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

SECOND SECTION

CASE OF NEMEC AND OTHERS v. SLOVAKIA

(Application no. 48672/99)

JUDGMENT

STRASBOURG

15 November 2001

FINAL

15/02/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nemec and Others 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 23 October 2001,

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

PROCEDURE

1. The case originated in an application (no. 48672/99) 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 eight Slovakian nationals, MM Jaroslav Nemec, Vladimír Rak, Ľudovít Kalina, Pavol Štefanka, Jozef Horváth, Vladimír Jorík, Ján Kučera and Pavol Plesník ("the applicants"), on 1 March 1999.

2. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský.

3. The applicants alleged that the length of the proceedings concerning their copyright action was excessive.

4. 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.

5. By a decision of 18 January 2001, the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The parties replied in writing to each other's observations.

THE FACTS

7. On 27 July 1990 the applicants lodged a copyright action with the Bratislava III District Court (then *Obvodný súd*, at present *Okresný súd*).

They claimed 10,750,000 Slovak korunas on the ground that a software created by them had been sold to a third person.

8. On 27 November 1991 the District Court decided that an expert opinion be submitted. It appointed an expert on 30 May 1992. Subsequently the expert informed the court that he was unable to submit an opinion.

9. On 6 November 1992 the District Court appointed a different expert. On 21 December 1992 the latter informed the court that he was not qualified in the area concerned.

10. On 17 May 1993 the applicants proposed an expert whom the District Court appointed on 15 June 1993. At the expert's request an *ad hoc* software expert was appointed as well. The *ad hoc* expert was sworn in on 20 January 1994. The expert opinion was submitted on 22 September 1994.

11. On 2 December 1993 the president of the Bratislava City Court (*Mestský súd*) admitted that the District Court had not proceeded effectively with the case after 4 August 1993.

12. On 31 August 1994 the Bratislava City Court upheld the first instance decision on an advance payment of the experts' fees. The case file was returned to the District Court on 7 October 1994.

13. On 5 December 1994 the District Court delivered an interim judgment in which it found, with reference to the expert opinion, that the software in question was covered by copyright.

14. On 13 February 1995 one of the defendants requested that the interim judgment be amended. The request was dismissed on 6 December 1995. On 18 January 1996 the defendant appealed. The case-file was transmitted to the Bratislava City Court on 29 March 1996. The City Court upheld the first instance judgment on 13 June 1996. The City Court's judgment was served on 26 August 1996.

15. Subsequently the case was allocated to another judge in the context of restructuring of the Bratislava III District Court.

16. At a hearing held on 2 July 1997 the applicants withdrew their claim against one of the defendants who had gone bankrupt.

17. On 16 July and on 5 August 1997 the parties submitted further documents at the District Court's request.

18. The next hearing was held on 3 June 1998. The case was adjourned with a view to obtaining further evidence.

19. On 9 June 1998 the District Court ordered a document to be translated from German. The translation was submitted on 23 June 1998. A hearing scheduled for 9 September 1998 had to be adjourned as the judge was ill. On 21 October 1998 the District Court adjourned the case as it was necessary to obtain an expert opinion on the value of the software. On 18 January 1999 the court requested the parties for assistance in finding a suitable expert.

20. On 3 February 1999 the applicants claimed that an expert opinion was not necessary and requested that the relevant decision be quashed.

21. On 18 August 1999 the District Court appointed an expert. On 27 August 1999 the applicants challenged both the expert and the judge dealing with the case. They also appealed against the decision ordering them to pay an advance on the expert's fees.

22. On 17 November 1999 the case file was submitted to the Bratislava Regional Court (*Krajský súd*) which dismissed the request for exclusion of the District Court judge on 30 November 1999. The case file was returned to the Bratislava III District Court on 8 December 1999.

23. On 21 February 2000 the case file was again sent to the Bratislava Regional Court for a decision on the applicants' above appeal of 27 August 1999. The Regional Court returned the case file to the District Court on 10 July 2000 after having decided on the applicants' appeal on 30 June 2000.

24. On 13 July 2000 the expert was invited to comment on the applicants' objections to his person.

25. On 4 August 2000 the vice-president of the Bratislava III District Court informed the applicants, in reply to their complaints, that she had found no undue delays in the proceedings. She expressed the view that the length of the proceedings was mainly due to the complex character of the case.

26. On 21 September 2000 the applicants submitted another objection as regards the expert. The defendant commented on the applicants' objection on 4 October 2000.

27. On 27 October 2000 the Bratislava III District Court asked an expert for opinion. On 26 February 2001 the expert was requested to submit the opinion without delay.

THE LAW

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

28. The applicants alleged that their 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..."

29. The Court notes that the proceedings in issue concern a copyright. It is satisfied, and this was not contested by the parties, that the proceedings concern the determination of the applicants' "civil rights and obligations" within the meaning of Article 6 § 1. This provision is therefore applicable.

