



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

FOURTH SECTION

CASE OF URÍK v. SLOVAKIA

(Application no. 7408/05)

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 Urík 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 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. 7408/05) 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 Ladislav Urík (“the applicant”), on 7 February 2005.

2. The applicant was initially represented by Mr L. Potocký and, subsequently, by Mr Š. Bucha, lawyers practising in Žilina. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 12 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 1938 and lives in Plevník - Drienové.

A. Inheritance proceedings before the State Notary in Považská Bystrica in case no. D186/61, subsequently before the Považská Bystrica District Court in cases nos. D1133/98, Dnot 652/96

5. Inheritance proceedings in respect of the applicant's father's estate were concluded by a decision of 31 July 1962. The stamp on that decision indicates that it became final on 27 October 1962.

6. On 17 February 1995 the Banská Bystrica Regional Court, upon the appeal of an heir lodged on 15 October 1962, quashed the above decision on the ground that it (i) had been issued without sufficient establishment of the facts and (ii) could not be reviewed for lack of reasons. On 6 March 1995 the case file was remitted for further examination to the Považská Bystrica District Court which had taken over similar cases in the meantime.

7. On 13 July 1998 the district court discontinued the proceedings since the matter at issue was a *res iudicata*. The district court stated that the decision of the State Notary of 31 July 1962 had become final on 27 October 1962 and that no new assets had been found. On 31 May 1999 the Trenčín Regional Court quashed the decision of 13 July 1998 and remitted the case file for further examination to the first-instance. It reasoned that the decision of the State Notary of 31 July 1962 had been quashed by the Banská Bystrica Regional Court on 17 February 1995 and the case file had been remitted for further examination. On 25 May 2000 the Supreme Court rejected the applicant's appeal on points of law lodged against the decision of the Trenčín Regional Court of 31 May 1999.

8. On 25 March 2004 the district court stayed the inheritance proceedings pending the outcome of another set of civil proceedings (file no. 6 C 156/04, see below). On 15 July and 18 November 2004 the district court corrected errors in its decision. The district court decided on the applicant's appeal in its decision of 5 May 2005. The decision to stay the inheritance proceedings became final on 3 June 2005.

9. In the subsequent period, the district court repeatedly verified whether the related civil proceedings had ended. The inheritance proceedings are still stayed.

B. Civil proceedings case no. 6 C 156/04

10. On 18 March 2010 the Považská Bystrica District Court delivered a judgment. Those proceedings are now pending before the appellate court.

C. Civil proceedings case no. 3 C 845/01

11. On 7 March 2002 the Považská Bystrica District Court dismissed the applicant's claim to have a donation contract declared null and void. On 22 April 2003 the Trenčín Regional Court confirmed the judgment.

D. Constitutional proceedings

1. Case no. III. ÚS 15/06

12. On 10 May 2006 the Constitutional Court found that the Považská Bystrica District Court had violated the applicant's right to a hearing without unjustified delay in proceedings nos. D1133/98, Dnot 652/96.

13. The Constitutional Court awarded 60,000 Slovakian korunas to the applicant as just satisfaction in respect of non-pecuniary damage and ordered reimbursement of the applicant's legal costs. It did not order the district court to avoid further delays as the inheritance proceedings were stayed pending the outcome of related civil proceedings.

14. The Constitutional Court noted that (i) it had jurisdiction to examine the duration of the proceedings only as from 15 February 1993 and (ii) until 6 March 1995 the district court had correctly assumed that the inheritance proceedings had been concluded by a final decision. Therefore, it examined the delays which had occurred in the proceedings only after 6 March 1995. It further stated that even after that date the proceedings had lasted nine years and the district court had been responsible for four years and nine months of delays.

2. Case no. Rvp 1289/04

15. A Constitutional Court judge informed the applicant in a letter of 24 August 2004 that his submission concerning the proceedings before the Považská Bystrica District Court in case no. 3 C 845/01 did not comply with the formal requirements for proceedings before the Constitutional Court.

3. Case no. III. ÚS 84/2010

16. On 18 February 2010 the Constitutional Court rejected the applicant's complaint about the length of unspecified proceedings before the Považská Bystrica District and Regional Court and the State Notary as falling short of the statutory requirements.

