



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

THIRD SECTION

**CASE OF STAVEBNÁ SPOLOČNOSŤ TATRY POPRAD S.R.O.
v. SLOVAKIA**

(Application no. 7261/06)

JUDGMENT

STRASBOURG

3 May 2011

FINAL

03/08/2011

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

In the case of Stavebná spoločnosť TATRY Poprad, s.r.o. v. Slovakia,
The European Court of Human Rights (Third Section), sitting as
a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 7261/06) 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 Stavebná spoločnosť TATRY Poprad s.r.o. (“the applicant company”), on 9 February 2006. The authorised signatories to the application were MM. I. Moravčík, L. Šípka and J. Čížik.

2. The applicant company was represented by Mr F. Kočka, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 1 February 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 (former Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a company with limited liability, with its registered office in Poprad.

5. On 6 July 1997 the applicant company’s predecessor sued a private limited company for a sum due for construction works carried out by the former.

6. Courts at two levels granted the claim in part, but the Supreme Court, in proceedings on the defendant's appeal on points of law, quashed the lower courts' judgments on 27 September 2001.

7. In subsequent proceedings, in December 2001, the plaintiff argued that the relevant part of the contract was void, as it had been signed by Mr K., who did not have the authority to act on behalf of the defendant company, on 22 April 1996.

8. On 5 February 2002 the Prešov Regional Court dismissed the action. It established that the parties had concluded a contract for the reconstruction of a spa house on 22 April 1996. The contract included a provision under which the plaintiff was liable to pay a penalty in case of delay. That penalty amounted to 0.5% of the contractual price for each day of delay, the maximum amount being 20%. The court established that the work under the contract had been completed on 13 December 1996 instead of 21 October 1996 as agreed in the contract. The defendant had therefore rightly deducted the sum in issue from the payment of the price.

9. As to the above argument concerning the validity of the relevant part of the contract, the Regional Court held that Mr K. had been elected to the company's board of directors at an extraordinary general meeting held on 12 April 1996. He had therefore been authorised to sign the contract on the defendant's behalf. The fact that he had been entered in that capacity in the companies' register on 28 May 1996 could not affect the position, as such an entry was of a declaratory nature only.

10. On 27 March 2002 the applicant company appealed. Its representative argued that the first-instance court had disregarded the relevant evidence when concluding that Mr K. had been authorised to sign the contract for the defendant company. In particular, the applicant company relied on the minutes of a meeting of that company's supervisory board held on 26 April 1996. Point 4 on the agenda was entitled "Election of the Board of Directors" and the minutes indicate that "the supervisory board approved Mr K. as a new member of the company's board of directors". The applicant further argued that there was nothing to prove that K. had been effectively appointed to that post at the general meeting held on 12 April 1996, contrary to what was stated in the Regional Court's judgment.

11. On 12 June 2003 the Supreme Court upheld the Regional Court judgment of 5 February 2002. As regards the standing of Mr K. to sign the contract in particular, it held that the Regional Court had correctly established that that person had been elected as a member of the company's board of directors at the general meeting held on 12 April 1996. He had therefore been entitled to sign the contract on 22 April 1996. According to one of the documents from the court's file, on 24 May 1996 the defendant company had requested that the responsible court register Mr K. as a member of the company's board of directors with effect from 12 April 1996. The judgment became final on 2 September 2003.

12. On 23 September 2003 the applicant company appealed on points of law against the judgment of 12 June 2003. It maintained that the appeal court had not examined its arguments concerning the evidence in the case and the standing of Mr K. to sign the contract in issue on the defendant company's behalf. The applicant company further complained that at the end of the hearing before the appeal court its representative had not been allowed to sum up the arguments or to submit final comments on the case. The applicant company had thus been prevented from acting before the court, which was a reason justifying the admissibility of an appeal on points of law within the meaning of Article 237(f) of the Code of Civil Procedure.

13. On 31 October 2003 the applicant company lodged a complaint under Article 127 of the Constitution. It argued that its right under Article 6 § 1 of the Convention to a fair hearing had been breached by the conduct of the Supreme Court and its decision of 12 June 2003. In particular, the Supreme Court had disregarded the applicant company's arguments concerning the standing of Mr K. to act on the defendant company's behalf.

