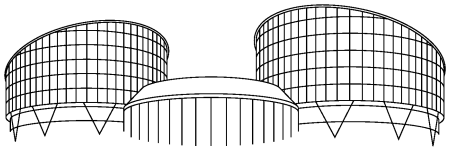

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BALOGH AND OTHERS v. SLOVAKIA

(Application no. 35142/15)

JUDGMENT

STRASBOURG

31 August 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Balogh and Others v. Slovakia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
María Elósegui, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 June and 28 August 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 35142/15) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fifty-one Slovak nationals, whose details are set out in the appendix ("the applicants"), on 9 July 2015.

2. The applicants were represented by Ms O. Szabó, a lawyer practising in Patince. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged, in particular, that their restitution claim, which had been examined in administrative and thereafter judicial proceedings, had not been decided on within a reasonable time and that they had had no effective remedy at their disposal in that respect, in violation of their rights under Article 6 § 1 and Article 13 of the Convention.

4. On 17 May 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Restitution proceedings

5. On 23 December 2004 the applicants and 126 others lodged a claim with the Komárno Land Office, an authority that is now part of the Komárno District Office ("the Land Office"), for restitution of land under the Restoration of Land Ownership Act (Law no. 503/2003 Coll., as amended).

6. On 27 May 2010 the Land Office dismissed the claim on the grounds that all the claimants lacked standing to bring it.

7. On 21 November 2011 the Nitra Regional Court upheld that decision following an administrative-law appeal by the claimants, lodged on their behalf by four individuals.

8. However, following an appeal lodged by the claimants with the Supreme Court, on 29 January 2014 that court quashed the Regional Court's judgment and remitted the case to it on the grounds that the latter had failed to establish the representatives' authority to act on behalf of all the claimants. The proceedings before the Regional Court had been conducted merely in the presence of the designated representatives and the court had failed to summon the claimants in person and to have its judgment served on them. It had thereby breached the claimants' right of access to a court.

9. Accordingly, it became incumbent on the Regional Court to determine anew the claimants' administrative-law appeal against the decision of the Land Office of 27 May 2010. In those proceedings, the court invited the claimants to clarify issues concerning their legal representation with a view to ensuring that they would be represented by a common representative.

10. In a decision of 4 December 2014 the Regional Court issued several rulings. In so far as relevant for the present application, it ruled that the claimants would all be jointly represented by a lawyer who had up until then represented only some of them.

11. On 25 May 2016 the Supreme Court upheld the decision of 4 December 2014 following an appeal lodged by the claimants.

12. The proceedings are still pending before the Regional Court.

B. Constitutional proceedings

13. Meanwhile, on 21 January 2015 the Constitutional Court had rejected a complaint lodged by the applicants about the length of the proceedings in their claim, in so far as they had taken place before the Land Office and the Regional Court. The Constitutional Court held that the length

of the administrative proceedings before the Land Office and of the judicial-review proceedings held before the Regional Court could not be considered together.

Having split the complaint into those two segments, the Constitutional Court rejected the complaint concerning the administrative proceedings on the grounds of non-exhaustion of ordinary remedies. In particular, it noted that the applicants had failed to challenge the alleged inactivity of the Land Office under Article 250t § 1 of the Code of Civil Procedure (CCP) (see paragraphs 19 et seq. in "Relevant domestic law and practice" below).

As regards the judicial-review proceedings, the Constitutional Court dismissed the complaint as manifestly ill-founded. It noted that those proceedings as a whole had lasted some four and a half years. However, the case had been pending on appeal before the Supreme Court for about two years of that period. Although the length of the appellate proceedings had been unsatisfactory, as such it had not been complained of by the applicants, who had limited their compliant to the proceedings before the Regional Court. In addition, the Constitutional Court observed that the proceedings had been procedurally complex on account of the number of claimants. In sum, despite the fact that its judgment had been quashed as flawed, the length of the proceedings before the Regional Court had not been excessive.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution (Constitutional Law no. 460/1992 Coll., as amended)

14. The relevant part of Article 48 § 2 provides:

> "Everyone shall have the right to have his matter ... heard without undue delay ..."

15. Article 127 reads as follows:

> "1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash such decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order such authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may award appropriate financial compensation to the person whose rights under paragraph 1 have been violated."

B. Constitutional Court Act (Law no. 38/1993 Coll., as amended)

16. The relevant part of section 53 reads:

> "1. A[n] [individual] complaint [under Article 127 of the Constitution] is not admissible if the complainant has not exhausted legal remedies or other legal means, which a statute effectively provides to [the complainant] with a view to protecting [the complainant's] fundamental rights or freedoms, and which the complainant is entitled to use under special statute.
>
> 2. The Constitutional Court shall not declare a[n] [individual] complaint inadmissible even if the condition under subsection 1 has not been fulfilled, if the complainant establishes that [he or she] has not fulfilled this condition for reasons worthy of particular consideration."

