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

SECOND SECTION

CASE OF I. S. v. SLOVAKIA

(Application no. 25006/94)

JUDGMENT

STRASBOURG

4 April 2000

In the case of I.S. 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 B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr A. BAKA,
Mr E. LEVITS, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 23 March 2000,

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

PROCEDURE

1. The case was referred to the Court by a Slovak national, I.S. ("the applicant") on 4 February 1999 pursuant to former Article 48 § 1(e) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 25006/94) against Slovakia lodged by the applicant with the Commission under former Article 25 of the Convention, on 3 May 1994. The Slovak Government are represented by their Agent, Mr R. Fico.

2. The case concerns the duration of the proceedings instituted by the applicant and whether they were terminated within a "reasonable time" as required by Article 6 § 1 of the Convention.

3. On 31 March 1999 a Panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court 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 B. Conforti, Mr G. Bonello, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)).

4. On 27 April 1999 the President invited the parties to submit memorials on the issues arising in the case (Rule 59 § 3). The applicant was further invited to submit his claim for just satisfaction under Article 41 of the Convention (Rule 60 § 1). The Government replied on 7 July 1999. The applicant failed to respond.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Slovak citizen, born in 1956 and resident in Žilina.

6. On 19 November 1991 the applicant and four other persons lodged an action for restitution of land with the Žilina District Court (*okresný súd)*[1] against two state enterprises pursuant to Extra-Judicial Rehabilitation Act no. 87/1991. On 24 January 1992 a judge of the District Court invited the defendants to submit written observations on the merits of the action. On 11 March 1992 the judge fixed a hearing for 23 March 1992 and then adjourned it requesting the applicant to present a copy of his letter to the Ministry of Administration and Privatisation of National Property *(Ministerstvo pre správu a privatizáciu národného majetku)* concerning his compensation claims. The applicant presented the letter on 8 September 1992.

7. On 21 January 1993 the judge ordered an inspection of the site for 9 February 1993. During the inspection it was established that the first defendant, a business enterprise, had been in proceedings of dissolution since 1 January 1992 and its property had been transferred to the Žilina Town *(Mesto Žilina)*. The judge therefore asked the applicant to amend his restitution action and designate a new defendant.

8. On 7 April 1993 the applicant, with reference to sections 5 and 6 of Court and Judges Act no. 335/1991 and to Article 6 of the Code of Civil Procedure, complained of delays in the proceedings to the President of the District Court. He also requested that the judge of this court dealing with his case be disqualified on the ground that she was involved in the complaint about the delays in the proceedings. The complaint was considered as a complaint of bias and was referred, together with the court-file, to the Banská Bystrica Regional Court *(krajský súd*)[2] on 25 May 1993 which, on 31 May 1993, decided that the judge concerned was not disqualified. On 16 July 1993 the case-file was remitted to the District Court.

9. A search for the case-number of succession proceedings relating to one of the co-plaintiffs who had died on 15 May 1993 had to be carried out.

10. On 27 August 1993 the decision of 31 May 1993 was served on the applicant who appealed on the same day notwithstanding that no appeal lay against the decision. The Regional Court referred the case-file to the District Court which, on 26 October 1993, instructed the applicant that any appeal would be inadmissible. The applicant insisted and the case-file was sent to the Regional Court by which it was referred to the Supreme Court *(Najvyšší súd)* which, on 25 November 1993, rejected the appeal for lack of jurisdiction

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1 Thereafter “the District Court”

2 Thereafter “the Regional Court”

holding that the Regional Court's decision was final. On 1 February 1994 the case-file was sent back to the District Court.

11. In the meantime, as the applicant had received no reply to his complaint of 7 April 1993 about delays in the proceedings, he lodged another complaint with the Ministry of Justice on 10 August 1993 where he also mentioned that the first co-plaintiff had died. The complaint was referred to the President of the District Court, who, on 29 September 1993, informed the applicant that his complaint had been considered as a request for disqualification of a judge and that it had been dealt with without undue delay. He also noted that the restitution proceedings could not be pursued as one of the co-plaintiffs had died and separate succession proceedings relating to her estate had to be terminated first. On 19 October 1993 the Regional Court confirmed, in reply to the applicant's complaint of 10 August 1993, the position of the President of the District Court.

