



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

SECOND SECTION

CASE OF STANČIAK v. SLOVAKIA

(Application no. 40345/98)

JUDGMENT

STRASBOURG

12 April 2001

FINAL

12/07/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Stančiak v. Slovakia,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 22 March 2001,

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

PROCEDURE

1. The case originated in an application (no. 40345/98) 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 Dušan Stančiak (“the applicant”), on 9 February 1998.

2. The Slovak Government (“the Government”) were represented by their Agent, Mr P. Vršanský.

3. The applicant alleged, in particular, that the proceedings concerning his action for separation of marital property have lasted unreasonably long.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a partial decision on the admissibility delivered on 24 August 1999 the Court declared inadmissible the applicant’s complaint that he was not able to use the property which he jointly owned with his former wife. By a decision of 31 August 2000 the Court declared admissible the applicant’s complaint that the length of the proceedings was excessive.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court having decided, after consulting the parties,

that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

8. In 1991 the applicant and his wife divorced. The judgment concerning the divorce became final in August 1993. On 27 October 1993 the applicant lodged an action with the Bratislava-vidiek District Court (*Okresný súd*) claiming separation of the matrimonial property.

9. On 21 January 1994 the District Court invited the applicant to pay the court fees. The applicant paid the fees and appointed a lawyer to represent him on 31 January 1994.

10. A hearing before the Bratislava-vidiek District Court was held on 20 May 1994.

11. On 30 May 1994 the court asked the applicant to submit further documents.

12. On 7 June 1994 the applicant completed his action. On 14, 15 and 24 June 1994 he submitted further documents.

13. On 30 September 1994 another hearing was held.

14. On 26 October 1994 the District Court asked for information concerning the applicant's health.

15. A hearing was held on 15 November 1994. On 11 January 1995 the District Court received further documentary evidence which it had requested on 12 December 1994.

16. On 12 April 1995 the District Court appointed an expert with a view to evaluating the marital assets. The decision ordered the parties to assist the expert and to pay an advance on his fees. It was served on the applicant's lawyer on 6 June 1995. Under the relevant law the decision was also to be served on the applicant in person.

17. On 13 September 1995 and on 20 November 1995 the judge instructed the District Court's registry to serve the decision of 12 April 1995 on the applicant. As the attempts to serve the decision failed, the District Court asked the police to serve it on 9 February 1996. On 27 May 1996 the police informed the District Court that the applicant was not staying at his permanent address.

18. On 3 July 1996 the District Court asked the central registry of inhabitants to establish the applicant's address. The reply of 4 July 1996 indicated that the applicant's address remained unchanged.

19. On 12 July 1996 the applicant's lawyer asked the District Court to inform her about the progress in the proceedings.

20. On 9 September 1996 the District Court asked the lawyer to indicate the applicant's address. The letter stated that the court could not proceed

with the case as the decision of 12 April 1995 could not be served on the applicant in person.

21. On 20 September 1996 the lawyer informed the District Court that the applicant's address remained unchanged and that other correspondence was delivered to him without difficulties.

22. The decision of 12 April 1995 was served on the applicant on 15 November 1996.

23. On 19 November 1996 the District Court transmitted the case file to the expert. The latter submitted his opinion on 29 January 1997.

24. On 18 March 1997 the applicant challenged the judges of the Bratislava-vidiek District Court (which had been replaced by the Bratislava III District Court in the meantime) on the ground that there had been undue delays in the proceedings. As he had received no reply, the applicant reiterated the request on 25 June 1997.

25. On 2 September 1997 the applicant complained to the Supreme Court (*Najvyšší súd*) that he had received no reply to his request and that the District Court had held the last hearing twenty-nine months ago. The Supreme Court transmitted the complaint to the Bratislava III District Court on 19 September 1997.

26. On 21 October 1997 the vice-president of the Bratislava III District Court informed the applicant that the District Court judges had been asked, on 21 March 1997, to submit their comments on the applicant's request for their exclusion and that the request would be submitted to the Bratislava Regional Court (*Krajský súd*). The vice-president of the District Court offered an apology to the applicant for delays imputable to her court.

