



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

SECOND SECTION

CASE OF BOHUNICKÝ v. SLOVAKIA

(Application no. 36570/97)

JUDGMENT

STRASBOURG

13 September 1999

In the case of Bohunický v. Slovakia,

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

Mr C. L. ROZAKIS, *President*,
Mr M. FISCHBACH,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr A. BAKA,
Mr E. LEVITS, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 7 September 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 36570/97) against the Slovak Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Jozef Bohunický (“the applicant”), on 24 February 1997. The applicant is represented by Mr P. Minich, a lawyer practising in Trnava. The Slovak Government is represented by their Agent, Mr R. Fico.

2. The applicant complained under Article 6 § 1 of the Convention about the dismissal of his claim for damages and that the proceedings concerning this claim lasted unreasonably long. On 9 September 1998 the Commission (Second Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 18 November 1998 to which the applicant replied on 21 December 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application was transferred to the Court.

4. In accordance with rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mrs V. Strážnická, the judge elected in respect of Slovakia (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr C. L. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr M. Fischbach, Mr G. Bonello, Mr P. Lorenzen, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)).

5. On 9 March 1999 the Court declared admissible the applicant's complaints under Article 6 § 1 of the Convention concerning the length of the proceedings and the effective access to a court.

6. On 21 June 1999, after an exchange of correspondence, the Section Registrar proposed to the parties to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 5 August 1999 and on 18 August 1999 respectively the Agent of the Government and the applicant's representative submitted formal declarations accepting a friendly settlement of the case.

AS TO THE FACTS

7. Due to an administrative mistake the applicant did not receive sickness benefits for the period from 14 October to 12 November 1987. In 1989 he lodged a claim for damages against, *inter alia*, the Czechoslovak Railways represented by the Railways Health Institute in Bratislava. On 7 March 1990 the Trnava District Court (*Okresný súd*) partly granted the applicant's claim.

8. On 4 September 1990 the Bratislava Regional Court (*Krajský súd*) quashed the first instance decision and rejected the applicant's claim. In its judgment the Regional Court noted, with reference to Sections 25 and 9 (1) of the State Liability Act of 1969 (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom*) that in the applicant's case the responsibility of the Slovak Republic was involved. The court found that the authority acting on behalf of the latter was the Ministry of Health and Social Affairs since the alleged erroneous acts were related to public health care. The judgment further stated that the claim would become statute-barred after three years and that the applicant could still claim damages from the "Ministry of Health and Social Affairs of the Slovak Republic".

9. On 2 October 1990 the applicant brought new proceedings against the "Ministry of Health of the Slovak Republic" before the Bratislava 1 District Court (*Obvodný súd*).

10. On 24 October 1990 the latter court asked the Trnava District Court to instruct the applicant that he should designate the defendant as "Czechoslovak State - Ministry of Health of the Slovak Republic". On 23 November 1991 the applicant specified, in the presence of a judge, that his action was directed against "Czechoslovak State - Ministry of Health of the Slovak Republic".

11. On 11 April 1991 the Bratislava 1 District Court dismissed the action on the ground that the Ministry of Health lacked *locus standi* in the proceedings. In its judgment the District Court held that in the applicant's case the responsibility of the Federal Ministry of Transport in Prague was engaged. The District Court further held that it was not bound by the

opinion expressed in the Regional Court's judgment of 4 September 1990. On 21 June 1991 the applicant appealed.

12. On 18 September 1991 the Bratislava City Court (*Mestský súd*) quashed the first instance judgment as it considered that the applicant had rightly claimed the damages from the Ministry of Health of the Slovak Republic. The City Court sent the case back to the Bratislava 1 District Court and pointed out that the latter was under an obligation to examine the applicant's action and to decide on its merits. The City Court instructed the applicant that the correct designation of the defendant in his case should be "Slovak Republic - Ministry of Health of the Slovak Republic". The applicant rectified his action accordingly.

13. On 28 May 1992 and on 14 September 1992 the Bratislava 1 District Court held a hearing and on 6 October 1992 it heard two doctors.

14. On 11 January 1995 the applicant complained to the president of the Bratislava 1 District Court about the length of the proceedings. On 17 February 1995 the president of the District Court admitted that there had been undue delays in the proceedings and apologised to the applicant.

15. On 13 January 1995 the Bratislava 1 District Court requested the Trnava District Court to transfer the file concerning the applicant's case.

16. On 13 February 1995 the Bratislava 1 District Court scheduled a hearing for 13 March 1995. The hearing was adjourned at the applicant's request.

17. On 19 April 1995 the Bratislava 1 District Court dismissed the action. It established that in the applicant's case the competent Social Security Advisory Commission should have started, *ex officio*, proceedings with a view to ensuring payment of a temporary invalidity pension to the applicant. The District Court held that the aforesaid commission fell within the competence of the Ministry of Labour and Social Affairs which should be considered as the central authority acting on behalf of the State in the applicant's case.

18. On 29 June 1995 the applicant appealed. He complained, in particular, that the first instance court had not dealt with the merits of his action.

19. On 24 July 1995 the defendant ministry submitted observations on the applicant's appeal.

20. On 3 May 1996 the applicant complained that his case was not progressing. On 5 June 1996 the vice-president of the Bratislava 1 District Court apologised to the applicant for delays in the proceedings and explained that they had been caused by the backlog of cases due to a lack of judges.

21. Following a request of 20 May 1996 the Bratislava 1 District Court transferred, on 6 June 1996, the file concerning the applicant's case to the Bratislava City Court. The latter scheduled a hearing for 6 August 1996.

22. On 6 August 1996 the Bratislava City Court upheld the District Court's judgment of 19 April 1995. The City Court shared the District Court's opinion that the applicant should have lodged his claim against the

Ministry of Labour and Social Affairs. The City Court's judgment was served on the applicant in October 1996.

AS TO THE LAW

23. On 5 August 1999 the Court received the following declaration signed by the Agent of the Slovak Government:

"I declare that the Government of the Slovak Republic offer to pay 100,000 SKK to Mr Jozef BOHUNICKÝ with a view to securing a friendly settlement of his application registered under No. 36570/97. This sum shall cover any damage and costs and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The present declaration does not entail any acknowledgment by the Government of the Slovak Republic of a violation of the European Convention on Human Rights in the present case.

The Government of the Slovak Republic further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

24. On 18 August 1999 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of the Slovak Republic are prepared to pay 100,000 SKK (covering both damage and costs) to Mr Jozef BOHUNICKÝ with a view to securing a friendly settlement of his application No. 36570/97 pending before the Court.

I accept the proposal and waive any further claims in respect of the Slovak Republic related to the facts of the aforesaid application until the delivery by the Court of a judgment pursuant to Article 39 of the European Convention on Human Rights. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

25. The Court takes note of the agreement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

26. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list.
2. *Takes note* of the parties' undertaking not to request a re-hearing of the case before the Grand Chamber.

Done in English, then sent as a certified copy on 13 September 1999, according to Rule 77 §§ 2 et 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President