12. On 8 February 1994 the judge of the District Court requested the applicant for the second time to amend his action for restitution and designate the Žilina Town as a new defendant. The applicant did so on 16 February 1994 indicating, at the same time, that one of the co-plaintiffs had died on 15 May 1993 and that the second and third co-plaintiffs became her successors. On 12 August 1994 the judge informed the applicant that his amended claim was presented improperly and requested him to rectify it within seven days. The applicant did so on 19 August 1994 submitting that as the first defendant was in dissolution, its property had been transferred to the Žilina Town which had taken over all the first defendant's rights and obligations. He therefore asked the District Court to accept the Žilina Town as a defendant to the restitution proceedings. The original action for restitution was enclosed with the amended claim.

13. On 25 November 1994 the judge requested the applicant to clarify whether the Žilina Town was intended to replace the first defendant or whether it was a new defendant and asked him to submit a new action for restitution properly designating the Žilina Town as a party to the proceedings.

14. On 12 April 1995 the judge invited the applicant to submit further information on the succession proceedings concerning the estate of the deceased plaintiff.

15. On 26 April, 25 and 31 May and 7 and 27 June 1995 the District Court held five hearings adjourning them having requested the parties to clarify different facts relating to the property in issue. The applicant and his lawyer were not present at the hearing of 7 June 1995.

16. On 15 September 1995 the District Court appointed an expert to establish the boundaries and draw a plan of the plot at issue. On 9 January 1996 the expert presented his report.

17. On 18 January 1996 the District Court, after hearing the co-plaintiffs' submissions, adjourned the hearing and on 30 January 1996 it decided in favour of the applicant.

18. On 30 May 1996, upon the defendants' appeal, the Regional Court, after a public hearing, quashed the judgment of the District Court and referred the case back to it. The Regional Court held that the District Court had not considered evidence in a sufficient extent and had committed some procedural errors. The court-file was sent to the District Court on 3 October 1996. The written judgment was served on the District Court and on the applicant on 4 October and 26 November 1996, respectively.

19. On 19 February 1997 the District Court received the applicant's detailed summary of his action for restitution, and on 3 April 1997, the Žilina Town submitted its observations on the merits of the action.

20. On 27 June 1997 the judge of the District Court fixed a hearing for 8 July 1997 and then adjourned it for procedural reasons until 9 September 1997. On 9 and 23 September 1997 hearings were held at the District Court. On 23 September 1997 the judge adjourned the hearing ordering the parties to produce further documentary evidence and requesting the applicant to submit the address of an enterprise sitting in Prague which was to be involved in the restitution proceedings.

21. On 22 January 1998 the applicant informed the District Court that one piece of the documentary evidence requested by the District Court had not been found in the District Records Office.

22. A subsequent hearing was scheduled for 23 January 1998. However, the applicant's lawyer, having been notified only on 22 January 1998, could not properly prepare his submissions and sent his apologies. The hearing was held on 17 February 1998. By judgment of 20 February 1998 the District Court rejected the applicant's action for restitution. On 18 June 1998 the judgment was served on the applicant who appealed on 2 July 1998 to the Žilina Regional Court. On 23 July 1998 the Regional Court received a report concerning the applicant's case together with the case-file from the District Court. On 23 November 1998 a judge of the Regional Court fixed a hearing for 3 December 1998.

23. On 3 December 1998 the Regional Court adjourned the hearing, and on 8 April 1999, after a public hearing, it changed the District Court's judgment deciding in the applicant's favour. On 31 May 1999 the judgment was sent to the parties and on 7 June 1999 it became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. According to section 17(1) of State Administration of Courts Act no. 80/1992, any natural person or corporation can turn to State authorities responsible for the administration of the courts (the Ministry of Justice, president and vice-president of the Supreme Court and presidents and vice-presidents of regional and district courts) with complaints about delayed proceedings or misconduct caused by improper performance and/or undignified interference with the proceedings by officers of the court.

According to sections 24-27 of the Act, the responsible authority is required to establish all relevant facts and, if necessary, hear the persons

concerned. Examination of a complaint is to be terminated within two months, and an applicant is to be informed in writing about the conclusion. After the complaint has been dealt with by the President of a district court, the applicant is entitled to request a review of the conclusion by the president of an appropriate regional court.

25. Pursuant to Article 6 of the Code of Civil Procedure, the courts shall examine cases in co-operation with all participants so that the protection of rights is expeditious and effective.