30. The proceedings were brought on 27 July 1990. 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 (see also *Matter v. Slovakia*, no. 31534/96, § 52, 5 July 1999, unreported). The proceedings are still pending. The period to be taken into consideration has therefore exceeded nine years and seven months.

31. The applicants alleged that the length of the proceedings is mainly imputable to the conduct of the domestic courts. In their view, the case raises no serious questions of fact or law.

32. The Government contended that the length of the proceedings is mainly due to the factual, legal and procedural complexity of the case and to the applicants' conduct. They pointed out, in particular, that the software created by the applicants was of a specific nature. It was therefore difficult for the courts to find qualified experts in both meteorology and softwares with a view to determining whether the software was covered by copyright and establishing its value. A considerable amount of evidence had to be taken. The Government also drew the Court's attention to the fact that there had been a restructuring of the Bratislava III District Court which has dealt with the case.

33. As to the applicants' conduct, the Government pointed out, in particular, that the applicants had challenged an expert and the judge dealing with their case, that they did not provide assistance to the District Court in finding a suitable expert, and that they refused to pay an advance on the expert's fees and challenged the decision concerning this issue.

34. The Court recalls that the reasonableness of the length of the 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 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).

35. The Court accepts that the case is of a certain complexity and that the applicants contributed to the length of the proceedings in that they had challenged the judge dealing with their case and also an expert appointed by the District Court. These factors alone do not, however, account for the overall length of the period under consideration.

36. As to the conduct of the authorities, the Court notes that the president of the Bratislava City Court admitted delays in the proceedings between 4 August and 2 December 1993. Furthermore, the Bratislava III District Court took more than nine months to decide on the defendant's request of 13 February 1995 that the interim judgment of 5 December 1994

be amended. The appellate court decided on the defendant's appeal of 18 January 1996 on 13 June 1996, i.e. after almost five months.

37. The next hearing in the case was held on 2 July 1997 which is more than ten months after the Bratislava City Court's judgment of 13 June 1996 had been served. The Court finds that such a long delay cannot be justified by the mere fact that during this period the case was allocated to another judge due to restructuring of the Bratislava III District Court as at that time the case was pending for more than six years.

38. The Court further notes that the parties submitted documents to the District Court on 16 July and 5 August 1997 respectively and that the latter held the next hearing on 3 June 1998, i.e. after some ten months. Another ten months elapsed between 27 August 1999, when the applicants challenged the judge dealing with the case and appealed against the decision ordering them to pay an advance on the expert's fees and 30 June 2000, when the Bratislava Regional Court decided on these issues in two separate sets of proceedings. Finally, the Court notes that the expert was requested to submit the opinion on 27 October 2000, and it does not appear from the documents available that such an opinion has been submitted.

39. Having regard to all the evidence before it the Court finds that the above delays and periods of inertia, if counted against the overall duration of the period under consideration, cannot be regarded as compatible with the "reasonable time" requirement. There has accordingly been a violation of Article 6 §1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants sought the sum of 26,566,000 Slovakian korunas (SKK) comprising the value of the software and the default interest.

42. The Government maintained that there was no causal link between the alleged breach of the applicants' rights and the sum claimed.

43. The Court recalls that, according to its case-law, compensation of damage is recoverable only to the extent that a causal link is established between the violation of the Convention and the damage sustained (*Martinez v. Italy*, no 41893/98, § 36, 26 July 2001). The Court finds that in

the present case no such link has been established and accordingly rejects the applicants' claim in respect of pecuniary damage.

B. Non-pecuniary damage

44. The applicants claimed the global sum of SKK 3,000,000 in compensation for non-pecuniary damage resulting from the violation of their rights under the Convention.

45. The Government considered that the claim was unsubstantiated and excessive.

46. The Court accepts that the applicants suffered damage of a non-pecuniary nature, such as distress resulting from the protracted length of the proceedings in their case. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicants SKK 100,000 each under this head.

C. Costs and expenses

47. The applicants claimed SKK 5,302,424 in compensation for the fees of the lawyer representing them in the proceedings before domestic courts and SKK 1,500,000 in respect of the proceedings before the Court.

48. The Government objected that the sums claimed were unreasonably high and that the applicants failed to submit documents in support of their claims.

49. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicants have incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the legal costs and expenses incurred in the proceedings before it, the Court, making its own assessment on an equitable basis, awards the applicants the global sum of SKK 15,000.

D. Default interest

50. 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts: 100,000 (one hundred thousand) Slovakian korunas each in respect of non-pecuniary damage and the global sum of 15,000 (fifteen thousand) Slovakian korunas in respect of costs and expenses;
(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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 November 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President