



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

FOURTH SECTION

CASE OF SZIGETIOVÁ v. SLOVAKIA

(Application no. 40047/06)

JUDGMENT

STRASBOURG

5 October 2010

FINAL

05/01/2011

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

In the case of Szigetiová 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 14 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 40047/06) 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, Mrs Monika Szigetiová (“the applicant”), on 28 September 2006.

2. The applicant was represented by Mr R. Belanský, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 11 May 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 Košice.

5. On 4 September 2002 the applicant sought an increase of the maintenance payments from her ex-husband before the Košice I District Court. On 21 July 2005 she complained to the President of the Košice I District Court about undue delays in the proceedings.

6. On 1 August 2005 she was informed that her complaint had been transmitted to the Košice II District Court where the case file had been transferred by a decision of 5 February 2003.

7. On 5 September 2005 the President of the Košice II District Court informed the applicant that her complaint would be dealt with after an expert had returned the case file.

8. On 16 September 2005 the President of the Košice II District Court informed the applicant that the case file concerning the maintenance dispute had been erroneously attached to the file in separate proceedings concerning her ex-husband's contact with their son. The latter proceedings had also been initiated before the Košice I District Court and the case file had been transferred to the Košice II District Court, for reasons of local jurisdiction, by a decision of 2 October 2002. The President of the Košice II District Court noted that the maintenance dispute had not been duly transferred to his court and instructed the judge dealing with the case "to take immediate measures".

9. In view of the statements of the Presidents of the Košice I and II District Court, on 2 November 2005 the applicant complained of undue delays before the Constitutional Court. The applicant directed her constitutional complaint against the Košice II District Court where, according to the information from the President of the Košice I District Court, the case file had been transferred in 2003. The applicant did not indicate the file number under which the proceedings had been pending before the Košice II District Court as no number had been assigned to the case at that time.

10. On 10 November 2005 the Constitutional Court invited the applicant to indicate the file number of the proceedings before the Košice II District Court. On 11 January 2006 the applicant's representative obtained the requested information and forwarded it by telephone to the Constitutional Court.

11. On 18 January 2006 the Constitutional Court declared the applicant's complaint concerning delays in the proceedings before the Košice II District Court admissible.

12. On 17 February 2006 the President of the Košice II District Court informed the Constitutional Court in writing that the case file concerning the proceedings complained of had been returned (as erroneously attached to another file) to the Košice I District Court on 22 November 2005. The letter further stated that on 30 November 2005 the Košice I District Court had formally re-transferred the case file to the Košice II District Court.

13. At the same time, the applicant unsuccessfully attempted to amend her constitutional complaint as formally directed also against the Košice I District Court.

14. On 15 March 2006 the Constitutional Court found that the applicant's right to a hearing without undue delays had not been violated by

the Košice II District Court. The Constitutional Court stated that it was bound by the formulation of the complaint and by its decision on admissibility and could examine the length of proceedings complaint only in respect of the proceedings before the Košice II District Court where the case file had been duly transferred on 30 November 2005. Although the conduct of the Košice I District Court fell outside the scope of the complaint examined by the Constitutional Court, the latter noted that the maintenance proceedings had lasted an unreasonably long time and that undue delay had occurred before the Košice I District Court.

15. On 5 May 2006 the Košice II District Court delivered a judgment which became final on 1 June 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

16. 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, which reads as follows:

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

17. The period to be taken into consideration began on 4 September 2002 and ended on 1 June 2006 when the Košice II District Court's judgment became final. It thus lasted 3 years and 9 months for one level of jurisdiction.

A. Admissibility

18. The Government argued, as far as the proceedings before the Košice I District Court were concerned, that the applicant had not exhausted domestic remedies as she had failed to lodge her constitutional complaint in accordance with the applicable procedural requirements and established practice, *i.e.* to formulate her complaint in a way which would allow the Constitutional Court to examine the length of this part of the proceedings. They stated that the Constitutional Court was bound by the phrasing of the complaint and by its decision on admissibility of 18 January 2006. The Government considered the complaint concerning the proceedings before the Košice II District Court as manifestly-ill founded and pointed to the Constitutional Court's finding.