C. Statement of the Vice-President of the Constitutional Court

17. On 15 June 2016 the Vice-President of the Constitutional Court issued a written statement in response to a request by the Government Agent concerning the admissibility and merits of the present case. He stated that he leaned towards the Constitutional Court's decision in the present case. In particular, he noted that jurisdiction to deal with alleged delays in administrative proceedings was vested in administrative tribunals under Article 250t of the CCP. This excluded the jurisdiction of the Constitutional Court in relation to the length of administrative proceedings as such. However, if an administrative tribunal's decision concerning the length of administrative proceedings was considered to be arbitrary, the Constitutional Court could still review it under Article 127 of the Constitution for compliance with the requirement of fairness. Moreover, as an action under Article 250t of the CCP had no compensatory effect, it could have been complemented by compensation claims under the State Liability Act.

D. Code of Civil Procedure

18. At the relevant time, the rules of procedure for the administrative judiciary were embodied in the 1963 Code of Civil Procedure (Law no. 99/1963 Coll., as amended), in particular its Chapter (*Časť*) 5. Under those rules, by virtue of an amendment that entered into force on 1 January 2003, administrative tribunals had jurisdiction, *inter alia*, to examine complaints concerning the inactivity of public administrative authorities (Section (*Hlava*) 4 – *konanie proti nečinnosti orgánu verejnej správy*).

19. Under Article 250t § 1, any natural or legal person alleging that a public administrative authority was not dealing with a matter in a timely fashion, in breach of the law and without a weighty reason, could apply to

an administrative tribunal for an order instructing the authority concerned to proceed with the matter and to decide on it. However, such a remedy could be pursued only after the exhaustion of all ordinary remedies available, in accordance with the relevant legislation.

20. If an action under Article 250t § 1 was allowed, under paragraph 4 of that Article the administrative tribunal would define an appropriate time-limit, not longer than three months, within which the defendant authority had to take a decision. This time-limit could be extended at the request of the authority concerned.

21. In the event of failure by the authority in question to abide by the time-limit, subject to a repeated request by the party concerned, the administrative tribunal had the power to impose, even repeatedly, a fine of up to 3,280 euros (EUR) on that authority (Article 250u).

E. Practice in respect of actions brought under Article 250t § 1 of the CCP

22. In a case that gave rise to an order of the Bratislava Regional Court of 11 April 2013 (file no. 1S 38/13), the underlying administrative proceedings concerned a restitution claim lodged in 1992.

The claimant brought an action before the Regional Court under Article 250t § 1 of the CCP, complaining of unjustified delays in the administrative proceedings.

On 11 April 2013 the Regional Court allowed the action and ordered the administrative authority dealing with the restitution claim to decide on the matter within sixty days.

23. On 21 August 2014 the claimant lodged a fresh action under Article 250t § 1 of the CCP arguing that the administrative authority had failed to abide by the order of 11 April 2013.

On 27 May 2015 the Regional Court issued a fresh order to the administrative authority to proceed with the matter and to decide on it within three months. At the same time, it imposed a fine on that authority of EUR 1,000.

On 11 September 2015 the administrative authority dismissed part of the restitution claim.

On 19 October 2015 it stayed its examination of the remainder of the claim, inviting a number of institutions to submit relevant documentation, which they did by the end of 2015.

As of November 2016 the examination of the remainder of the claim was on-going.

F. State Liability Act

24. State liability for damage is regulated by the State Liability Act (Law no. 514/2003 Coll., as amended). Its section 3(1)(d) provides that the State is liable for damage which has been caused by maladministration (*nesprávny úradný postup*).

25. Section 9, which deals with compensation for damage caused by maladministration, provides:

> "1. The State shall be liable for damage caused by maladministration. Maladministration includes a public authority's failure to take action or issue a decision within the statutory time-limit, general inactivity in the exercise of public authority, unjustified delays in proceedings, or other unlawful interference with the rights and legally recognised interests of individuals and legal entities.
>
> 2. The right to compensation for damage caused by maladministration is vested in the person who sustained the damage."

26. Section 17 defines the manner and extent of compensation for damage. It provides in its relevant part:

> "1. Damage and lost profit shall be compensated for, unless special legislation provides otherwise.
>
> 2. In the event that the finding of a violation of a right alone is not adequate compensation in view of the loss caused by the unlawful official action or wrongful official conduct, monetary compensation shall also be awarded for non-pecuniary damage, if it is not possible to compensate for it otherwise."

G. Practice in respect of actions brought under the State Liability Act

27. In a judgment of 12 November 2013 the Bratislava Regional Court examined appeal no. 5Co 152/2013 in a case, at the heart of which was the length of administrative proceedings for the issuance of a construction permit.

28. Following an action brought on 19 March 2004 under Article 250t § 1 of the CCP by the person seeking the permit ("the builder"), the Žilina Regional Court issued a decision on 24 January 2008 finding that there had been unjustified delays in the administrative proceedings and ordering the planning authority to proceed and decide on the matter within thirty days.