14. The Constitutional Court (First Chamber) dismissed that complaint on 25 February 2004. It held, with reference to Article 238 § 3(b) of the Code of Civil Procedure, that an appeal on points of law was available against the appeal court decision and that the applicant company was required to use that remedy first. The relevant part of its complaint was therefore premature.

15. On 26 May 2005 the Supreme Court (chamber dealing with appeals on points of law) dismissed the applicant company's appeal on points of law (see paragraph 12 above) as inadmissible. According to the decision, "the applicant company was aware of the fact that the admissibility criteria for an appeal on points of law under Articles 238 and 239 of the Code of Civil Procedure had not been met, as it alleged a breach of its right of access to court, which is a ground for an appeal on points of law listed in Article 237(f) of the Code of Civil Procedure".

16. The Supreme Court further held that the arguments concerning the assessment of evidence and determination of the point in issue did not permit the conclusion that the applicant company had been prevented from acting before the appeal court within the meaning of Article 237(f) of the Code of Civil Procedure. Such arguments could be raised only in cases where an appeal on points of law was admissible on one of the grounds enumerated in Articles 238 or 239 of the Code of Civil Procedure.

17. As to the other argument, that the representative of the applicant company had been prevented from making final submissions at the hearing before the appeal court, the Supreme Court held that the plaintiff had had ample opportunity to present its arguments in the course of the hearing. No new evidence requiring comments from the parties had been taken. The applicant company's procedural rights had therefore not been infringed in the proceedings leading to the appellate court's judgment of 12 June 2003.

An appeal on points of law under Article 237f of the Code of Civil Procedure was therefore not available in that context.

18. On 9 August 2005 the applicant company lodged a fresh constitutional complaint. It complained under Article 6 § 1 of the Convention that its right to a fair hearing had been breached by the judgment of the Prešov Regional Court of 5 February 2002, the Supreme Court's (appellate chamber) judgment of 12 June 2003 and the decision of the Supreme Court (chamber dealing with appeals on points of law) of 26 May 2005. The applicant company relied on the arguments which it had submitted in the proceedings before the ordinary courts. In particular, it alleged that the courts at the first and second levels of jurisdiction had disregarded the position in the case and the plaintiff's arguments that the contract was void. The applicant further complained that its representative had been unable to make final submissions to the appeal court and that it had obtained no redress in that respect in the proceedings on the appeal on points of law.

19. The Constitutional Court (Fourth Chamber) rejected the complaint on 27 September 2005. It held that the complaint about the Regional Court and Supreme Court judgments of 5 February 2002 and 12 June 2003 had been lodged after the expiry of the statutory time-limit of two months. It declared manifestly ill-founded the complaint about the Supreme Court decision of 26 May 2005. It held, in particular, that the Supreme Court had considered the applicant company's arguments appropriately and had given sufficient and relevant reasons for its decision on the applicant company's appeal on points of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution and the Constitutional Court Act 1993

20. Article 127 of the Constitution provides:

“1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of a failure to act, the Constitutional Court may order [the authority] which violated the rights or freedoms in question to take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order the authority concerned to abstain from

violating fundamental rights and freedoms ... or, where appropriate, order those who violated the rights or freedoms set out in paragraph 1 to restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated.” ...

21. Under section 53(1) of the Constitutional Court Act 1993, a complaint to the Constitutional Court is admissible only where the applicant has used effective remedies provided for by the law to protect his or her fundamental rights. Paragraph 3 of the same section provides that a complaint to the Constitutional Court can be lodged within two months of a decision finally taking effect or from the date of a contested measure or notification of another interference with a person’s rights.

22. Section 56(3) of the Constitutional Court Act 1993 provides that, when a violation of fundamental rights or freedoms is found, the Constitutional Court may order the authority liable for that violation to proceed in accordance with the relevant rules. It may also return the case to the authority concerned for further proceedings, prohibit the continuation of the violation or, as the case may be, order the restoration of the situation existing prior to the violation.

B. Code of Civil Procedure

23. Article 118 § 3 provides that parties can sum up their proposals and comment on the evidence and the merits of a case at the end of a court hearing.

