



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

THIRD SECTION

CASE OF VOJTĚCHOVÁ v. SLOVAKIA

(Application no. 59102/08)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

25/12/2012

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

In the case of Vojtěchová v. Slovakia,

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

Josep Casadevall, *President*,

Egbert Myjer,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 59102/08) 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 a Slovak national, Ms Alena Vojtěchová (“the applicant”), on 19 November 2008.

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

3. The applicant alleged that proceedings concerning the termination of a tenancy agreement were unfair contrary to Article 6 § 1 of the Convention.

4. On 14 March 2011 the application was communicated 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Košice.

6. In 2000 a cooperative sued the applicant’s mother for termination of a tenancy agreement in respect of a flat in which she lived with the applicant and the latter’s daughter. It was argued that the tenant had failed to pay the rent and service charges. In her reply the defendant explained that she was an immobile invalid, and that her daughter had taken care of her for twenty

years and was unemployed. They were in financial need and unable to pay the rent.

7. The defendant authorised the applicant to represent her at hearings before the Košice I District Court on 15 January 2002 and 17 May 2002. Subsequently, the District Court examined the case in the presence of the applicant who attended hearings but had no authority to represent her mother.

8. On 9 September 2004 the District Court allowed the action with reference to Article 711 § 1 (d) of the Civil Code. It ordered the applicant's mother and the other persons living with her to move out of the flat within fifteen days after they have been provided with substitute accommodation. The court held it established that the tenant had failed to pay the rent for a period exceeding three months.

9. The applicant's mother appealed on 8 November 2004. She described her and her daughter's difficult situation. At the hearing the applicant submitted that a substantial part of the debt had been paid in the meantime.

10. On 26 April 2005 the Košice Regional Court upheld the first-instance judgment. With reference to the reasons for that judgment the Regional Court held that the District Court had established the relevant facts and had applied the relevant law correctly.

11. On 24 June 2005 the applicant's mother filed an appeal on points of law. She subsequently appointed a lawyer to represent her in the proceedings.

12. In the appeal on points of law it was argued that the applicant's mother had been prevented from protecting her rights at first-instance as the court had proceeded with the case at several hearings without having duly summoned her. The Regional Court had not redressed the shortcomings in the first-instance proceedings. The applicant's mother relied on Article 30 of the Code of Civil Procedure and maintained that the District Court had not complied with its obligation to inform her of the possibility of having a lawyer appointed to represent her in the proceedings. She also argued that the courts had made their decision in disregard of Article 712b of the Civil Code.

13. On 24 February 2006 the applicant's mother died. The applicant joined the proceedings as a defendant on 13 August 2007.

14. On 25 October 2007 the Supreme Court dismissed the appeal on points of law. It noted that the applicant had been authorised to represent her mother at two hearings, that she had attended further hearings and could have thus informed her mother, who had been the defendant, of the date when they took place. Furthermore, the first-instance court had sent summonses to the applicant's mother, for example, for the hearing scheduled for 9 March 2004. Similarly, she had been summoned to a hearing before the court of appeal held on 26 April 2005 but had neither appeared nor excused her absence. The Supreme Court concluded that the

lower courts had not prevented the applicant's mother from exercising her rights.

15. On 19 February 2008 the applicant lodged a constitutional complaint in which she alleged a breach of Article 6 § 1 of the Convention in the above-mentioned proceedings leading to the Supreme Court's decision of 25 October 2007. She argued, among other things, that her mother had not been duly summoned to hearings before the District Court and that both that court and the court of appeal had decided arbitrarily in that they had failed to examine the facts of the case in the light of Article 712b in conjunction with Article 879c of the Civil Code.

16. On 6 May 2008 the Constitutional Court declared the complaint manifestly ill-founded. It found that the Supreme Court's decision was neither arbitrary nor otherwise contrary to Article 6 § 1 of the Convention.

17. In February 2009 the cooperative which owns the flat initiated proceedings before the Košice I District Court with a view to having the applicant removed from the flat. The proceedings are pending.

II. RELEVANT DOMESTIC LAW

A. The Civil Code

18. Article 711 § 1 (d) entitles landlords, subject to approval by a court, to terminate tenancy agreements where tenants fail to pay the rent and service charges for more than three months.