29. Relying on that judgment, the builder argued that the unjustified delays in the administrative proceedings amounted to maladministration within the meaning of section 9 of the State Liability Act. At the same time, he pointed out that it had taken more than three years and ten months for his action under Article 250t § 1 of the CCP to be determined, and argued that the length of the proceedings on that action alone had amounted to maladministration.

30. In the aforementioned judgment of 12 November 2013 the Bratislava Regional Court upheld the first-instance judgment dismissing those claims. In doing so, it fully endorsed the conclusions of the first-instance court, including that:

- in view of all the circumstances, including the judgment 24 January 2008, there had been maladministration on the part of the planning authority;

- no financial compensation in respect of non-pecuniary damage caused by that maladministration was called for, since the proceedings in respect of the construction permit were still pending and the planning authority could still redress any non-pecuniary damage sustained by the builder by issuing the construction permit he was seeking;

- although the proceedings in the action under Article 250t § 1 of the CCP had lasted nearly four years, there were no statutory time-limits for their completion. Accordingly, there could not have been any maladministration on account of their length. Moreover, the builder could have challenged their length by way of a complaint under Article 127 of the Constitution, which excluded jurisdiction of the ordinary courts in the matter under the State Liability Act;

- furthermore, as the administrative tribunal dealing with the builder's action under Article 250t § 1 of the CCP had no power to deal with the merits of his request for a construction permit, and as he had failed to seek judicial enforcement of the decision of 24 January 2008, the State was not liable for any non-pecuniary damage allegedly caused by the length of the proceedings in the action under Article 250t § 1 of the CCP.

THE LAW

I. THE APPLICANTS T. CSENTEOVÁ, J. KÓSOVÁ, L. MOLNÁR, I. OLLÉ, K. SZABÓ, K.SZÉPE, M. TÁNCZOSOVÁ AND M. VERMESOVÁ

31. In submissions of 29 May, 26 June, 9 July and 26 August 2018 the applicants' lawyer informed the Court that the applicants Ms Csentenová, Ms Kósová, Messrs Molnár, Ollé, Szabó and Szépe, Ms Tánczosová and Ms Vermesová had died in the course of the Court's proceedings and submitted further information in that respect as follows.

The heirs of Ms Csentenová did not wish to continue the relevant part of the application, whereas the heir of Mr Koloman Szépe, Mr Anton Szépe, did. The lawyer submitted a copy of a certificate of inheritance dated 15 November 2016 certifying that Mr A. Szépe, Mr K. Szépe's brother, was the latter's only heir.

As to the heirs of Ms Kósová, Mr Pavol Kóša - her son - expressed the wish to continue the respective part of the application, while the position of Mr Štefan Paál, was unknown. The children and heirs of Ms Vermesová, Ms Teréz Vermes and Messrs István Vermes and Vilmos Vermes, expressed a wish to pursue the application in her stead. In that respect, copies of certificates of 30 January 2017 and 6 June 2018 were submitted indicating that the persons mentioned were the respective heirs of Ms Kósová and Ms Vermesová.

Of the heirs of Mr Molnár, Ms Emília Nagyová and Mr Imrich Molnár expressed the wish to continue the respective part of the application, while the position of Ms Mária Molnárová was unknown. To that end, a copy of a part of a decision of the Komárno District Court of 18 December 2017 was submitted showing that they were the heirs of Mr Molnár.

As regards Mr Ollé, his heirs, Ms Jolana Olléová, Ms Klára Lőrincz, Ms Marta Vargová and Mr Róbert Ollé expressed the wish to continue the respective part of the application. In that respect, a copy of a part of a decision of the District Court of 30 May 2018 was submitted showing that they were the heirs of Mr Ollé.

The heirs of Mr Szabó, Ms Alžbeta Szabóová and Mr Koloman Szabó also expressed the wish to continue the proceedings in his stead. In support of that claim, a copy of a part of a decision of the District Court of 25 June 2018 was submitted indicating that they were the heirs of Mr Szabó.

Lastly, the childrena and heirs of Ms Tánczosová, Mr Peter Tánczos and Ms Annamária Hencz, likewise submitted that they were interested to continue the proceedings in her stead, relying on a certificate by a public notary identifying them as the heirs of Ms Tánczosová.

32. The Government for their part proposed first of all that the part of the application brought by Ms Csentenová be struck out of the Court's list.

Moreover, they submitted that they had no objection to (i) Mr Pavol Kóša, (ii) Ms Emília Nagyová and Mr Imrich Molnár, (iii) Ms Jolana Olléová, Ms Klára Lőrincz, Ms Marta Vargová and Mr Róbert Ollé, (iv) Ms Alžbeta Szabóová and Mr Koloman Szabó, (v) Mr Anton Szépe, (vi) Mr Peter Tánczos and Ms Annamária Hencz, and (vii) Ms Teréz Vermes and Messrs István Vermes and Vilmos Vermes continuing the proceedings in place of (i) Ms Juliana Kósová, (ii) Mr Ladislav Molnár, (iii) Mr Imrich Ollé, (iv) Mr Koloman Szabó, (v) Mr Koloman Szépe, (vi) Ms Mária Tánczosová, and (vii) Ms Margita Vermesová, respectively, provided that the former were the heirs of and succeeded the latter in the impugned domestic proceedings.