24. The relevant provisions concerning appeals on points of law provide:

“Article 237

An appeal on points of law against any decision of the appeal court is admissible where ...

f) a party has been prevented, by the appeal court’s conduct, from acting before the court ...

Article 238

...3. An appeal on points of law is also admissible against an appeal court judgment confirming the first-instance judgment where the appeal court ...

b) upheld a judgment deciding on the matter in a different manner than an earlier delivered judgment because the first-instance court was bound by the legal view of the court which had quashed the earlier judgment...”

C. The Supreme Court's practice relating to appeals on points of law

25. In its decision no. 1 Cdo 11/02 of 24 September 2002 the Supreme Court found that availability of an appeal on points of law under Article 238 § 3 (b) did not extend to situations where an appeal court upheld a fresh first-instance judgment deciding on the matter in a different manner than in a judgment delivered earlier as a result of the fact that the first-instance court was bound by the legal view expressed by the court which had quashed such an earlier judgment in the context of proceedings on appeal on points of law. Otherwise, the last-mentioned court would be called upon to review, contrary to the purpose of proceedings on an appeal on points of law, its own legal view expressed when it quashed the original first-instance judgment in the case. This decision was included in the collected Supreme Court judgments and decisions under number 3/2004 with effect from 24 September 2004.

THE LAW

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

26. The applicant company cited Article 6 § 1 of the Convention and complained that the domestic courts had disregarded the principle of equality of arms and had decided arbitrarily. In particular, they had based their decision concerning the validity of the contract on evidence which had not been included in the file, had disregarded the applicant company's arguments and had failed to give relevant reasons for their conclusion. It also complained that prior to the delivery of the Supreme Court judgment of 12 June 2003 its representative had not been allowed to sum up the applicant's submissions and, in particular, to orally request that the Supreme Court should allow an appeal on points of law against its judgment.

27. The applicant company further complained that the Supreme Court had dismissed its appeal on points of law and that in its two decisions the Constitutional Court had refused to examine its complaint against the judgment of the Regional Court of 5 February 2002 and the Supreme Court judgment of 12 June 2003. It relied on Article 13 of the Convention.

28. Given that the Court is free, in the performance of its task, to attribute to the facts of the case a characterisation in law different from that given by the applicant (see *Camenzind v. Switzerland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, § 50), it considered it appropriate, when communicating the case to the Government, to examine this complaint also from the viewpoint of the

applicant company's right of access to court as guaranteed under Article 6 § 1 of the Convention.

29. The Government contested those arguments and maintained that the application was manifestly ill-founded.

30. Article 6 § 1, in its relevant part, provides:

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

A. Admissibility

31. The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court notes that the application 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

1. Alleged breach of the applicant company's right of access to court

(a) Arguments of the parties

32. The applicant maintained that the Constitutional Court had rejected its first complaint as premature and then, after the appeal on points of law had been declared inadmissible by the Supreme Court, it had rejected the relevant part of its second complaint as out of time. As a result, the Constitutional Court had failed to examine a part of the complaint made by the applicant company. It had therefore been prevented from seeking redress in respect of the alleged breach of its right to a fair trial before the Constitutional Court.

33. The Government argued that the Constitutional Court, in its first decision, had refused to deal with the applicant company's complaint because the applicant company had not made use of the available remedy, namely an appeal on points of law, which was at its disposal. This decision was adopted in line with the Constitutional Court's established practice. After the applicant company had lodged an appeal on points of law, the Supreme Court examined the applicant's arguments in detail and found that appeal inadmissible. As to the second constitutional complaint, the Government maintained that the Constitutional Court had examined the applicant company's complaint on the merits, as it had dealt in detail with the decision of the Supreme Court on the appeal on points of law. It had thoroughly considered that decision, its reasoning and the conclusion that

the applicant company had not been prevented from acting before the appeal court within the meaning of Article 237(f) of the Code of Civil Procedure.

34. As to the part of the constitutional complaint which had been rejected as out of time, the Government noted that the Constitutional Court had adopted a formal decision on all points of the summary of the constitutional complaint. The applicant company's argument as to the unfairness of the proceedings had been examined on the merits by courts at all levels of jurisdiction. The Government therefore expressed the view that the manner in which the Constitutional Court had dealt with the present two constitutional complaints had been compatible with the applicant company's right of access to court.