27. The case file was transmitted to the Bratislava Regional Court on 24 November 1997. The Regional Court returned the file back to the District Court on 4 December 1997 with the instruction to have the request completed by the applicant.

28. On 8 January 1998 the applicant complained to the president of the Bratislava Regional Court that his case had not been proceeded with since 1995 and requested that it should be given priority.

29. On 27 January 1998 the president of the Regional Court informed the applicant that the District Court had not submitted the file concerning his case to the Regional Court and that the president of the District Court had been asked to inform her about the proceedings.

30. On 30 January 1998 the Bratislava III District Court asked the applicant to submit additional information in respect of his request for exclusion of judges.

31. On 24 April 1998 the applicant withdrew his request for exclusion of judges. He explained that the Bratislava III District Court, which had replaced the former Bratislava – vidiek District Court, had not yet dealt with the merits of his case. He had therefore no reason for challenging its judges.

32. On 27 April 1998 the president of the Bratislava III District Court assigned the case to a section set up with a view to accelerating proceedings in all cases concerning separation of matrimonial property which had been pending for more than four years.

33. The Bratislava III District Court held a hearing on 3 July 1998. The case was adjourned so that the parties could discuss the possibility of reaching a settlement.

34. On 11 August 1998 the District Court asked the parties to submit their comments on the expert opinion dated 25 January 1997. The applicant replied on 21 August 1998. The defendant submitted her comments on 16 September 1998.

35. A hearing scheduled for 18 September 1998 was adjourned until 4 November 1998. The applicant was asked to reply to the defendant's submissions of 16 September 1998. He submitted his comments on 22 September 1998.

36. On 4 November 1998 the District Court attempted to have the case settled.

37. Another hearing was held on 19 December 1998. The applicant did not appear explaining that his newly appointed lawyer needed more time for studying the case file. The case was adjourned until 19 February 1999. On the latter date the District Court heard the parties.

38. On 14 April 1999 the Bratislava III District Court heard the parties and took evidence.

39. A hearing held on 26 May 1999 was adjourned as the parties had stated that they would attempt to settle the case. On 14 June 1999 the defendant informed the court that the attempt had failed.

40. The District Court held the next hearing on 19 January 2000. It adjourned the case after it had unsuccessfully attempted to have it settled. Further hearings were held on 10 March 2000, on 10 and 24 May 2000 as well as on 21 June 2000.

41. On 12 July 2000 the applicant requested the exclusion of the Bratislava III District Court judges. He explained, *inter alia*, that the judge dealing with the case had reproached him for having lodged an application with the European Court of Human Rights and had made offensive remarks in respect of his private and family life.

42. On 27 September 2000 the District Court adjourned the case pending the delivery of a decision on the applicant's request for exclusion of its judges.

43. On 12 December 2000 the applicant informed the Court that by 8 December 2000 the Bratislava III District Court had not submitted the case file to the Bratislava Regional Court for decision on his request for exclusion of the judges of the former court. The Government explained that all District Court judges had to state their position on the applicant's request.

44. The Bratislava Regional Court dismissed the applicant's request for exclusion of the District Court judges on 31 January 2001.

THE LAW

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

45. The applicant alleged that his action was not decided upon "within a reasonable time" and that there has therefore been a violation of Article 6 § 1 of the Convention which, so far as relevant, provides:

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

46. The Court notes that the proceedings in issue concern the separation of matrimonial property. It is satisfied, and this was not contested by the parties, that the proceedings concern the determination of the applicant's "civil rights and obligations" within the meaning of Article 6 § 1. This provision is therefore applicable.

47. The proceedings were brought on 27 October 1993 and they are still pending. Accordingly, the period to be considered is seven years and more than four months.

48. As to the length of the proceedings, the applicant alleged, in particular that he could not be held responsible for the delay in serving the Bratislava-vidiek District Court's decision of 12 April 1995 as he had stayed, throughout the relevant period, at his permanent address and had received other correspondence addressed to him. He maintained that the case had become complex as a result of the courts' failure to proceed with it speedily as many of the relevant facts had become difficult to establish after the lapse of several years.