33. The Court reiterates that it has been its practice to strike applications out of the list of cases in the absence of any heir or close relative who has expressed a wish to pursue the application (see, for example, *Silášová and Others v. Slovakia* (revision), no. 36140/10, § 9, 30 January 2018, with further references). Moreover, it finds no special circumstances relating to

respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application in respect of Ms Csentenová. The application should therefore be struck out of the Court's list of cases in so far as it relates to this applicant.

34. As Mr Anton Szépe is the sole heir of the late applicant Mr Koloman Szépe, the Court considers that he has a legitimate interest to continue the present proceedings in his late brother's stead (see, for example, *Bittó and Others v. Slovakia* (just satisfaction), no. 30255/09, § 7, 7 July 2015, with further references). The same applies accordingly to (i) Mr Pavol Kóša, (ii) Ms Emília Nagyová and Mr Imrich Molnár, (iii) Ms Jolana Olléová, Ms Klára Lőrincz, Ms Marta Vargová and Mr Róbert Ollé, (iv) Ms Alžbeta Szabóová and Mr Koloman Szabó, (v) Peter Tánczos and Ms Annamária Hencz, and (vi) Ms Teréz Vermes and Messrs István Vermes and Vilmos Vermes,

As no submission has been made indicating any interest in continuation of the relevant part of the proceedings by or on behalf of Mr Paál and Ms Mária Molnárová, no ruling concerning their standing is called for.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION, ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

35. The applicants complained that the length of the proceedings on their restitution claim had been excessive and that they had had no effective remedy at their disposal in that respect, contrary to the requirements of Article 6 § 1 and Article 13 of the Convention.

The relevant part of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

1. The parties' submissions

36. As to the complaint under Article 6 § 1 of the Convention, the Government pointed out that the proceedings on the applicants' claim consisted of a phase before an administrative authority and a phase before the courts. Relying on the Constitutional Court's findings in its decision of 21 January 2015, they considered that the examination of the length of those proceedings had to be divided into those two phases.

37. In particular, as regards the administrative phase of the proceedings, the applicants should have brought an action for acceleration of the proceedings under Article 250t § 1 of the CCP.

Relying on the judgment of the Bratislava Regional Court in an unrelated case (see paragraph 27 above), the Government further argued that any finding by an administrative tribunal of unjustified delays in the administrative proceedings could then have served as a basis for a claim for compensation in respect of pecuniary and non-pecuniary damage under the State Liability Act (see paragraph 25 above).

By not having made use of those remedies, as regards the administrative phase of the proceedings, the applicants had failed to meet the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

38. As to the part of proceedings on the applicants' restitution claim which had taken place before the courts, the Government referred to the findings of the Constitutional Court and argued that the relevant part of the length-of-proceedings complaint was manifestly ill-founded.

39. In relation to the applicants' complaint under Article 13 of the Convention, the Government pointed to the remedies at the applicants' disposal as mentioned above. Should they not have been successful, the applicants could also have resorted to subsidiary protection by the Constitutional Court under Article 127 of the Constitution. In so far as the Constitutional Court had made protection of the applicants' right to a hearing without undue delay in the administrative proceedings dependent on their first having challenged the alleged delays in those proceedings by way of an action for their acceleration under Article 250t § 1 of the CCP, the Government sought to distinguish the present case from that of *Ištván and Ištvánová v. Slovakia* (no. 30189/07, 12 June 2012). In that case, the Constitutional Court had made protection of the right of Mr Ištván and Mrs Ištvánová to a hearing within a reasonable time in judicial proceedings dependent on their first having enabled the president of the court concerned to redress the alleged delays in those proceedings in response to a complaint by Mr Ištván and Mrs Ištvánová under the Courts Act (Law no. 757/2004 Coll., as amended). In the Government's view, the difference between *Ištván and Ištvánová* and the present case lay in the fact that an action under Article 250t § 1 of the CCP had been accepted by the Court as an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Csepyová v. Slovakia* (dec.), no. 67199/01, 8 April 2003), whereas a complaint under the Courts Act had not. The Government concluded that the remedies available to the applicants comprised preventive as well as compensatory elements, the aggregate of which met the requirements of Article 13 of the Convention.

40. In response, the applicants maintained their complaints, submitting that the length of the proceedings should be seen as including the administrative phase, and that not even the arguable complexity of the

proceedings could justify their length, which was in no way attributable to them.