(b) The Court's assessment

(i) Recapitulation of the relevant principles

35. The Court reiterates that Article 6 § 1 does not guarantee a right of appeal as such. However, where several levels of jurisdiction do exist, each instance must comply with the guarantees of Article 6, including the right of effective access to court (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2956, § 37). Moreover, parties to proceedings must be able to exercise usefully the rights of appeal or other remedy available to them (see *Hadjianastassiou v. Greece*, judgment of 16 December 1992, Series A no. 252, p. 16, § 33, and *Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands*, no. 46300/99, § 48, ECHR 2004-X).

36. The "right to court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and *Mortier v. France*, no. 42195/98, § 33, 31 July 2001). Nonetheless, the limitations applied must not restrict or reduce the individual's access in such a way or to such an extent as to impair the very essence of the right. Furthermore, limitations will only be compatible with Article 6 § 1 if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued (see *Guérin v. France*, judgment of 29 July 1998, *Reports* 1998-V, p. 1867, § 37).

(ii) Application of the relevant principles to the present case

37. The Court notes that in Slovakia Article 127 of the Constitution entitles the Constitutional Court to examine complaints in which natural or legal persons allege a breach of their fundamental rights and freedoms and to provide redress, for example by quashing final decisions given by other

authorities including ordinary courts and to return the case to such authorities for further proceedings. The Court has required applicants in similar circumstances to exhaust that remedy for the purpose of Article 35 § 1 of the Convention. It sees no reason why the guarantees of a fair trial under Article 6 § 1 of the Convention should not extend also to proceedings before the Constitutional Court (see also *Süßmann v. Germany*, 16 September 1996, §§ 41-46, *Reports of Judgments and Decisions* 1996-IV, and, *a contrario*, *Slovenské telekomunikácie, š.p., Herold Tele Media, s.r.o. and František Eke v. Slovakia* (dec.), no. 47097/99, 23 March 2004).

38. In the present case, the applicant company, in its first constitutional complaint, alleged a breach of its right under Article 6 of the Convention to a fair trial in the proceedings leading to the Supreme Court's judgment of 12 June 2003. It argued, among other issues, that the Supreme Court had disregarded its arguments which concerned the validity of the relevant contract. In parallel, it sought protection of its rights by means of an appeal on points of law relying on Article 237(f) of the Code of Civil Procedure.

39. On 25 February 2004 the Constitutional Court rejected the above complaint. Relying on section 53(1) of the Constitutional Court Act 1993, it held that the applicant company was obliged first to use the other remedy available, namely an appeal on points of law. The Constitutional Court expressly referred to Article 238 § 3(b) of the Code of Civil Procedure.

40. Subsequently, a different chamber of the Supreme Court dismissed the applicant company's appeal on points of law holding that no relevant ground rendering such a remedy admissible had been established. That decision was in compliance with its earlier practice concluding that Article 238 § 3(b) of the Code of Civil Procedure did not extend to similar situations. The Supreme Court then dealt in more detail with the argument concerning the denial of the right to sum up the arguments and make final submissions prior to the conclusion of the hearing before the appeal court. It held that the applicant company had not thereby been prevented from acting before the appeal court within the meaning of Article 237(f) of the Code of Civil Procedure.

41. The applicant company then lodged a fresh constitutional complaint, in which it again alleged a breach of Article 6 § 1 of the Convention in the proceedings before ordinary courts at all three levels. In its decision of 27 September 2005 the Constitutional Court noted that the proceedings on the merits ended by the decision of the appeal court which had become final on 2 September 2003. It concluded that the applicant company's complaint in respect of the proceedings leading to that decision had been introduced outside the time-limit of two months laid down in section 53(3) of the Constitutional Court Act 1993.

42. The Constitutional Court further held that the Supreme Court gave relevant and sufficient reasons for its conclusion, in the decision on the

appeal on points of law, that the applicant company's right to act before the appeal court had not been breached. There was no appearance of a breach of Article 6 § 1 in the proceedings concerning the appeal on points of law.