26. According to section 5(1) of Courts and Judges Act no. 335/1991, as amended, judges are required to decide without delay.

Under section 6 a complaint about delays in court proceedings may be lodged with the authorities responsible for the State administration of courts.

PROCEEDINGS BEFORE THE COMMISSION

27. The applicant applied to the Commission on 3 May 1994. He complained about the length of the restitution proceedings and lack of impartiality and independence of the courts acting in these proceedings. He alleged a violation of Article 6 § 1 of the Convention.

28. The Commission declared the application admissible as regards the length of the proceedings and inadmissible for the remainder on 4 March 1997. In its report of 27 October 1998 (former Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1[1].

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Exhaustion of domestic remedies

29. As they had done before the Commission, the Government maintained before the Court that the applicant had not exhausted domestic remedies as he had failed to file a complaint under section 17(1) of State Administration Act no. 80/1992. They noted that his complaint of 7 April 1993 had been qualified by the President of the Žilina District Court and the President of the Banská Bystrica Regional Court as a complaint against the

Note by the Registry:

1 A copy of the Commission's report is obtainable from the Registry.

biased judge, and not as a complaint against delays in the proceedings. They maintained that the mere effort carried out to pursue a domestic remedy by complaining against unreasonable delay in the proceedings without lodging the complaint under Act no. 80/1992 could not satisfy the requirement of exhaustion of domestic remedies.

30. In its decision on the admissibility of the application, the Commission dismissed the objection on the ground that the applicant had complained of delays in the proceedings to the President of the Žilina District Court with reference to sections 5 and 6 of Act no. 335/1991 and to Article 6 of the Code of Civil Procedure. The Commission considered that the fact that in his complaint the applicant had not expressly referred to Act no. 80/1992 could not affect his intention to challenge a delay in the proceedings and to accelerate them.

31. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, the Assenov and Others v. Bulgaria judgment of 28 October 1998*, Reports of Judgments and Decisions* 1998-VIII, p. 3286, § 85). Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, *mutatis mutandis*, the A. v. France judgment of 23 November 1993, Series A no. 277-B, p. 48, § 32).

32. The Court considers that the mere fact that the applicant did not complain about the delay referring to the Act no. 80/1992 cannot in the circumstances of the case lead to the conclusion that the applicant has failed to comply with the rule on exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention.

Consequently, the Court, like the Commission, dismisses the Government's preliminary objection.

B. Failure to observe the six month time limit

33. The Government further asked the Court to dismiss the application on the ground that the applicant had not applied to the Commission within six months of the date on which the President of the Banská Bystrica Regional Court, by letter of 19 October 1993, had confirmed, in reply to the applicant's complaint of 10 August 1993, the position of the President of the Žilina District Court.

34. The Court observes that the Government's objection was not raised, as it could have been, when the admissibility of the application was being

considered by the Commission. There is therefore estoppel (see, among other authorities, the Nikolova v. Bulgaria judgment of 25 March 1999, to be published in the Court's official reports, § 44).

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

35. The applicant complained of the length of the restitution proceedings. He alleged a violation of Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a … hearing within a reasonable time by [a] … tribunal…"

A. Period to be taken into consideration

36. The proceedings were brought on 19 November 1991. However, the relevant period began only on 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition pursuant to former Article 25 of the Convention. As of 1 January 1993, the Slovak Republic, as one of the two successor States, took over, according to the territorial principle, all rights and obligations arising under international treaties which had bound the Czech and Slovak Federal Republic and made relevant statements to this effect at the international level. The Court notes that the proceedings ended on 31 May 1999 when the decision of the Žilina Regional Court of 8 April 1999 was sent to the parties (see paragraph 23 above).

37. In order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 18 March 1992. On the above understanding the proceedings lasted seven years, six months and 12 days for two sets at two levels of jurisdiction each, out of which seven years, two months and 13 days are taken into consideration by the Court (see the Matter v. Slovakia judgment of 5 July 1999, Second Section, § 53).

B. Reasonableness of the length of the proceedings

38. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see the Zielinski and Pradal & Gonzalez and Others v. France judgment of 28 October 1999, to be published in the Court's official reports, § 65).