19. The applicant pointed to the letters of the Presidents of the Košice I and Košice II District Court of 1 August and 5 September 2005 informing

her that the proceedings had been pending before the Košice II District Court. She stated that it was only after she had lodged her complaint about undue delay in the proceedings that the district courts concerned realised that the case file had been erroneously attached to another file and that it was only after she had initiated the constitutional proceedings that the district courts had taken the necessary measures for rectification of this error. The applicant maintained that she had complained about delays in the proceedings since September 2002. She stressed that (i) in her constitutional complaint she had also indicated the file number of the proceedings before the Košice I District Court, (ii) she had complained of the overall length of the proceedings and (iii) the Constitutional Court's decision on admissibility of 18 January 2006 had been erroneous as at the time of lodging her complaint no file number had been assigned yet to the proceedings before the Košice II District Court.

20. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges the applicant to use the remedies available in compliance with the formal requirements and time-limits laid down in domestic law, as interpreted and applied by domestic courts. On the other hand, the Court has recognised that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-69, *Reports* 1996-IV). It has further recognised that the rule is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of the case (see *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, §§ 51-54; *Şarli v. Turkey*, judgment of 22 May 2001, no. 24490/94, § 59). The Court must therefore examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of her to exhaust domestic remedies.

21. The Court notes that the maintenance proceedings were initiated before the Košice I District Court. After 6 months, the case file was incorrectly transferred to the Košice II District Court, where it remained for almost 3 years without any legal basis. Following identification of that error, the President of the Košice II District Court instructed the judge dealing with the case to take immediate measures without further specification. The applicant complained to the Constitutional Court that the overall length of the proceedings had been excessive. As according to the information obtained from the President of the Košice I District Court the case file was with the Košice II District Court at that time, the applicant directed her constitutional complaint formally against the latter. The Constitutional Court declared admissible the complaint directed against the Košice II District Court. Only following the Constitutional Court's decision on admissibility, the applicant and the Constitutional Court learned, from a

letter of the President of the Košice II District Court, that in November 2005 the case file had been remitted to the Košice I District Court in order that the latter could re-transfer it in a due manner to the Košice II District Court.

22. The Constitutional Court examined the length of proceedings only as regards the period after November 2005 when the case file had been re-transferred in a due manner to the Košice II District Court. The Court notes that the Košice I District Court had the case file at its disposal only for six months before it had erroneously transferred it to the Košice II District Court. The Košice II District Court, on the other hand, failed to identify and rectify that error until the introduction of the constitutional complaint by the applicant, *i.e.* after almost three years.

23. In view of the above, the Court accepts that the applicant did everything that could reasonably be expected of her to obtain redress before the Constitutional Court. It further considers that the Constitutional Court dealt with the applicant's complaint with excessive formalism. It failed to take into account all the circumstances of the case and, in particular, the fact that the Košice II District Court had kept the file without any relevant justification for a substantial part of the period under consideration. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be rejected.

24. The Court concludes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and it is neither inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The applicant reiterated that the overall length of the proceedings before the Košice I and II District Courts had lasted too long and that both district courts had been responsible for the delays.

26. The Government, pointing to the Constitutional Court's reasoning, admitted that undue delays had occurred in the proceedings before the Košice I District Court and argued that the complaint concerning proceedings before the Košice II District Court is manifestly-ill founded. They underlined that the proceedings complained of had ended within three months after the Constitutional Court's finding.

27. 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). The Court reiterates that special diligence is necessary in maintenance disputes.

28. 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).

29. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. 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 3,319 euros (EUR) and 39 cents in respect of non-pecuniary damage.

33. The Government considered the claim exaggerated.

34. The Court considers that it should award the full sum claimed and round up the total sum to EUR 3,320.

B. Costs and expenses

35. The applicant also claimed EUR 288.12 for the costs and expenses incurred before the Constitutional Court and EUR 663.88 for those incurred before the Court.

36. The Government had no objection to the award of demonstrably incurred costs and expenses in the proceedings before the Court.

37. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full and round down the total sum to EUR 950.

C. Default interest

38. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, the following amounts:
 - (i) EUR 3,320 (three thousand three hundred and twenty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 950 (nine hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 5 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President