



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

FOURTH SECTION

CASE OF KESZELI v. SLOVAKIA (No. 2)

(Application no. 34200/06)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

21/03/2011

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

In the case of Keszeli v. Slovakia (no. 2),

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 A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 30 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 34200/06) 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, Mr Vojtech Keszeli (“the applicant”), on 17 August 2006.

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

3. On 5 March 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1952 and lives in Šal’a.

A. Proceedings concerning the applicant’s action of 1999

5. On 3 June 1999 the applicant lodged a civil action with the Bratislava IV District Court against the Slovak Television (a State-owned public television network). He mainly claimed compensation for the damage allegedly caused by the defendant company in breach of the applicant’s

intellectual property rights. The claim was based on a contract concluded between the parties, under which the applicant had been obliged to create documentaries and several short films.

6. The applicant's requests for an exemption from the obligation to pay the court fees were repeatedly examined by the District, Regional and Supreme Courts. Finally, in 2004 the applicant was exempted from the obligation to pay 50 % of the court fees.

7. On 26 January 2005 the District Court discontinued the proceedings on the ground that the applicant had not paid the fees. The applicant appealed.

8. On 31 August 2005 the above decision was quashed by the Bratislava Regional Court and the case was remitted to the District Court. It was established that the District Court had not correctly calculated the amount of the fees.

9. On 19 October 2005 the District Court judge asked the applicant to pay the court fees. The applicant was also notified that his failure to pay the fees would lead to the discontinuation of the proceedings.

10. On 16 November 2005 the applicant lodged an appeal which was directed against "any future decision to discontinue the proceedings for a failure to pay the court fees".

11. As the applicant had not paid the fees, the District Court discontinued the proceedings on 29 November 2005. The decision was served on the applicant on 8 December 2005. It became final on 26 December 2005.

12. On 10 August 2006 the applicant learned that his appeal of 16 November 2005 had been archived by the District Court and had not been transferred to the court of appeal.

B. Constitutional proceedings

13. On 1 December 2004 the Constitutional Court found that the District Court had violated the applicant's right to a hearing within a reasonable time. It awarded the applicant 20,000 Slovakian korunas in respect of non-pecuniary damage and ordered the reimbursement of the applicant's costs. Despite the applicant's request, it did not order the District Court to proceed without further delay.

14. On 8 September 2006 the applicant relied on Article 6 of the Convention and complained that the District Court had refused to deal with his appeal of 16 November 2005. On 4 October 2006 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. It noted that pursuant to the Code of Civil Procedure an appeal could be filed within fifteen days counted from the date when a decision had been served on the party to the proceedings. The law clearly set the beginning and the end of the time-limit. Although the applicant could have foreseen

the consequences of his failure to pay the fees, there was no possibility, envisaged by the law, to appeal against a decision which had not yet been adopted. The Constitutional Court's decision was served on the applicant on 13 November 2006.

II. RELEVANT DOMESTIC LAW

A. The Constitution

15. Article 127 §§ 1, 2 and 3 of the Constitution provides:

“1. The Constitutional Court shall decide 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 grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated.”

B. The Code of Civil Procedure

16. Pursuant to Articles 201 and 204 § 1 of the Code of Civil Procedure, a party to the proceedings can lodge an appeal against a first-instance decision within fifteen days after the decision has been served on the party.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

17. 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

1. As to the applicability of Article 6 § 1 of the Convention

18. The Government argued that the proceedings before the ordinary courts had not fallen within the scope of Article 6 § 1, because they had been concluded by a decision of a procedural nature (decision to discontinue the proceedings), which had not had any direct impact on the applicant’s civil rights and obligations. Since the proceedings before the ordinary courts did not fall within the scope of Article 6, the ensuing constitutional proceedings were equally not covered by that provision.

19. The applicant argued that Article 6 § 1 had been applicable to the proceedings before the ordinary courts as well as the Constitutional Court. He pointed out that the Slovakian Constitutional Court could quash decisions of the ordinary courts and thus reverse the outcome of the civil proceedings complained of.

