



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

FOURTH SECTION

CASE OF SIROTŇÁK v. SLOVAKIA

(Application no. 30633/06)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

11/04/2011

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

In the case of Sirotnák v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

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. 30633/06) 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 Emil Sirotnák (“the applicant”), on 19 July 2006.

2. The Government of the Slovak Republic (“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 1940 and lives in Pečovská Nová Ves.

1. Inheritance proceedings

5. On 16 February 1996 the Prešov District Court delivered a judgment in an inheritance dispute. The judgment became final on 14 March 1996.

6. On 28 August 1996 the Košice Regional Court rejected the applicant's appeal as lodged by a person who lacked standing in the proceedings.

2. Civil proceedings

7. On 5 May 2001 the applicant sought a determination of the ownership rights in respect of a plot of land which had also been the subject matter of the above inheritance proceedings.

8. On 26 November 2003 the Prešov District Court dismissed his claim and the judgment was upheld by the Prešov Regional Court on 7 December 2005.

9. On 13 April 2006 the district court transmitted the case file to the Supreme Court for a decision on the applicant's appeal on points of law. On 22 May 2006 the Supreme Court returned the case file to the district court as having been transmitted prematurely. The Supreme Court stated that the judgment of 7 December 2005 had not been served on one of the defendants and, therefore, had not become final. It further stated that the district court should decide whether to grant the applicant exemption from his obligation to pay court fees and to instruct the applicant to eliminate shortcomings in his appeal on points of law.

10. On 23 and 26 June and 6 October 2006 the applicant amended his appeal on points of law. On 25 July the district court exempted the applicant from his obligation to pay court fees. On 14 October 2006 the judgment was served on the defendant and became final.

11. On 13 November 2006 the case file was again transmitted to the Supreme Court. On 19 March 2007 the Supreme Court rejected the applicant's appeal on points of law. The decision became final on 4 May 2007.

3. Constitutional proceedings

12. On 2 March 2006 the applicant complained about a violation of his right to judicial protection and to a “fair trial” within a “reasonable time” as a result of (i) the course of the above sets of proceedings and (ii) the judgments of the district court of 16 February 1996 and of the regional court of 7 December 2005.

13. On 22 November 2006 the Constitutional Court rejected his complaint for various reasons. As to the inheritance proceedings, the complaint was rejected as being belated.

14. As to the civil proceedings, the Constitutional Court noted that at the time of lodging the constitutional complaint the judgment of the regional court had not become final as it had not yet been served on one of the parties to the proceedings. However, the Constitutional Court held that the appellate court had already delivered its judgment and thus the applicant's legal uncertainty had been eliminated at the time of lodging his constitutional complaint. Therefore, the Constitutional Court rejected the length of proceedings complaint as being manifestly ill-founded.

15. It rejected the complaint about unfairness as being manifestly ill-founded, holding that there was no causal link between the alleged violation and the course of the proceedings before the regional court.

THE LAW

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

16. The applicant complained that his right to a “fair hearing” had been violated in the above proceedings and that their length 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

17. The Government stated that both the applicant's constitutional complaint and his complaint to the Court had been lodged belatedly.

18. The applicant reiterated his complaints.

19. The Court notes that the proceedings ended by a final decision on 14 March 1996. The present application was introduced on 19 July 2006, that is outside the six months' time-limit laid down in Article 35 § 1 of the Convention.

20. The Constitutional Court rejected the applicant's complaint as lodged out of time. The Court notes that applicants are required to use the remedy available to them under Article 127 of the Constitution as from January 2002 (*Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX). Therefore, the constitutional remedy lodged by the applicant cannot affect the above position.

21. It follows that this part of the application must be rejected as having been introduced out of time in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Civil proceedings

(a) Alleged length of the proceedings

22. The Government argued that the applicant had not exhausted domestic remedies as he had failed to seek redress before the Constitutional Court in accordance with the statutory requirements and the Constitutional Court's practice. The applicant lodged his constitutional complaint on 2 March 2006. At that time the proceedings were "pending" neither before the district court nor before the regional court as the latter had delivered a judgment on 7 December 2005. The judgment was served on the applicant on 20 January 2006, and 13 February 2006 he lodged an appeal on points of law. On 13 April 2006 the case file was transmitted to the Supreme Court. The Government admitted that the judgment had not yet become final at the time when the constitutional complaint was lodged as it had not yet been served on one of the defendants. However, the Supreme Court became aware of this fact only after the case file had been transmitted to it. The judgment became final on 14 October 2006 when it was served on the defendant concerned. The Government argued that, at the time of lodging the constitutional complaint, the applicant should have considered the proceedings as having been finally concluded. In November 2006, the Constitutional Court, when deciding on the applicant's constitutional complaint, was aware that the Supreme Court had returned the case file to the district court as having been submitted prematurely. However, the Constitutional Court examined whether the admissibility criteria were met at the date on which the complaint was lodged. The Constitutional Court rejected the applicant's complaint as, at the time of its lodging, the applicant's legal uncertainty had been eliminated. The Government argued that in March 2006, at the time of introduction of the constitutional complaint, the case file had already been transmitted to the Supreme Court for a decision on the applicant's appeal on points of law. The Constitutional Court rejected the complaint about the length of the proceedings before the district and regional courts, as it has been the Constitutional Court's practice to examine length of proceedings complaints only when the proceedings were still pending before the authority liable for the alleged violation at the moment when the complaint was lodged with the Constitutional Court.