2. The Court's assessment

41. The Court notes that the applicants' standing to pursue the present application and the applicability of Article 6 § 1 of the Convention to the proceedings on their restitution claim, including the part taking place before the Land Office, have not been disputed. The applicability of Article 6 § 1 of the Convention was established by the Court in the past in a similar context (see *Csepyová*, cited above, and *Schmidtová v. the Czech Republic*, no. 48568/99, §§ 54-57, 22 July 2003).

42. As to the Government's objection of non-exhaustion of domestic remedies, the Court further notes that it is limited to the part of the applicants' complaint which concerns the administrative phase of the proceedings. In that connection, it reiterates that the purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, with further references).

43. In view of the closely interconnected nature of the Government's non-exhaustion plea with regard to the complaint under Article 6 § 1 of the Convention and considerations as to the merits of the applicants' complaint under Article 13 of the Convention, the Court considers that this objection should be joined to the merits of the complaint under the latter provision (see *Antoni v. the Czech Republic*, no. 18010/06, § 26, 25 November 2010).

44. Regarding the question of the beginning of the proceedings, the Court further reiterates that when under the national legislation an applicant has to exhaust a preliminary administrative procedure before having recourse to a court, the proceedings before the administrative authorities are to be included when calculating the overall length of the proceedings for the purposes of Article 6 of the Convention (see, for example, *Kiurkchian v. Bulgaria*, no. 44626/98, § 51, 24 March 2005).

45. The period to be taken into consideration for the purposes of Article 6 § 1 of the Convention accordingly began on 23 December 2004 and has not yet ended. It has thus lasted more than thirteen years and three months for the proceedings before the Land Office and two levels of jurisdiction.

46. The Court notes that the length-of-proceedings complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds.

For similar reasons, it finds the complaint arguable for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131).

The application must therefore be declared admissible.

B. Merits

47. The parties have made no separate submissions on the merits.

1. Article 13 in conjunction with Article 6 § 1 of the Convention

48. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, § 157).

49. Although the Contracting States are afforded some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision (see, for example, *Kaya v. Turkey*, 19 February 1998, § 106, *Reports of Judgments and Decisions* 1998-I), a remedy available to a litigant at domestic level for raising a complaint about the length of proceedings is "effective", within the meaning of Articles 13 and 35 § 1 of the Convention, only if it is capable of covering all stages of the proceedings complained of and thus, in the same way as a decision given by the Court, of taking into account their overall length (see, for example, *Počuča v. Croatia*, no. 38550/02, § 35, 29 June 2006, with further references).

50. Furthermore, remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred. A remedy is therefore effective if it can be used either to expedite a decision by the courts dealing with the case, or to

provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII). While a preventive measure is preferable, if a length-of-proceedings violation has already occurred, a remedy designed only to expedite the proceedings may not be adequate, and compensation or another form of redress may be called for (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74-77, ECHR 2006-V).

51. The Court notes that the proceedings the length of which is under review in the present case concerned a restitution claim pursued by the applicants. Such claims are primarily conducted before an administrative authority, which may, as in the present case, be followed by proceedings before an administrative tribunal. As established by the Constitutional Court in its decision of 21 January 2015 (see paragraph 13 above), there is no single remedy in Slovakia with regard to the length of proceedings conducted in such a regime, the remedial mechanism available consisting of several components.

52. In particular, as regards the phase of the proceedings before the administrative tribunals, the single remedy to be used remains a complaint under Article 127 of the Constitution. On the specific facts of the present case, the Constitutional Court did indeed review the length of that phase of the proceedings, albeit specifically excluding from its examination the other phase of the proceedings, which had taken place before the Land Office. It did so despite the fact that the formulation and construction of the applicants' constitutional complaint enabled it to examine the length of the proceedings before the Land Office and the Regional Court as a whole (see *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006).

53. As to the administrative phase of the proceedings, the position taken by the Constitutional Court was that the applicants should have sought acceleration of those proceedings by way of an action under Article 250t § 1 of the CCP and that as administrative tribunals had jurisdiction in that matter, it fell outside the jurisdiction of the Constitutional Court.

54. The Court observes that an action under Article 250t § 1 of the CCP has no compensatory potential and that, as the Government themselves have argued in reliance on a judgment of the Bratislava Regional Court of 12 November 2013 (see paragraphs 27 and 37 above), a finding of unjustified delays in the underlying administrative proceedings by an administrative tribunal in response to such an action may serve as a basis for a claim for damages under the State Liability Act against the administrative authority responsible for those delays.

55. However, at the same time, the Court notes that in the very judgment relied on by the Government, the Bratislava Regional Court endorsed the view that there was no room under the State Liability Act for a claim for compensation in respect of non-pecuniary damage allegedly caused by the excessive length of the underlying administrative proceedings, because it

was still open to the administrative authority being sued for damages before the Regional Court to grant the claim that the plaintiff was pursuing in those administrative proceedings. The Court considers that in such circumstances it cannot be said that a compensatory remedy existed in respect of length of the proceedings.

