



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

FOURTH SECTION

CASE OF MAJAN v. SLOVAKIA

(Application no. 8799/04)

JUDGMENT

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 Majan 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. 8799/04) 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 Igor Majan (“the applicant”), on 23 February 2004.

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

3. On 13 April 2007 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 1944 and lives in Rimavská Baňa.

1. Factual background

5. The applicant's father was a member of an agricultural co-operative. He died in 1995.

6. The cooperative underwent a transformation and a monetary value of the membership interests of individual members was established.

In a decree of 4 September 1998 the co-operative certified the financial value of the ownership interest that had once belonged to the applicant's father.

7. The applicant subsequently made a claim for compensation in respect of his father's membership interest (see below).

2. Insolvency proceedings

8. On 3 March 1998 the Banská Bystrica Regional Court declared the co-operative insolvent.

9. On 25 June 1998 the applicant registered his compensation claim in the insolvency proceedings.

10. On 18 May 1999 the regional court held a hearing (*prieskumné pojednávanie*) with a view to establishing the claims of the different creditors. At the hearing the receiver rejected the applicant's claim on the ground that he had filed it in his own name but had failed formally to show that the claim, which had originally belonged to his father, had actually devolved on him. The applicant was referred to the possibility of seeking judicial establishment of his claim by way of a separate action (*incidenčná žaloba*). The applicant brought such an action and was successful (see below).

11. In the following period, the regional court agreed to the sale of the co-operative's individual assets.

12. On 1 December 2005 a final report on the sale of the co-operative's assets was submitted to the regional court. It was amended on 14 March 2006 and displayed on the regional court's official notice board on 6 March 2007.

13. On 4 April 2007 a hearing took place. On 18 October 2007 a meeting of the insolvency creditors took place and a new receiver was appointed.

14. On 21 June 2010 the applicant informed the Court that the insolvency proceedings were still pending.

3. Action for establishment of the applicant's claim

15. On 1 June 1999 the applicant brought an action against the insolvency receiver in the regional court seeking judicial establishment of his compensation claim.

16. On 30 April 2002 the regional court granted the action and decided that the applicant had a claim in an amount equivalent to 18,537 euros. The applicant alleged that the judgment had not been served on him but on his daughter and therefore had not yet become final.

17. The Government stated that the judgment had become final on 3 July 2002.

4. Constitutional complaint

18. On 8 July 2003 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court in respect of the length of the insolvency proceedings and the proceedings in the action for establishment of his claim.

19. On 10 September 2003 the Constitutional Court declared the complaint inadmissible. As for the proceedings in the applicant's action, it observed that they had ended in 2002. They had thus no longer been pending at the time when the constitutional complaint had been lodged. In these circumstances, in line with the Constitutional Court's established practice, the complaint of the length of those proceedings was manifestly ill-founded. As for the insolvency proceedings, the Constitutional Court observed that the sale of the co-operative's assets was still under way and had not yet been completed. As the Constitutional Court had not found any undue delays, it concluded that the complaint in respect of the insolvency proceedings was manifestly ill-founded.

THE LAW

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

20. The applicant complained that the length of the above two sets of proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

21. The Government contested the applicant's argument. As to the proceedings concerning establishment of the applicant's claim, the Government argued that the applicant had failed to exhaust domestic remedies. They were of the opinion that the applicant had failed to formulate his constitutional complaint in a way which would have allowed the Constitutional Court to address his objection concerning the alleged failure to serve on him the judgment of 30 April 2002. The Government agreed with the Constitutional Court's decision stating that, according to the information obtained from the regional court, the judgment had become final on 3 July 2002. Therefore, the Constitutional Court correctly came to the conclusion that the applicant had not lodged his constitutional complaint at the time when the proceedings had still been pending. As to the insolvency proceedings, the Government referred to the Constitutional Court's decision and reiterated that the complaint in this respect was

manifestly ill-founded. They further stated that at the stage of sale of the co-operative's assets, the regional court exercised only statutory supervision of the receiver's activity. They also argued that, as regards the period after the Constitutional Court's decision, the applicant could have lodged a fresh complaint under Article 127 of the Constitution.

22. The applicant argued that the judgment of 30 April 2002 had still not been served on him, that he had exhausted domestic remedies and that further delays had occurred after the Constitutional Court's decision.

23. The Court observes that on 25 June 1998 the applicant registered his claim with the receiver in the context of the insolvency proceedings. As the receiver had refused to acknowledge the claim, the applicant lodged an action against the receiver with a view to having his entitlement established by a court. The regional court confirmed the applicant's right to claim the sum in the context of the insolvency proceedings by its judgment of 30 April 2002. After the judicial establishment of the applicant's entitlement to claim compensation in the insolvency proceedings, the latter are still pending.

24. In accordance with its practice to examine the length of the proceedings taken as a whole, the Court finds that, in the circumstances of the case, the individual proceedings should be treated as a single dispute over the applicant's claim registered on 25 June 1998 and that the proceedings on establishment of the applicant's claim cannot be dissociated from the insolvency proceedings (see also *Keszeli v. Slovakia*, no. 34602/03, § 29, 13 October 2009; *mutatis mutandis*, *Sika v. Slovakia*, no. 2132/02, §§ 25, 26, 13 June 2006; and *Komanický v. Slovakia (no.2)*, no. 56161/00, § 118, 2 October 2007).

25. The Court observes that the Constitutional Court rejected the applicant's complaint lodged against the two sets of proceedings. It excluded one set of proceedings from its examination and did not find any undue delays in the other set of proceedings. This approach differs from the Court's case-law (as quoted in paragraph 24 above).

26. Since the applicant was unable to obtain redress before the Constitutional Court, the Court concludes that, as to the period of the proceedings following the Constitutional Court's decision, he was not required, for the purposes of Article 35 § 1 of the Convention, to have again recourse to the remedy under Article 127 of the Constitution (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). The Government's objections must therefore be dismissed.

27. The period under consideration started on 25 June 1998. The regional court dealt with the applicant's claim in the course of the insolvency proceedings, later in the proceedings on establishment of the applicant's claim and, subsequently, again in the course of the insolvency

proceedings. The proceedings have thus been pending for 12 years and more than 4 months.

28. It follows that this part of the application cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and it 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

29. 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).

30. 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).

31. The Court observes that in the course of the insolvency proceedings, the applicant was obliged to have his claim confirmed in a separate set of proceedings. This took 3 years and 1 month. However, the insolvency proceedings which started in 1998, have not yet ended and no arguments justifying such a long period have been submitted. They have thus lasted twelve years and more than 4 months so far.

32. Having examined all the material submitted to it, and 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

34. The applicant complained that due to the excessive length of the proceedings, it is now impossible for him to have his claim satisfied. In substance, he alleged a violation of Article 1 of Protocol No. 1.

35. However, in the light of all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights guaranteed under Article 1 of Protocol No. 1.

36. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 8,300 euros (EUR) in respect of non-pecuniary damage.

39. The Government considered the claim exaggerated.

40. The Court awards the applicant the full amount claimed, *i.e.* EUR 8,300 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 166 for the costs and expenses and a lump sum which the Court considered reasonable. The applicant attached invoices for EUR 26.

42. The Government had no objection to the award of a demonstrably incurred sum under this head. They further argued that the applicant had failed to support his claim by sufficient evidence.

43. 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 awards the applicant, who was not represented by a lawyer, the sum of EUR 100 for his out-of-pocket expenses.

C. Default interest

44. 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 admissible and the remainder of the application inadmissible;
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 8,300 (eight thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred 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