20. The Court notes that the proceedings before the ordinary courts concerned the applicant’s pecuniary claim in respect of the damage allegedly caused by the defendant. It therefore finds, contrary to the Government’s arguments, that there existed a dispute over “civil rights and obligations” within the meaning of Article 6 § 1 (see, among others, *Ringeisen v. Austria*, 16 July 1971, § 94, Series A no. 13, and also *Roche v. the United Kingdom* [GC], no. 32555/96, §§ 117 and 120, ECHR 2005-X). The Court also notes that, in respect of the alleged violation of the applicant’s right to a hearing within a reasonable time, it is irrelevant that the ordinary courts did not ultimately determine the merits of the case (see, *mutatis mutandis*, *Číž v. Slovakia*, no. 66142/01, § 61, 14 October 2003). Article 6 was thus applicable to the proceedings before the ordinary courts.

21. As regards the ensuing constitutional proceedings, the Court observes that in his complaint of 8 September 2006, the applicant alleged a violation of his right to a fair trial and complained that the District Court had not transferred his appeal to the court of appeal.

22. The Court reiterates that Article 6 is applicable to the constitutional proceedings where the outcome of such proceedings is directly decisive for one's civil rights and obligations (see *Süßmann v. Germany*, 16 September 1996, §§ 41-46, *Reports of Judgments and Decisions* 1996-IV). It observes that the Slovakian Constitutional Court, when finding a violation of one's fundamental rights and freedoms (such as the right to a fair trial), has the power to quash final decisions of the ordinary courts. It follows that, even though the Constitutional Court did not ultimately rule in the applicant's favour, the constitutional proceedings leading to the decision of 4 October 2006 were directly decisive for the applicant's civil rights and obligations (see, *a contrario*, *Slovenské telekomunikácie, š.p., Herold Tele Media, s.r.o. and František Eke v. Slovakia* (dec.), no. 47097/99, 23 March 2004).

23. The Court therefore finds that Article 6 § 1 was applicable to the proceedings in issue, including the constitutional proceedings leading to the decision of 4 October 2006.

2. As to the applicant's victim status

24. The Government drew the Court's attention to the Constitutional Court's judgment of 1 December 2004. They left it up to the Court to determine whether the applicant could still claim to be a victim of a violation of his right to a hearing within a reasonable time.

25. The applicant stated that the redress awarded by the Constitutional Court had not been sufficient to deprive him of his victim status.

26. The Court notes that at the time of the Constitutional Court's judgment of 1 December 2004 the period of the proceedings complained of (that is the period attributable to the District Court) lasted four years and three months for one level of jurisdiction. The Court concludes, in view of its established case-law, the Constitutional Court's judgment, the amount awarded to the applicant and the fact that the Constitutional Court did not order the responsible court to proceed with the case, that the applicant did not lose his victim status within the meaning of Article 34 of the Convention (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

27. Accordingly, he was not required to again resort to the complaint procedure under Article 127 of the Constitution in respect of the period after the Constitutional Court's judgment. The Court notes that the proceedings were pending for another year and that the Constitutional Court examined the applicant's complaint for approximately one month. The period under the Court's consideration thus lasted until 13 November 2006.

28. 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

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

30. The Government agreed with the Constitutional Court's finding of 1 December 2004. They admitted that the complaint of the length of the proceedings in the present case had not been manifestly ill-founded.

31. 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).

32. 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).

33. Having examined all the materials submitted to it and having regard to its case-law on the subject, the Court concurs with the view expressed by the Constitutional Court on 1 December 2004 that the length of the proceedings had been excessive and had failed to meet the "reasonable time" requirement. It finds further delays in the period after that judgment.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Relying on Article 6 § 1 and Article 13 of the Convention the applicant complained that his right of access to a court had been infringed by the refusal to accept his appeal lodged on 16 November 2005.

35. He further complained that his rights under Article 6 § 1 and Article 14 of the Convention had been violated in that he had not been exempted from the obligation to pay the court fees.

36. Under Article 1 of Protocol No. 1 and Article 14 of the Convention the applicant complained that the State had prevented him from obtaining a just decision in the above proceedings.

37. However, in the light of all the materials 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 rights and freedoms set out in the Convention or its Protocols.

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

38. 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

39. The applicant claimed 82,527.09 euros (EUR), with interest, in respect of pecuniary damage and EUR 28,000 in respect of non-pecuniary damage.

40. The Government contested these claims.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to the fact that the applicant obtained partial redress at the domestic level, it awards him EUR 1,800 under that head.

B. Costs and expenses

42. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Constitutional Court and the Court.

43. The Government left the matter to the Court’s discretion.

44. Having regard to the supporting documents submitted by the applicant, the Court considers it reasonable to award EUR 300 under this head.

C. Default interest

45. 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 under Article 6 § 1 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 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three 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 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President