43. The Court notes that, as a result, the Constitutional Court excluded from its review a part of the arguments which the applicant company made in both complaints to it and which concerned the evidence put before the ordinary courts at first and second levels of jurisdiction, the reasoning in respect of the validity of the contract and, in particular, the standing of Mr K. to act on behalf of the defendant company.

44. In its first decision, the Constitutional Court held that such issues could be reviewed in proceedings on an appeal on points of law, and referred to Article 238 § 3(b) of the Code of Civil Procedure. After the Supreme Court had refused to examine such complaints, concluding that the above provision did not allow for an appeal on points of law in similar cases, the Constitutional Court, in its second decision, held that the statutory time-limit of two months prevented it from dealing with the alleged shortcomings in the proceedings leading to appeal court's judgment of 12 June 2003.

45. The Court considers that the manner in which the Constitutional Court dealt with the two complaints of the applicant company (see paragraphs 43 and 44 above) prevented it from asserting its rights and effectively using the remedy available under Article 127 of the Constitution in respect of a substantial part of the case and that, accordingly, the very essence of the applicant company's "right to court" was impaired (see paragraph 36 above and also, *mutatis mutandis*, *Vodárenská akciová spoločnosť, a. s. v. the Czech Republic*, no. 73577/01, 24 February 2004, §§ 32 and 34; *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, §§ 54 and 55, ECHR 2002-IX, and *Běleš and Others v. the Czech Republic*, no. 47273/99, § 69, ECHR 2002-IX).

46. There has therefore been a breach of Article 6 § 1 of the Convention.

2. Other alleged breaches of Article 6 § 1

47. The applicant company complained that the courts had based their decision concerning the validity of the contract on evidence which had not been included in the file, had disregarded its arguments and had failed to give relevant reasons for their conclusions. It also complained that its representative had not been allowed to sum up the submissions or to orally request that the Supreme Court should allow an appeal on points of law against its judgment.

48. The Government stated that the courts had based their conclusion on the basis of the documents in the file, noting that courts had been free to take evidence not proposed by the parties. They concluded that the applicant company had not been prevented from submitting other evidence or raising other arguments, and that the guarantees in Article 6 § 1 had been respected.

49. Having regard to its conclusion, above, that there was a violation of the applicant company's right of access to court within the meaning of Article 6 § 1 of the Convention, and considering that it has only limited powers to deal with errors of fact or law allegedly committed by national authorities, the Court does not find it necessary to examine separately the applicant company's remaining complaints raised under that provision (see also *Čanády v. Slovakia* (no. 2), no. 18268/03, 20 October 2009, with further references).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. Under Article 13 of the Convention the applicant complained that the Supreme Court had dismissed its appeal on points of law and that in its two decisions the Constitutional Court had refused to hear its complaint against the Regional Court judgment of 5 February 2002 and the Supreme Court's judgment of 12 June 2003.

51. The Government maintained that the applicant company had at its disposal effective domestic remedies, namely an appeal on points of law to the Supreme Court and the complaint procedure under Article 127 of the Constitution. The present complaint was thus manifestly ill-founded.

52. The Court considers that this complaint is closely linked to the above-mentioned applicant company's complaint under Article 6 § 1. It must therefore likewise be declared admissible.

53. In view of the finding of a breach of the applicant company's right under Article 6 § 1 of access to court (see paragraph 47 above), the Court further considers that it is not necessary to examine whether in this case there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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."

55. In a letter of 8 June 2010 the Court invited the applicant company to submit its just satisfaction claims by 20 July 2010. The attention of its representative was drawn to Rule 60 of the Rules of Court. The applicant company's lawyer submitted such claims in a letter sent by fax on 22 July 2010, explaining that the above-mentioned time-limit had not been respected due to a holiday period at the applicant company.

56. Noting that no just satisfaction claims were submitted within the given time-limit and no extension of time had been requested before the

expiry of that period, the Court makes no award under Article 41 of the Convention (see also, *A.R., spol. s r.o. v. Slovakia*, no. 13960/06, §§ 63-65, 9 February 2010, with further references, or *Ryabykh v. Russia*, no. 52854/99, §§ 66-68, ECHR 2003-IX).

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 in respect of the applicant company's right of access to a court;
3. *Holds* that there is no need to examine separately the other complaints raised under Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention.

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

Santiago Quesada
Registrar

Josep Casadevall
President