49. The Government contended that the case was complex as it involved identification of the relevant property and determination of its value including evaluation of investments which had been made in real property. An expert opinion was required and the scope of the evidence which had to be taken and assessed was considerable.

50. The Government admitted a delay in submitting the applicant's request for exclusion of the Bratislava-vidiek District Court judges of 18 March 1997 to the Bratislava Regional Court. In their view, this shortcoming was remedied in that the case was assigned, on 27 April 1998, to a special section within the Bratislava III District Court with a view to accelerating the proceedings.

51. The Government further argued that the applicant had considerably contributed to the length of the proceedings in that the District Court's

decision on the appointment of an expert could not be served on him between 13 September and 15 November 1995, in that he had reacted in an inadequate manner to the defendant's submissions and that he had twice requested the exclusion of judges.

52. As to the reasonableness of the length of the proceedings, the Court recalls that it 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 as well as what was at stake for the applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999, § 67, and the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

53. The Court accepts that the establishment of the relevant facts has been of a certain complexity and that it has become more difficult with the lapse of several years after the introduction of the action.

54. As regards the conduct of the applicant, the Court notes that he contributed to a certain extent to the length of the proceedings, in particular in that he challenged twice the judges of the court dealing with the case.

55. As to the conduct of the authorities, the Court notes that the Bratislava-vidiek District Court judge instructed the registry to serve the decision concerning the appointment of an expert on the applicant on 13 September 1995, i.e. five months after it had been delivered on 12 April 1995. Furthermore, the central registry of inhabitants informed the District Court that the applicant's address remained unchanged on 4 July 1996 and the District Court contacted the applicant's lawyer with a view to establishing the applicant's whereabouts on 9 September 1996, i.e. after more than two months. The lawyer informed the court that the applicant was staying at his permanent address on 20 September 1996 and the decision in question was served on 15 November 1996, i.e. almost two months later. While it is not for the Court to determine whether or not the applicant was staying at his address, it is conceivable that at least some of the delays in serving the decision of 12 April 1995 could have been avoided if the request to the applicant's lawyer had been made earlier.

56. The documents available indicate that the District Court submitted the applicant's request for exclusion of its judges filed on 18 March 1997 to the higher court on 24 November 1997, i.e. after more than eight months. The Regional Court returned the case file to the first instance court with a view to have the applicant's request completed on 4 December 1997. The District Court invited the applicant to submit the relevant information only on 30 January 1998.

57. The Court has noted that the proceedings have been considerably accelerated after 27 April 1998 when the case was assigned to a special section within the Bratislava III District Court.

58. Nevertheless, even after the aforesaid date the District Court apparently remained inactive for more than seven months between 14 June 1999, when the defendant informed it about the failure of the friendly settlement negotiations, and 19 January 2000, when it held the next hearing. Furthermore, the Government have not convincingly explained the delay in submitting the applicant's request for exclusion of the District Court judges filed on 12 July 2000 to the Bratislava Regional Court.

59. Having regard to all the evidence before it the Court finds that the overall duration of the proceedings concerning the applicant's action cannot be regarded as reasonable, despite the inherent complexity of such proceedings and the fact that the applicant himself contributed to a certain extent to their length. There has accordingly been a violation of Article 6 §1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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. Pecuniary damage

61. The applicant claimed 115,000 Slovak korunas (SKK) on the ground that he had not been able to use his share of the property since 1991.

62. The Government did not comment on the claim considering that there had been no violation of Article 6 § 1 of the Convention.

63. The Court notes that by its decision of 24 August 1999 it declared inadmissible the applicant's complaint that he was not able to use the property which he jointly owned with his former wife (see paragraph 6 above). There is, therefore, no ground for any award under this head.

B. Non-pecuniary damage

64. The applicant claimed SKK 80,000 on account of the unreasonable length of the proceedings.

65. The Government made no comments.

66. Having regard to the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant the sum claimed, namely 80,000 SKK.

C. Default interest

67. According to the information available to the Court, the statutory rate of interest applicable in Slovakia at the date of adoption of the present judgment is 17.6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 80,000 (eighty thousand) Slovak korunas in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 17.6% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President