56. Furthermore, the Court finds it noteworthy that, although the applicants in the present case had made no use of the remedy under the State Liability Act prior to lodging a constitutional complaint, in its decision of 21 January 2015 the Constitutional Court did not reproach them for failing to exhaust remedies on that account, as required under section 53 of the Constitutional Court Act. Similarly, there is no explanation of the relationship between the remedy under the State Liability Act and a complaint under Article 127 of the Constitution in the statement of the Vice-President of the Constitutional Court (see paragraph 17 above). It thus remains the case that the functional relationship between the remedy under the State Liability Act and that under Article 127 of the Constitution is equivocal (see, *mutatis mutandis*, *Horváth v. Slovakia*, no. 5515/09, §§ 74 and 75, 27 November 2012).

57. The relationship between the various components of the remedial mechanism in relation to a lengthy administrative phase of the proceedings was thus in part unclear. The Court considers that such a cumulation of remedies, which by extension leads to multiplication of judicial proceedings, by its nature, raises general doubts about its overall effectiveness.

58. The Court also finds that these doubts are amplified by the fact that the division of the examination of the length of proceedings into their administrative and judicial segments is as such at odds with the Court's approach to examining the overall length of the proceedings (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005). In this context, the Court would emphasise the specific nature of the problem of lengthy proceedings, in that it does not consist of a series of static events but rather of one progressively developing occurrence, the gravity of which progressively increases over time.

59. Furthermore, the Court notes that although the remedies under Article 250t of the CCP and the State Liability Act have now been a part of the Slovakian legal order for quite some time, they appear to have been scarcely used in practice, making it difficult to demonstrate their actual effectiveness.

60. On the contrary, the known examples (see paragraphs 22 et seq. above) appear rather to suggest that even repeated recourse to an action under Article 250t of the CCP produces no real acceleration of administrative proceedings, or that the proceedings in such an action may themselves take a considerable time (see paragraph 28 above).

61. By the same token, as has already been noted above, the known example of the use of the remedy under the State Liability Act in a situation similar to that of the present case rather demonstrates the limits of its effectiveness.

62. At this juncture, the Court observes that the Government have not identified any other examples of the use of those remedies to show how they function and, more importantly, to demonstrate their effectiveness (see, *a contrario*, *Pallanich v. Austria*, no. 30160/96, § 30, 30 January 2001).

63. In view of these considerations, and to the extent that the Government's argument has been substantiated, the Court finds the sum of remedies proposed by them in relation to the length of the administrative phase of the proceedings ineffective for the purposes of Article 13 of the Convention.

64. In its decision in *Csepyová* (cited above) the Court accepted an action for acceleration of administrative proceedings under Part 5 of the CCP as an effective remedy for the purposes of Article 35 § 1 of the Convention. The Court notes, however, that the situation assessed in the present case is different from that in *Csepyová* in two respects. First, in the present case the proceedings brought by the applicants comprised not only an administrative phase, but also a judicial phase. Consequently, the Court's assessment of the effectiveness of that remedy and others in the present case is made with reference to such two-tier proceedings as a whole. Secondly, unlike in *Csepyová*, in the present case the absence of established practice demonstrating the effectiveness of an action under Article 250t of the CCP despite its long-term existence, combined with examples of its failure, cannot but be seen as indicative of its actual ineffectiveness.

65. As to the Government's argument comparing the present case to that of *Ištván and Ištvánová* (cited above), the Court notes first of all that in that case it did not examine whether a complaint under the Courts Act was an effective remedy within the meaning of Article 35 § 1 of the Convention as such. Its examination focused rather on the overall effectiveness of the combination of remedies available to Mr Ištván and Ms Ištvánová and on whether they had complied with the exhaustion requirement under Article 35 § 1 of the Convention in view of how they had made use of those remedies. The central theme of that assessment was that the availability of redress under Article 127 of the Constitution for Mr Ištván and Ms Ištvánová had been dependent on their making a complaint under the Courts Act (see in particular paragraphs 77, 84, 85 and 91 of that judgment).

66. The situation in the present case is, however, structurally different, in that the Constitutional Court denied the applicants a remedy under Article 127 of the Constitution in relation to the administrative phase of the proceedings, holding that they should bring an action under Article 250t of the CCP, and refused to view the proceedings as a whole, which is

combined with the Government's argument that the applicants had at their disposal an action under the State Liability Act.

The problem is accordingly two-fold. As has been established above, the remedies under Article 250t of the CCP and the State Liability Act in relation to the administrative phase of the proceedings are inefficient. In addition, the length of the proceedings has never been examined as a whole.

67. The Court concludes that the applicants have not had at their disposal an effective remedy in relation to their length-of-proceedings complaint.

There has accordingly been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, and the Government's non-exhaustion objection in relation to the applicants' complaint under the latter provision must be dismissed.

