Czechoslovak citizenship were to be submitted to the District National Committee or to the appropriate embassy abroad within six months.

Under section 3, persons who lost their Czechoslovak citizenship by virtue of section 1 of the Decree could claim its restoration by applying to the District National Committee or the appropriate embassy abroad.

The Charter of Fundamental Rights and Freedoms

Article 36 §§ 1 and 2 provide in particular that anyone may assert in his or her right before an independent and unbiased court of justice and, in specified cases, before another organ. Anyone claiming that his or her rights have been violated by a decision of an organ of public administration may turn to a court for a review of the legality of that decision, unless the law provides otherwise.

C. Relevant international law*International Covenant on Civil and Political Rights*

Under Article 2 § 1 each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The second paragraph provides that, where not already provided for by existing legislative or other measures, each State Party to the Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant.

Finally, under the third paragraph, each State Party to the Covenant undertakes: (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of a judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted.

Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the restitution proceedings have lasted an unreasonably long time.

2. She further submits that the Semily Land Office approved her late husband's property rights under the Restitution Act on 10 March 1993 and that he took possession of 87 ha of forest. She complains that the Czech Republic has not provided her with an effective remedy, entailing the prompt restitution of the property or compensation, and appropriate compensation for the fact that she and her late husband had been deprived of the enjoyment of their property since its restitution had been revoked in 1995, as indicated by the United Nations Human Rights Committee in its Views no. 747/1997 of 30 October 2001. She invokes in this respect Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the restitution proceedings have lasted an unreasonably long time.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complains under Article 1 of Protocol No. 1 that the Czech Republic has not provided her with an effective remedy, entailing the prompt restitution of the property or compensation, and appropriate compensation for the fact that she and her late husband had been deprived of the enjoyment of their property since its restitution had been revoked in 1995, as indicated by the United Nations Committee in its Views no. 747/1997 of 30 October 2001.

The Court notes that it is not competent to intervene in execution proceedings concerning decisions delivered by international judicial authorities. It further notes that the restitution proceedings initiated by the applicant's late husband in July and November 1992 respectively before the different national administrative authorities have not yet been terminated.

In view of the above, and since the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Akdivar and others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions 1996-IV*, §§ 65-66), it is not for the Court to speculate on the outcome of the restitution proceedings which are currently pending, and the various legal avenues which may become open to the applicant after their termination. This part of the application must

therefore be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the restitution proceedings;

Declares the remainder of the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President