THE LAW

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

17. The applicant complained about the course and outcome of the above sets of proceedings. He further alleged that the length of the

inheritance proceedings and of the related civil proceedings (file no. 6 C 156/04) had been incompatible with the “reasonable time” requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. Inheritance proceedings before the State Notary in Považská Bystrica in case no. D186/61, subsequently before the Považská Bystrica District Court in cases nos. D1133/98, Dnot 652/96

(a) Alleged length of the inheritance proceedings

18. The Government admitted that a stamp on the State Notary's decision of 31 July 1962 had indicated that it had become final on 27 October 1962. However, on 17 February 1995, the regional court, upon appeal lodged by one party to the proceedings on 15 October 1962, quashed the decision and remitted the case to the district court for further examination. Therefore, the Government stated that the decision of 31 July 1962 had not become final in 1962. They further argued that the Constitutional Court correctly examined only the period after 6 March 1995 when the proceedings had been pending before the district court upon return of the case file from the regional court. They stated that until that date the district court had correctly assumed that the decision of 31 July 1962 had become final.

19. 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 and had awarded the applicant sufficient just satisfaction for non-pecuniary damage suffered. The applicant should have lodged a fresh constitutional complaint in respect of the subsequent period in the inheritance proceedings as well as in respect of the related civil proceedings (file no. 6 C 156/04).

20. The applicant contested the above arguments and stated that he had used the remedies available and that he was still a victim of a violation of his right to a hearing within a reasonable time.

21. The Court notes that it is not clear from the parties' submissions whether it was the State Notary, the Považská Bystrica District Court or the Banská Bystrica Regional Court which kept the appeal lodged by an heir for nearly thirty-three years. The Court has only limited power to examine alleged errors of facts or law imputed to the national courts. However, it is to be noted that on 17 February 1995 the Banská Bystrica Regional Court, upon appeal lodged on 15 October 1962, quashed the decision of 31 July

1962. The first-instance decision had thus not become final in 1962 as indicated by the stamp. This fact cannot be imputed to the applicant.

22. Accordingly, the period to be taken into consideration began on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

23. The Court finds that the Constitutional Court, by reviewing only the period after 6 March 1995, when the case file had been returned from the regional court, had refused to examine the duration of the entire relevant period which the Court has jurisdiction to examine.

24. 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 his right under Article 6 § 1 of the Convention to a hearing within a reasonable time, as interpreted and applied by the Court.

25. The period in question ended on 3 June 2005 when the inheritance proceedings were stayed pending the outcome of the related civil proceedings.

26. The period under consideration thus lasted 13 years and more than 2 months at three levels of jurisdiction.

27. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. There are no other grounds for its inadmissibility. It must therefore be declared admissible.

(b) Alleged unfairness of the proceedings

28. The applicant complained that the manner, in which the domestic courts had dealt with the case, was contrary to his right to a fair hearing guaranteed under Article 6 § 1 of the Convention.

29. The Court notes that the inheritance proceedings have been stayed pending the outcome of related civil proceedings. The complaint of their alleged unfairness is therefore premature.

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

2. Civil proceedings case no. 6 C 156/04 and case no. 3 C 845/01

31. The applicant failed to show that he had raised the complaints now made to the Court in respect of the above two sets of proceedings in a complaint to the Constitutional Court under Article 127 of the Constitution, lodged in accordance with the applicable statutory requirements.

32. It follows that these complaints must also be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

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

34. The Government pointed to the Constitutional Court's finding and admitted that the complaint about the length of the proceedings was not manifestly ill-founded.

35. 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).

36. 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).

37. Having examined all the material submitted to it, the Court considers, having regard to its case-law on the subject that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. On 23 June 2010 the applicant's representative submitted additional observations which had not been solicited by the Court. In that context, he alleged a violation of Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

40. However, in the light of all the materials in its possession, and to the extent that these complaints are substantiated and fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights guaranteed under the Convention or its Protocols.

41. 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

42. 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

43. Within the time-limit set for that purpose and without claiming any specific amount, the applicant argued that he had suffered non-pecuniary damage. He stated that the amount awarded by the Constitutional Court was not sufficient.

44. The Government requested the Court to award the applicant compensation for non-pecuniary damage to the extent justified and to take into account the just satisfaction already granted to him by the Constitutional Court.

45. Even in the absence of quantification, the Court accepts that the applicant has suffered non-pecuniary damage which would not have been sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case and the award made by the Constitutional Court, the Court awards the applicant EUR 5,100 under this head.

B. Costs and expenses

46. Within the time-limit set for that purpose the applicant also claimed EUR 1,927 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

47. The Government had no objection against the award of a demonstrably and necessarily incurred sum.

48. 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, the Court found a violation of the applicant's right to a hearing within a reasonable time. The documents submitted indicate that the costs and expenses which the applicant actually and necessarily incurred in that respect in the proceedings before the Court amount to EUR 96. Therefore, regard being had to the above criteria, the Court awards the applicant that sum.

C. Default interest

49. 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 of the Convention concerning the excessive length of the inheritance 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 5,100 (five thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 96 (ninety-six 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