23. The applicant contested the above arguments. He stated that on 9 March and in October 2006, upon the district court's request, he had provided the address of the defendant concerned. The applicant argued that the district court had been responsible for several procedural steps and delays even after the adoption of the judgment of 7 December 2005, such as its service on the parties. The applicant argued that he had exhausted domestic remedies by lodging his constitutional complaint at a time when the proceedings had not yet been concluded by a final judgment.

24. As regards applications against Slovakia concerning 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 purposes of Article 35 § 1 of the Convention (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).

25. 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 had ended. This practice has been accepted by the Court (see *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

26. 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 his complaint with the Constitutional Court after the regional court had upheld the first-instance judgment, but before that judgment was served on all the parties to the proceedings and had become final.

27. 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 legal uncertainty in the context of judicial or administrative proceedings can be eliminated only when such proceedings have ended. It has been the Court's own practice to examine the duration of proceedings as a whole, that is until they have ended by a final decision.

28. As to the circumstances of the present case, the Court notes that the proceedings had not yet been concluded by a final judgment when the constitutional complaint was lodged on 2 March 2006. At the time of lodging the constitutional complaint, the proceedings had not yet been pending before the Supreme Court, to which the case file had been transmitted only on 13 April 2006. The subsequent developments in the proceedings showed that further delays imputable to the district court occurred. Even though the district court was not dealing with the merits of the case after the adoption of the judgment of 7 December 2005, it still had to carry out several procedural steps.

29. In these circumstances, the manner in which the applicant's complaint was dealt with by the Constitutional Court failed to respect the applicant's right under Article 6 § 1 of the Convention to a hearing within a reasonable time, as interpreted and applied by the Court.

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

31. The proceedings complained of lasted six years at three levels of jurisdiction.

32. It follows that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Alleged unfairness of the proceedings

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

34. 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 guaranteed under the Convention or its Protocols.

35. 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.

B. Merits

36. The applicant argued that the proceedings concerning a plot of land had lasted between 1996 and 2007. He stated that the proceedings had not been complex, that he had not contributed by his conduct to their prolongation and that the domestic courts had caused delays incompatible with the reasonable time requirement guaranteed by Article 6 § 1 of the Convention.

37. The Government argued that the length of the proceedings was not excessive. They further stated that the proceedings had been complex from the factual and procedural point of view. The applicant, to a certain extent, had contributed to their length. Moreover, the few delays caused by the district court could not lead to finding of a violation of the applicant's right to a hearing within a reasonable time.

38. 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).

39. 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).

40. 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, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. Lastly the applicant complained that he had no effective remedy at his disposal within the meaning of Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

43. The Government argued that the applicant had not had an arguable claim and, therefore, Article 13 of the Convention was not applicable to the present case. In any event, the applicant had an effective remedy at his disposal, namely a complaint under Article 127 of the Constitution. The complaint must be rejected as being manifestly-ill founded.

44. The applicant contested the above argument and argued that although he had turned to the Constitutional Court, the latter had failed to provide him with an appropriate redress.

45. In the light of its above conclusions in respect of the applicant's complaints concerning the inheritance proceedings and the complaint about the alleged unfairness of the civil proceedings, the Court finds that the applicant cannot be regarded as having an arguable claim for the purpose of Article 13 of the Convention.

46. Accordingly, the Court rejects this part of the application under Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

47. On the other hand, the Court finds that the part of the application concerning the absence of an effective remedy for the alleged breach of the applicant's right to a hearing within a reasonable time in the civil proceedings 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

48. The Court reiterates that the remedy under Article 127 of the Constitution is likely to provide appropriate and sufficient redress to applicants where it allows for the examination of the entire duration of the proceedings complained of (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).

49. Since the applicant in the present case complained to the Constitutional Court about the overall duration of the proceedings before the district and the regional courts and since the Constitutional Court refused to examine it although the proceedings had not been concluded by a final judgment, the Court considers that the applicant's right to an effective remedy has not been respected (see, *mutatis mutandis*, *A. R., spol. s r. o. v. Slovakia*, no. 13960/06, §§ 59-60, 9 February 2010).

50. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. Within the time-limit set for that purpose, the applicant claimed 17,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government considered the claim exaggerated.

54. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

55. Within the time-limit set for that purpose, the applicant claimed EUR 273 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. Although the applicant itemised his claims, he submitted only invoices for an amount equivalent to EUR 13.48.

56. The Government contested the claims concerning the costs of the domestic proceedings but had no objection to an award of demonstrably incurred costs in respect of the proceedings before the Court.

57. 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 it reasonable to award the sum of EUR 100 for the applicant's out-of-pocket expenses.

C. Default interest

58. 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the excessive length of the civil 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* that there has been a violation of Article 13 of the Convention;
4. *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 1,000 (one thousand 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;
5. *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