19. Article 712b provides that a court should not allow the termination of a tenancy agreement for reasons set out in Article 711 § 1 (d) where the tenant and members of his or her household are in material need and where the situation cannot be imputed to them.

20. That provision was repealed with effect from 1 September 2001. However, under Article 879c § 1, the courts were bound to continue applying that and related provisions in proceedings concerning the termination of tenancy agreements which had started before that date.

B. The Code of Civil Procedure

21. Article 30 entitles courts to appoint a lawyer at the request of a party who qualifies for exemption from the obligation to pay court fees. With effect from 1 September 2003, Article 30 was amended in that it obliges courts to advise a party to proceedings of that possibility.

22. Article 212 § 1 provides that appeal courts are bound by the scope and reasons for an appeal. Paragraph 3 of Article 212 provides that appeal courts should consider shortcomings in proceedings at first instance where they entail an erroneous decision on the case.

23. Pursuant to Article 228 § 1 (d), a party is entitled to challenge a final judgment by means of a request for a reopening of the proceedings where the European Court of Human Rights concluded in a judgment that a court's decision or the proceedings preceding it were in breach of the fundamental human rights or freedoms of the party, unless the just satisfaction granted eliminated the serious consequences of the breach.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE APPLICATION OUT OF THE LIST UNDER ARTICLE 37 OF THE CONVENTION

24. On 28 October 2011 the Government submitted a unilateral declaration in which they admitted a breach of the applicant's rights under Article 6 § 1 of the Convention and offered to pay her a sum to cover any pecuniary and non-pecuniary damage together with any costs and expenses incurred by the applicant. The Government suggested that the Court strike the application out of its list on that basis pursuant to Article 37 § 1 of the Convention.

25. The applicant disagreed with that proposal. She wished to have the merits of her complaint determined with a view to obtaining appropriate redress. She invoked Article 228 § 1 (d) of the Code of Civil Procedure, under which she would be allowed to request a reopening of the proceedings in the event that the Court found a breach of Article 6 § 1.

26. The Court has held that it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

27. The Court reiterates that in cases where a violation of Article 6 is found, the applicant should, as far as possible, be put in the position that he or she would have been in had the requirements of that provision not been disregarded. The most appropriate form of redress would, in principle, be a retrial or the reopening of the proceedings, if requested (see *Kounov v. Bulgaria*, no. 24379/02, §§ 58-59, 23 May 2006 with further references). The Court notes, in this connection, that Article 228 § 1 (d) of the Code of

Civil Procedure provides for such a possibility where it concludes that there has been a breach of the Convention in domestic proceedings.

28. For that reason, and considering what is at stake for the applicant in the proceedings complained of and also taking into account the terms of the unilateral declaration submitted by Government, the Court, without prejudging its decision on the admissibility and merits of the case, accepts the applicant's argument and holds that respect for human rights as defined in the Convention and its Protocols requires the continued examination of the case. The Government's request for the application to be struck out of the list of cases under Article 37 of the Convention must therefore be rejected.

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

29. The applicant complained that her or her legal predecessor's right to a fair hearing had been breached in the proceedings concerning the termination of the tenancy agreement. She alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads as follows:

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

A. Admissibility

30. The applicant complained, in particular, that (i) the District Court had proceeded with the case in the absence of her mother and without having duly summoned her, (ii) in the course of the first-instance proceedings her mother had not been advised of the possibility of having a lawyer appointed to represent her as required by Article 30 of the Code of Civil Procedure, and (iii) the courts had not considered the argument about her and her mother's difficult financial situation in the light of Article 712b of the Civil Code when approving the termination of the tenancy agreement.

31. The Government, with reference to the terms of their unilateral declaration, informed the Court that they did not consider it necessary to submit written observations dealing with the applicant's complaints under Article 6 of the Convention.

32. The Court notes that the proceedings complained of concerned an action against the applicant's mother as a party to the tenancy agreement in issue. Following her mother's death on 24 February 2006, the applicant, who lived in the apartment together with her daughter, continued the proceedings. Both the Supreme Court and the Constitutional Court accepted her standing to do so. The applicant can therefore claim to be a victim, within the meaning of Article 34 of the Convention, of a breach of Article 6 § 1 in the proceedings complained of.

33. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court will not, in principle, intervene, unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable and provided that the proceedings as a whole were fair as required by Article 6 § 1 (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 31, Series A no. 274; *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *Van Kück v. Germany*, no. 35968/97, §§ 46-47, ECHR 2003-VII; and *Khamidov v. Russia*, no. 72118/01, § 170, ECHR 2007-XII (extracts)).

35. According to the Court's established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references). The notion of a fair procedure requires that a national court did in fact address the essential issues which were submitted to its jurisdiction (see *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003; *Juez Albizu v. Spain*, no. 25242/06, §§ 21-25, 10 November 2009; and, *mutatis mutandis*, *Helle v. Finland*, 19 December 1997, § 60, *Reports of Judgments and Decisions* 1997-VIII).

36. In the present case, Article 712b read in conjunction with Article 879c § 1 of the Civil Code excluded the termination of tenancy for the tenant's failure to pay the rent where the tenant and members of his or her household were in material need and where that situation could not be imputed to them.

37. In their submissions to national courts the applicant and her mother stated that they were in financial need preventing them from paying the rent (see paragraphs 6 and 9 above). They thus put forward an argument which was of particular relevance for the determination of the point in issue, namely, whether the statutory conditions for terminating the tenancy agreement had been met.

38. In that context the Court does not attach particular importance to the fact that the applicant's mother failed to expressly invoke the relevant provisions of the Civil Code in the first-instance and appeal proceedings.

It was primarily for the courts involved to assess the parties' arguments on the position in the case from the perspective of the applicable law.

39. The District Court's judgment with reasons does not indicate that that court considered the argument concerning the material situation of the applicant and her mother, and that it assessed the position under Article 712b read in conjunction with Article 879c § 1 of the Civil Code. The court of appeal upheld the first-instance judgment while indicating in a summary manner that the District Court had established the relevant facts and had applied the relevant law correctly. There is nothing in the text of the appeal judgment to suggest that the Regional Court examined the above-mentioned argument of the defendant. Subsequently, the Supreme Court found no relevant ground justifying the quashing of the lower courts' judgments, and the Constitutional Court found no breach of the applicant's or her predecessor's right to a fair hearing in that context.

40. It is not the Court's task to decide whether the argument about the material situation of the applicant and her mother was well-founded, as it falls to the national courts to determine questions of that nature. Nevertheless, the Court notes that that argument was clearly relevant because had the courts found it to be well-founded, they would have been bound by the relevant law to dismiss the plaintiff's claim for termination of the tenancy agreement.

41. Therefore, the Court finds that courts which dealt with the merits of the case were obliged to give a reasoned answer to the argument concerning the financial situation of the applicant and her mother, and explain why they considered that the provisions of Article 712b did not prevent the tenancy agreement from being terminated. Their finding in that respect was decisive for the right of the applicant's mother and the applicant to continue living in the flat.

42. Similar failures to give sufficient reasons resulted in findings of violations of Article 6 of the Convention in, for example, *Hiro Balani v. Spain*, 9 December 1994, §§ 27 and 28, Series A no. 303-B; *Suominen v. Finland*, cited above, §§ 35-38; and *Salov v. Ukraine*, no. 65518/01, § 92, ECHR 2005-VIII (extracts)).

43. The Court finds no reason to reach a different conclusion in the present case. There has therefore been a violation of Article 6 § 1 of the Convention on account of the domestic courts' failure to give sufficient reasons for their decision in the light of the arguments before them and the law applicable at the relevant time.

44. In view of the above finding, the Court does not consider it necessary to examine the remainder of the applicant's complaints regarding the fairness of the proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government considered the claim excessive.

48. The Court notes that, following its above finding under Article 6 § 1, the domestic law entitles the applicant to challenge the conclusions of domestic courts by a request for a reopening of the proceedings. That possibility constitutes the most appropriate redress in the circumstances of the case (see also paragraph 27 above).

49. Having regard to the above, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant also claimed EUR 331.81 for the costs and expenses incurred before the Constitutional Court and EUR 1,082.90 for those incurred before the Court.

51. The Government asked the Court to consider the claim in accordance with its practice.

52. 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 are 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 1,400 covering costs under all heads.

C. Default interest

53. The Court considers it appropriate that the default interest rate 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,400 (one thousand four 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 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President