



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

FOURTH SECTION

CASE OF ZAREMBOVÁ v. SLOVAKIA

(Application no. 7908/07)

JUDGMENT

*This version was rectified on 20 December 2010
under Rule 81 of the Rules of Court*

STRASBOURG

23 November 2010

FINAL

23/02/2011

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

In the case of Zarembová v. Slovakia,

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

Nicolas Bratza, *President*,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 7908/07) 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, Ms Dagmar Zarembová (“the applicant”), on 31 January 2007.

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

3. On 4 February 2010 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 1965 and lives in Bratislava.

5. On 17 August 1998 she lodged an action to determine the validity of the termination of employment¹. The defendant introduced a counterclaim.

6. The parties reached an out-of-court settlement and withdrew their claims on 22 May 2006.

1. Rectified on 20 December 2010. The text was: “On 17 August 1998 she lodged an action challenging her dismissal from her job.”

7. As a result, the Bratislava III District Court discontinued the proceedings on 25 May 2006. The decision was served on the applicant on 1 July 2006 and, in the absence of an appeal, it became final on 16 August 2006.

8. On 31 May 2006 the applicant complained to the Constitutional Court about the length of the proceedings.

9. On 7 July 2006 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. It held that the protection of one's right to a hearing without unjustified delay by the Constitutional Court was intended to eliminate the state of legal uncertainty of a party to proceedings. Legal uncertainty could be eliminated either by a final judicial decision or by other means stipulated by the law. The latter also included a procedural decision of a court, based on the plaintiff's wish not to pursue the proceedings as regards the entire claim or where, as in the present case, both parties withdrew their claims. It had been the Constitutional Court's practice to reject complaints filed when the applicants' right to a hearing without unjustified delay was not being violated, even if the relevant decisions had not yet become final.

10. It finally noted that the applicant had lodged her complaint after the District Court had adopted the decision to discontinue the proceedings following the withdrawal of the parties' claims. As a result, the District Court was no longer dealing with the merits of the case and the complaint of the length of the proceedings was thus manifestly ill-founded.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 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, 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..."

A. Admissibility

12. The Government relied on the Constitutional Court's decision. They argued that the applicant had not exhausted the available remedies, as she had failed to seek redress before the Constitutional Court in accordance with the Constitutional Court's practice. More specifically, she had lodged her complaint after any legal uncertainty she may have had had been eliminated,

that is after the District Court had discontinued the proceedings and had no longer been dealing with the merits of the case. They noted that it had been the Constitutional Court's practice to examine length of proceedings complaints only when the proceedings were still pending at the moment when the complaints were lodged with the Constitutional Court. They further stated that such practice had also been accepted by the Court (see *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

13. The applicant disagreed. She argued that at the time of the lodging of her constitutional complaint, the proceedings had not been concluded and her state of legal uncertainty had persisted. The proceedings ended on 16 August 2006, when the decision to discontinue them became final. She stated that the District Court had been responsible for several procedural steps even after the adoption of the decision, such as preparation of the decision in writing and its delivery to the parties.

14. The Court first reiterates that, in respect of the alleged violation of the applicant's right to a hearing within a reasonable time, it is irrelevant that the applicant withdrew her claim and that, as a result, the ordinary courts did not ultimately determine the merits of the case (see *Číž v. Slovakia*, no. 66142/01, § 61, 14 October 2003).

15. As regards applications against Slovakia concerning the length of proceedings the Court has held that a complaint under Article 127 of the Constitution is, in principle, an effective remedy which applicants are required to use for the purpose of Article 35 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002). It has also held that applicants should formulate their complaints in a manner permitting the Constitutional Court to examine the overall duration of the proceedings (see *Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006).

16. Domestic law stipulates a two-month time-limit for submitting complaints under Article 127 of the Constitution. However, the practice of the Constitutional Court has been not to apply this time-limit to length of proceedings complaints and to examine only those complaints which were lodged before the proceedings complained of have ended. This practice has been accepted by the Court (see *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

17. In the case of *Mazurek* (cited above), the applicant lodged his constitutional complaint after the proceedings had been terminated by a final decision. This is not the case in the present application. The applicant lodged her complaint with the Constitutional Court after the District Court had adopted the decision to discontinue the proceedings, but before that decision was served on her and had become final.

18. Even though the Constitutional Court, when rejecting the applicant's complaint, relied on the principle of legal certainty, the Court is of the opinion that the state of legal uncertainty in the context of judicial or

administrative proceedings can be eliminated only when such proceedings end. In line with that it has been the Court's practice to examine the duration of proceedings as a whole, that is up until they have ended by a final decision (see, among many others, *Kocianová (no. 2) v. Slovakia*, no. 45167/06, § 12, 18 May 2010).

19. As to the circumstances of the present case in particular, and despite the Government's arguments, the subsequent developments in the proceedings in issue could not be predicted. It was possible to appeal against the decision to discontinue the proceedings, and the proceedings might well have continued even in the later period. Even though the District Court was not dealing with the merits of the case after the adoption of the decision of 25 May 2006, it still had to carry out several procedural steps. Delays could have theoretically occurred also in that period of the proceedings, for example, as regards the delivery of the decision to the parties. By refusing to examine the length of proceedings, which had not yet ended by a final decision, the Constitutional Court risked excluding from its examination a future, possibly substantial period of proceedings on a matter which had not still been determined by a final decision.

20. In these circumstances, the manner in which the applicant's complaint was dealt with by the Constitutional Court failed to meet the purpose of protection of her right under Article 6 § 1 of the Convention to a hearing within a reasonable time, as interpreted and applied by the Court. Such approach is susceptible of depriving the remedy under Article 127 of the Constitution of its requisite effectiveness (see also *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV).

21. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be dismissed.

22. The proceedings complained of lasted eight years at one level of jurisdiction.

23. The Court notes that this complaint 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.

B. Merits

24. The applicant argued that the proceedings had lasted an unreasonably long time.

25. 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 employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

26. 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).

27. Having examined all the materials 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 33,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested the claim.

31. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 9,000 under that head.

B. Costs and expenses

32. The applicant also claimed EUR 173 for translation costs.

33. The Government left the matter to the Court's discretion.

34. The Court considers it reasonable to award the applicant the full sum claimed under this head.

C. Default interest

35. 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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 173 (one hundred and seventy-three 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President