



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

FOURTH SECTION

CASE OF MOŠAŤ v. SLOVAKIA

(Application no. 27452/05)

JUDGMENT

STRASBOURG

21 September 2010

FINAL

21/12/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mošať v. Slovakia,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 27452/05) 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 a Slovak national, Mr Milan Mošať (“the applicant”), on 15 July 2005.

2. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 9 March 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1964 and lives in Bratislava.

A. Enforcement proceedings

1. Proceedings file nos. Er 1998/00 and Er 2005/00

5. On 1 and 11 August 2003 the Bratislava IV District Court dismissed the applicant's objections to a notification of enforcement and its costs. The decisions were served on the applicant on 13 September 2003.

2. Proceedings file no. 15 E 22/00

6. On 10 January 2000 enforcement proceedings were initiated against the applicant before the Bratislava IV District Court.

7. On three occasions the District Court submitted prematurely the case file to the Bratislava Regional Court. On 30 May 2003 the Regional Court decided not to exclude the District Court judge for bias.

8. On 10 December 2003 the District Court discontinued the proceedings and the decision was confirmed by the Regional Court on 24 September 2004.

B. Constitutional proceedings

9. On 3 December 2003 the applicant complained to the Constitutional Court about the length of the above proceedings before the Bratislava IV District Court. On 28 April 2004 the Constitutional Court accepted his length of proceedings complaint in respect of proceedings 15 E 22/00 and rejected the remainder as having been lodged outside the statutory two-month time-limit.

10. On 18 August 2004 the Constitutional Court found that the Bratislava IV District Court had violated the applicant's right to a hearing without unjustified delay. It ordered the District Court to avoid further delays and to reimburse the applicant's legal costs. The Constitutional Court further concluded that the finding of a violation represented in itself sufficient just satisfaction in the circumstances of the case. It reasoned its decision not to award any just satisfaction with reference to the position of the applicant in the enforcement proceedings, the applicant being the party liable. It further noted that it had been the applicant's conduct that had given rise to enforcement of the decision in issue. It further reasoned that, if the applicant had complied with the enforcement decision, the enforcement proceedings would never have had to be brought.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

11. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. With reference to the length of the proceedings the applicant also alleged a violation of Article 6 § 3 (b) of the Convention. The provisions invoked read as follows:

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

3 “Everyone charged with a criminal offence has the following minimum rights
(b) to have adequate time and facilities for the preparation of his defence.”

A. Admissibility

1. Complaint under Article 6 § 1 of the Convention

(a) Enforcement proceedings file nos. Er 1998/00 and Er 2005/00

12. The applicant failed to complain about undue delay in the above enforcement proceedings to the Constitutional Court in accordance with the applicable procedural requirements, *i.e.* within the prescribed time-limit.

13. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Enforcement proceedings file no. 15 E 22/00

14. The Government expressed the view that the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. They argued that the Constitutional Court had expressly acknowledged such a violation, had ordered the District Court to proceed without further delay and also had ordered reimbursement of the applicant's legal costs.

15. The applicant argued that he had voluntarily complied with his obligations resulting from the enforcement decision. He contested the necessity of initiation of the enforcement proceedings and alleged that they had lasted five years until the domestic courts finally discontinued them.

16. The Court notes that at the time of the Constitutional Court's finding, the District Court, in respect of which the applicant complained to the Constitutional Court, had been responsible for a period of approximately three years and nine months.

17. The Court reiterates that whether the redress afforded to the applicant was adequate and sufficient having regard to Article 41 of the Convention falls to be determined in the light of the principles established under the Court's case-law (see, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006- V, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V). These include, most notably, the amount of the compensation awarded to the applicant and the effectiveness of the preventive measure applied (see *Sika v. Slovakia* (no. 3), no. 26840/02, § 54, 23 October 2007).

18. Although the present application concerns enforcement proceedings directed against the applicant, the Court cannot overlook the fact that the period imputable to the District Court was approximately three years and nine months. Moreover, the domestic courts, upon the applicant's request, discontinued the enforcement proceedings. Furthermore, the Constitutional Court itself had acknowledged the District Court's responsibility for delays in those proceedings. Having regard to the facts of the case and to the principles established in its case-law, the Court considers that the redress obtained by the applicant at the domestic level was not adequate and sufficient. In view of the above, it concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

19. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Complaint under Article 6 § 3 (b) of the Convention

20. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the right guaranteed under Article 6 § 3 (b) of the Convention.

21. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

22. 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).

23. 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).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, at the time of the Constitutional Court's finding, the period under consideration had lasted approximately three years and nine months at one level of jurisdiction. Albeit no delays occurred in the subsequent period, the Court nevertheless considers, having regard to its case-law, that the length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement.

25. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant further complained that he had no effective remedy at his disposal within the meaning of Article 13 of the Convention, which reads:

"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."

1. As regards the complaint in respect of the proceedings file no. 15 E 22/00

27. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. The applicant used the possibility to lodge a complaint under Article 127 of the Constitution, which was at his disposal, and the Constitutional Court found a violation of his right to a hearing without unjustified delay guaranteed by the constitutional equivalent of Article 6 § 1 of the Convention. The fact that the redress obtained from the Constitutional Court was not sufficient for Convention purposes does not render the remedy under Article 127 of the Constitution in the circumstances of the present case incompatible with Article 13 of the Convention (see *Bošková v. Slovakia*, no. 21371/06, § 25, 2 June 2009; *Janík v. Slovakia*, no. 5952/05, § 36, 27 October, 2009).

28. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. As regards the remaining complaints

29. As regards the alleged absence of an effective remedy in respect of the remaining complaints under the Convention, the Court reiterates that

Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court found these complaints inadmissible. Accordingly, the applicant did not have an “arguable claim” and Article 13 is, therefore, not applicable.

30. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government considered the claim exaggerated.

34. The Court awards the applicant EUR 2,100 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant submitted no claim for costs and expenses.

C. Default interest

36. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings indicated by file no. 15 E 22/00 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the above-mentioned proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,100 (two thousand one 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President