



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

FOURTH SECTION

CASE OF RADVÁK AND RADVÁKOVÁ v. SLOVAKIA

(Application no. 25657/08)

JUDGMENT

STRASBOURG

11 January 2011

FINAL

11/04/2011

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

In the case of Radvák and Radváková 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 25657/08) 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 two Slovak nationals, Mr Ivan Radvák and Mrs Vladimíra Radváková (“the applicants”), on 23 May 2008.

2. The applicants were represented by Mrs I. Rajtáková, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 15 March 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 applicants are siblings. They were born in 1984 and 1983 respectively and live in Košice.

1. Civil proceedings

5. On 29 March 2000 the applicants claimed payment of an amount then equivalent to 428 euros (EUR) from three defendants before the Košice II District Court.

6. On 19 March 2007 the applicants informed the district court about their intention to withdraw their action and requested the district court to discontinue the proceedings. They did so after they had learned that it was impossible to verify a signature on a relevant document.

7. On 7 June 2007 the district court discontinued the proceedings and obliged the applicants to pay the court fees.

8. On 31 August 2007 the Košice Regional Court, upon the applicants' appeal in respect of the court fees, upheld the first-instance decision. The proceedings finally ended on 24 October 2007.

2. Constitutional proceedings

9. On 19 March 2007 the applicants complained to the Constitutional Court about the length of the proceedings before the district court. On 24 May 2007 the Constitutional Court declared their complaint admissible.

10. On 11 October 2007 the Constitutional Court dismissed the applicants' complaint. It stated that it could examine complaints concerning length of proceedings only where the proceedings were still pending and the applicants had a genuine legal interest in their continuation. The Constitutional Court held that there had been no legal uncertainty in the case following the applicants' withdrawal of the action and therefore their lodging of the constitutional complaint had been formalistic and unfounded.

B. Relevant domestic law and practice

1. The Constitutional Court Act 1993 (Law no. 38/1993 Coll., as amended)

11. Section 53 (3) provides that a constitutional complaint can be lodged within a period of two months from the date on which the decision in question has become final and binding or on which a measure has been notified or on which notice of other interference has been given. As regards measures and other interferences, the above period commences when the complainant could have become aware of them.

2. Practice of the Constitutional Court

12. It has been the practice of the Constitutional Court to entertain complaints about excessive length of proceedings only where the proceedings complained of are pending before the authority liable for the

alleged violation at the moment when such complaints are lodged (III. ÚS 150/03).

13. In two judgments (I. ÚS 182/06, I. ÚS 23/06) submitted by the applicants, the Constitutional Court, contrary to the above practice, examined alleged delays notwithstanding that the proceedings had ended prior to the filing of a constitutional complaint. The Constitutional Court found a violation of the complainants' right to a hearing within a reasonable time.

14. The Constitutional Court has held that the aim of the right to a hearing without unjustified delays is to eliminate legal uncertainty in which a person, who requests delivery of a decision by a State authority, is placed. Such legal certainty is normally brought about as a result of a final decision (I. ÚS 175/06).

15. In a number of cases the Constitutional Court held that a constitutional complaint was manifestly ill-founded where the impugned conduct of a public authority could not have violated the fundamental right as alleged by the plaintiff for lack of a causal link. Such was also the case where a procedural situation or the state of the proceedings before a public authority objectively excluded the possibility that such an authority (ordinary court) violates the afore-mentioned fundamental right (IV. ÚS 16/04, II. ÚS 1/05, II. ÚS 20/05, IV. ÚS 55/05, IV. ÚS 288/05).

THE LAW

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

16. The applicants 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

17. The Government argued that the applicants had not exhausted domestic remedies as they had failed to seek redress before the Constitutional Court in accordance with the statutory requirements and the Constitutional Court's practice. They reiterated the reasoning of the Constitutional Court's decision and considered the latter to be in accordance with the Court's case-law (see *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

18. As to the two judgments of the Constitutional Court (I. ÚS 182/06, I. ÚS 23/06) invoked by the applicants, the Government stated that, unlike in the present case, the applicants in the judgments quoted had had a genuine legal interest in the continuation of the proceedings.

19. The applicants contested the above arguments. They stated that the purpose of an effective remedy was to obtain relief – either preventive or compensatory - for an alleged violation of one's Convention rights. The applicants further argued that they had exhausted domestic remedies by lodging their constitutional complaint before the district court had decided on the case.

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

21. 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 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).

22. 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*, cited above).

23. 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 applicants lodged their complaint with the Constitutional Court before the district court had delivered a decision to discontinue the proceedings and before that decision became final. The subsequent developments in the proceedings showed that an appeal had been lodged against the first-instance decision in respect of court fees. Although the district court was not dealing with the merits of the case after the withdrawal of the action by the applicants, it still had to carry out several procedural steps.

24. Even though the Constitutional Court, when rejecting the applicants' 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

have ended. Accordingly, it has been the Court's practice to examine the duration of proceedings as a whole, that is up until the time they have ended by a final decision.

25. In these circumstances, the manner in which the applicants' complaint was dealt with by the Constitutional Court failed to meet the purpose of protection of their right under Article 6 § 1 of the Convention to a hearing within a reasonable time in the manner as interpreted and applied by the Court.

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

27. The overall proceedings lasted 7 years and 7 months at two levels of jurisdiction. During this period, the proceedings were pending 7 years and 3 months before the district court.

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 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 applicants and the relevant authorities and what was at stake for the applicants 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. 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 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

33. Lastly the applicants complained that they had no effective remedy at their 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

34. The Government argued that the applicants had an effective remedy at their disposal, namely a complaint under Article 127 of the Constitution.

35. The applicants contested the above argument and argued that although they had turned to the Constitutional Court, the latter's decision had not provided them with any redress. Pointing to the quoted judgments of the Constitutional Court (see paragraph 13 above) the applicants argued that termination of the proceedings in those two cases had not been an obstacle to finding a violation of those applicants' right to a hearing within a reasonable time.

36. The Court notes that the complaint concerning absence of an effective remedy for the alleged breach of the applicants' right to a hearing within a reasonable time 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

37. 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 examination of the length of the proceedings complained of (see *Kudła v. Poland* [GC], no. 30210/96, §§ 158 and 159, ECHR 2000-XI, and *Andrášik and Others* cited above).

38. The applicants lodged a complaint with the Constitutional Court. Although they did so at the time when the proceedings had not yet been concluded by a final decision, the Constitutional Court refused to examine it. As established in paragraph 25 above, the manner in which the applicants' complaint was dealt with by the Constitutional Court failed to meet the purpose of protection of their right under Article 6 § 1 of the Convention to a hearing within a reasonable time as interpreted and applied by the Court. The Court, therefore, considers that the applicants' 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).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed EUR 8,000 each in respect of non-pecuniary damage.

42. The Government considered the claim exaggerated.

43. Having regard to its case-law on the subject and to the relatively low amount claimed by the applicants in the domestic proceedings, the Court awards EUR 2,000 to each of the applicants in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicants also claimed EUR 595 for the costs and expenses incurred before the Constitutional Court and EUR 714 for those incurred before the Court.

45. The Government pointed to the Court's case-law stating that there was a need for human rights lawyers to be moderate in the fees they charged to applicants. The Government underlined the fact that the applicants had not supported their claims by any evidence. They requested the Court to grant the applicants compensation for only reasonably incurred costs and expenses and to dismiss the rest of their claims.

46. 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 absence of any documents supporting the applicants' claims, the Court makes no award under this head.

C. Default interest

47. 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* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) each plus any tax that may be chargeable in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President