2. Article 6 § 1 of the Convention

68. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

69. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

70. Having examined all the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, and despite the procedural complexity of the present case which is due to the number of restitution claimants, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 on that account.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

72. The applicants jointly claimed 871,510 euros (EUR) in respect of pecuniary damage, this amount representing their estimate of the value of the land and buildings that were at stake for them at the domestic level. In addition, they claimed EUR 30,000 each in respect of non-pecuniary damage.

73. The Government contested the former claim as having no causal connection to the alleged violations and the latter as being excessive.

74. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

On the other hand, it awards each of the applicants, whose application has not been struck out of the Court's list (see paragraph 33 above), EUR 6,200, plus any tax that may be chargeable, in respect of non-pecuniary damage, payable in accordance with the domestic inheritance procedures. If more than one person continues the application instead of a late applicant, this amount is to be paid to them jointly.

B. Costs and expenses

75. The applicants also made a claim in respect of legal costs. While they were unable to specify the amount of their claim in relation to the period prior to 2014, when their current legal representative took over the case, they left that part of their claim to the Court's discretion. As to the period from 2014, they jointly claimed EUR 276,191.77. This amount was calculated on the basis of the number of "acts of legal assistance" rendered and the value of such an "act" established under the calculation formula applicable at national level, taking into account what they considered to be the value of what was at stake for them at the domestic level.

76. The Government objected that the claim was unsupported by any evidence.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant

supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

78. In the instant case, the Court observes that the applicants have not substantiated their claim by any relevant supporting documents establishing that they were under an obligation to pay for the cost of legal services or have actually paid for them. Accordingly, the Court decides not to award any sum under this head (see *Ištván and Ištvánová*, cited above, § 122).

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to strike the application out of its list of cases in so far as brought by the applicant Ms Terézia Csenteová;

2. *Holds*, unanimously, that (i) Mr Pavol Kóša, (ii) Ms Emília Nagyová and Mr Imrich Molnár, (iii) Ms Jolana Olléová, Ms Klára Lőrincz, Ms Marta Vargová and Mr Róbert Ollé, (iv) Ms Alžbeta Szabóová and Mr Koloman Szabó, (v) Mr Anton Szépe, (vi) Mr Peter Tánczos and Ms Annamária Hencz, and (vii) Ms Teréz Vermes and Messrs István Vermes and Vilmos Vermes have standing to continue the present proceedings instead of, respectively, (i) Ms Juliana Kósová, (ii) Mr Ladislav Molnár, (iii) Mr Imrich Ollé, (iv) Mr Koloman Szabó, (v) Mr Koloman Szépe, (vi) Ms Mária Tánczosová, and (vii) Ms Margita Vermesová;

3. *Joins*, unanimously, to the merits of the complaint under Article 13 of the Convention the Government's non-exhaustion objection in relation to the complaint under Article 6 § 1 of the Convention and *rejects* it;

4. *Declares*, unanimously, the application admissible;

5. *Holds*, unanimously, that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention;

6. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

7. *Holds*, by four votes to three,
(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,200 (six thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 August 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helena Jäderblom
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Jäderblom, Lubarda and Poláčková is annexed to this judgment.

H.J.
F.A.

PARTLY DISSENTING OPINION OF JUDGE POLÁČKOVÁ JOINED BY JUDGES JÄDERBLOM AND LUBARDA

To our regret, we have been unable to vote with the majority on the question of the amount of the just satisfaction awarded in respect of non-pecuniary damage in this case and in the case of *Engelhard v. Slovakia* (no. 12085/16).

Both cases are essentially the same in that they involve an aspect that is purely individual (the length of the applicants' proceedings from the point of view of Article 6 § 1 of the Convention) and an aspect that has additional systemic features (the lack of an effective remedy from the point of view of Article 13 of the Convention).

Under Article 41 of the Convention, subject to other conditions, the Court affords just satisfaction to the injured party "if necessary".

In our opinion, the systemic aspect of both cases is sufficiently addressed by the finding of a violation. We therefore consider the amount awarded in just satisfaction unnecessarily high, both in absolute and relative terms.