39. The Government argued that the applicant's action for restitution involved legal issues of a complex nature. They contended that the national courts had dealt with the case without unreasonable delay and had given

their decisions within a reasonable time within the meaning of Article 6 § 1 of the Convention. The Government submitted that the duration of the proceedings was, to some extent, due to the workload of the national judges dealing with the applicant's case. They also pointed out that between 4 May and 1 June 1992, 9 November and 14 December 1992, and 4 November 1994 and 16 January 1995 the judge of the District Court was absent due to illness. This fact did not, however, affect the length of the proceedings. Moreover, it would not have been reasonable to replace the judge because of the complexity of the matter. A new judge would have had spent a considerable time to acquaint himself with the case. The Government further contended that the applicant's lawyer had contributed substantially to the overall length of the proceedings by his unprofessional and incompetent conduct when he had not acted, on several occasions, upon the advice or instructions of the judge of the District Court. The Government referred particularly to the amended claim which the applicant had been requested to submit. They noted that the latter's amended claim had been presented improperly on 16 February 1994. His rectified amended claim submitted on 19 August 1994 had not complied with the procedural requirements. It had contained only a copy of the original claim in which the new defendant had not been mentioned. Despite the advice of the judge on 25 November 1994, the applicant's lawyer had insisted on maintaining the claim. The Government also contended that the applicant's lawyer had failed to inform the District Court about the death of one of the co-plaintiffs.

40. The Court agrees with the Government that the restitution proceedings in question raised a complex issue of a factual nature which contributed to some extent to the overall length of the proceedings.

41. As to the applicant's conduct, the Court notes that he contributed to the length of the proceedings by the delay of five months and 16 days in presenting to the District Court his letter to the Ministry of Administration and Privatisation of National Property (see paragraph 6 above) and by the delay of five months and five days in filing an improper appeal to the Supreme Court against the decision of the Regional Court dismissing his request for the disqualification of the judge (see paragraph 10 above). As to the Government's argument that the applicant did not inform the District Court about the death of one of the co-plaintiffs, the Court observes that this fact was mentioned in the applicant's complaint to the Ministry of Justice of 10 August 1993, which was then referred to the President of the District Court, and in his amended restitution claim of 16 February 1994 (see paragraphs 11 and 12 above).

The Court further notes that more than one year and six months elapsed between the request of the judge of the District Court to amend the applicant's action for restitution and the date on which the applicant amended his action (see paragraphs 7 and 12 above). The Court considers, however, that the applicant cannot be considered to be responsible for the period between 25 May and 16 July 1993 when the District Court could not continue to deal with the case because the case-file was sent to the Regional Court

which was called upon to decide on the applicant's complaint about delays in the proceedings and his request for the exclusion of the judge (see paragraph 8 above). Moreover, although the judge of the District Court received the applicant's amended claim, which did not comply with the procedural requirements, already on 16 February 1994, she requested the applicant to rectify it only on 12 August 1994, thus almost six months later (see paragraph 12 above).

42. In respect of the conduct of the Slovak authorities, the Court notes that the applicant submitted the requested letter concerning the Ministry of Administration and Privatisation of National Property to the District Court on 8 September 1992 and that the judge of the District Court ordered the inspection of the site on 21 January 1993, i.e. after four months and 13 days (see paragraph 7 above). The Court nevertheless accepts the Government's explanation that the judge was reported ill during this period, i.e. between 9 November and 14 December 1992.

43. Another five months and 27 days elapsed between the delivery of the decision of the Banská Bystrica Regional Court of 30 May 1996 and the date on which the decision was served on the applicant (see paragraph 18 above), and almost four months elapsed between the delivery of the judgment of the Žilina District Court of 20 February 1998 and its notification to the applicant (see paragraph 22 above).

44. Moreover, the judge of the Žilina Regional Court fixed the first hearing on 23 November 1998, i.e. four months after he had received the case-file and the report on the case prepared by the Žilina District Court (see paragraph 22 above).

45. Having examined the facts of the case in the light of the arguments put forward by the parties and having regard to its case-law, the Court considers that the complexity of the case and the applicant lawyer's conduct, in particular in the initial stages of the case, are not in themselves sufficient to justify the overall length of the restitution proceedings. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. The applicant did not submit any claim for just satisfaction under Article 41 of the Convention taken together with Rule 60 of the Rules of Court. In these circumstances, the Court is not called upon to make any award.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, then sent as a certified copy on 4 April 2000, according to Rule 77 §§ 2 et 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President