APPENDIX

List of applicants

1. Mr Zoltán Balogh was born in 1961 and lives in Kolárovo
2. Ms Mária Bezúrová was born in 1940 and lives in Kolárovo
3. Ms Terézia Csenteová was born in 1921, died in 2016, and lived in Kolárovo
4. Ms Cecília Csontosová was born in 1943 and lives in Kolárovo
5. Ms Mária Csontosová was born in 1938 and lives in Kolárovo
6. Ms Edita Donková was born in 1958 and lives in Kolárovo
7. Ms Katarína Erdélyiová was born in 1944 and lives in Komárno
8. Mr Ján Fekete was born in 1942 and lives in Kolárovo
9. Mr Jozef Fekete was born in 1958 and lives in Kolárovo
10. Mr Imrich Fekete was born in 1946 and lives in Zemné
11. Ms Magdaléna Feketeová was born in 1960 and lives in Kolárovo
12. Ms Edita Fördősová was born in 1959 and lives in Kolárovo
13. Mr Štefan Gőgh was born in 1933 and lives in Kolárovo
14. Mr Vojtech Gőgh was born in 1944 and lives in Kolárovo
15. Ms Margita Hegyiová was born in 1933 and lives in Kolárovo
16. Mr Alexander Horváth was born in 1947 and lives in Kolárovo
17. Ms Terézia Horváthová was born in 1937 and lives in Kolárovo
18. Ms Serena Jirková was born in 1931and lives in Hurbanovo
19. Ms Alžbeta Kériová was born in 1949 and lives in Kolárovo
20. Ms Irena Kissová was born in 1942 and lives in Komoča
21. Ms Juliana Kósová[*] was born in 1933, died in 2016, and lived in Kolárovo
22. Ms Mária Mészárosová was born in 1948 and lives in Kolárovo
23. Mr Ladislav Molnár was born in 1932, died in 2017, and lived in Kolárovo
24. Ms Mária Molnárová was born in 1940 and lives in Kolárovo
25. Ms Helena Morovičová was born in 1951 and lives in Kolárovo
26. Mr Alexander Nagy was born in 1958 and lives in Kolárovo
27. Ms Terézia Nagyová was born in 1939 and lives in Kolárovo
28. Mr Imrich Ollé[†] was born in 1941, died in 2018, and lived in Kolárovo

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[*] the application brought by Ms J. Kósová is continued by Mr Pavol Kóša, who was born in 1953 and lives in Kolárovo.

[†] the application brought by Mr I. Ollé is continued by Ms Jolana Olléová, Ms Klára Lőrincz, Ms Marta Vargová and Mr. Róbert Ollé, who were born in 1947, 1967, 1968 and 1976, and live in Kolárovo, Nové Zámky, Kolárovo and Kolárovo, respectively. The

29. Mr Imrich Őszi was born in 1928 and lives in Kolárovo
30. Ms Margita Švajdová was born in 1951 and lives in Nové Zámky
31. Mr Koloman Szabó[‡] was born in 1941, died in 2017, and lived in Kolárovo
32. Ms Alžbeta Szabóová was born in 1940 and lives in Kolárovo
33. Ms Magdaléna Szabóová was born in 1959 and lives in Kolárovo
34. Ms Margita Szabóová was born in 1939 and lives in Kolárovo
35. Mr František Szépe was born in 1952 and lives in Kolárovo
36. Mr Koloman Szépe[*] was born in 1958, died in 2016, and lived in Kolárovo
37. Mr Ladislav Szépe was born in 1953 and lives in Kolárovo
38. Mr Peter Tánczos was born in 1955 and lives in Kolárovo
39. Mr Tibor Tánczos was born in 1953 and lives in Kolárovo
40. Ms Katarína Tánczosová was born in 1958 and lives in Kolárovo
41. Ms Mária Tánczosová[§] was born in 1935, died in 2018, and lived in Kolárovo
42. Ms Terézia Tánczosová was born in 1930 and lives in Kolárovo
43. Mr Jozef Telekes was born in 1980 and lives in Kolárovo
44. Ms Alžbeta Telekesová was born in 1974 and lives in Kolárovo
45. Ms Zuzana Telekesová was born in 1977 and lives in Kolárovo
46. Mr Ján Tóth was born in 1948 and lives in Kolárovo
47. Ms Rozália Tóthová was born in 1954 and lives in Kolárovo
48. Mr Alexander Varga was born in 1953 and lives in Kolárovo
49. Ms Margita Vermesová[**] was born in 1937, died in 2018, and lived in Zemianska Olča
50. Mr Arpád Nagy was born in 1967and lives in Kolárovo
51. Ms Alžbeta Forróová was born in 1962 and lives in Kolárovo

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amount specified in paragraph 74 of the text and ruling 7(a) of the operative part of this judgment is awarded to them jointly.

[‡] the application brought by Mr Koloman Szabó is continued by Ms Alžbeta Szabóová and Mr Koloman Szabó, who were born in 1945 and 1986, respectively, and live in Kolárovo. The amount specified in paragraph 74 of the text and ruling 7(a) of the operative part of this judgment is awarded to them jointly.

[*] the application brought by Mr K. Szépe is continued by Mr Anton Szépe, who was born in 1954 and lives in Kolárovo.

[§] the application brought by Ms M. Tánczosová is continued by Mr Peter Tánczos and Ms Annamária Hencz, who were born in 1958 and 1960 and live in Kolárovo and Veľký Meder, respectively. The amount specified in paragraph 74 of the text and ruling 7(a) of the operative part of this judgment is awarded to them jointly.

[**] the application brought by Ms M. Vermesová is continued by Ms Teréz Vermes and Messrs István Vermes and Vilmos Vermes, who were born in 1958, 1962 and 1967, and live in Komárno, Kolárovo and Bozianske Lúky, respectively. The amount specified in paragraph 74 of the text and ruling 7(a) of the operative part of this judgment is awarded to them jointly.