



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

FOURTH SECTION

CASE OF GAJDÚŠEK v. SLOVAKIA

(Application no. 40058/98)

JUDGMENT

STRASBOURG

18 December 2001

FINAL

18/03/2002

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 Gajdúšek v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 40058/98) 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 Slovakian national, Mr Štefan Gajdúšek ("the applicant"), on 19 February 1998.

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

3. The applicant alleged, in particular, that his right to a hearing within a reasonable time was violated in proceedings concerning termination of co-ownership.

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 decision of 8 March 2001 the Court declared admissible the applicant's complaint about the length of the proceedings. It declared inadmissible the applicant's complaint that he was not able to use the property which he jointly owns with his brother.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. In 1988 the applicant and his brother became co-owners of real property which had belonged to their late parents.

9. On 18 April 1989 the applicant's brother brought proceedings before the Senica District Court (*Okresný súd*) with a view to having the co-ownership terminated. The plaintiff requested that the house should be transferred to his exclusive ownership and that the applicant should be compensated.

10. On 6 April 1990 the Senica District Court granted the action. Upon the applicant's appeal the Bratislava Regional Court (*Krajský súd*) quashed the first instance judgment on 18 June 1990 and ordered that further evidence should be taken.

11. In the course of 1991 the District Court held several hearings and obtained a supplementary expert opinion. The judge also inspected the real property in question. An attempt to settle the case failed as the parties had different positions as regards the value of the property.

12. On 30 March 1992 an expert submitted his second supplementary opinion which the District Court had requested on 17 March 1992.

13. On 28 April 1992 the District Court heard the parties and the expert. The latter was ordered to supplement his opinion. The expert complied with the request on 21 May 1992.

14. On 8 June 1992 the District Court ordered the parties to pay an advance on the fees of the expert. The parties appealed on 12 and 16 June 1992 respectively. For this reason a hearing scheduled for 25 June 1992 was adjourned. On 13 July 1992 the Bratislava Regional Court upheld the decision on the advance payment of expert's fees. The case file was returned to the District Court on 21 July 1992.

15. In the meantime, on 1 July 1992, the applicant complained to the president of the Senica District Court that the judge dealing with the case lacked impartiality.

16. On 24 November 1992 the District Court delivered a decision on reimbursement of the costs of two witnesses who had been heard in 1990.

17. On 20 January 1993 the president of the District Court informed the applicant that his request for exclusion of the judge of 1 July 1992 had not been duly registered and invited him to submit a copy. The applicant did so on 4 February 1993.

18. On 27 January 1993 the District Court adjourned the case pending the decision on the applicant's request for exclusion of the judge. The Bratislava Regional Court dismissed the request on 18 March 1993. The case file was returned to the District Court on 26 April 1993.

19. On 10 June 1993 the applicant's brother requested the District Court to adjourn the case until 1994 as he had health problems.

20. On 12 August 1993 the District Court heard the applicant and adjourned the case.

21. On 27 September 1993 the president of the Senica District Court admitted, in a reply to the applicant's complaint addressed to the Ministry of Justice, that the proceedings had lasted long. The president expressed the view that the delays were mainly due to the plaintiff's health problems.

22. On 16 December 1993 the District Court heard the parties and decided to appoint an expert with a view to evaluating the property.

23. On 26 April 1994 the applicant complained about the length of the proceedings to the Constitutional Court (*Ústavný súd*). The latter requested the District Court to submit the case-file on 30 May and 21 June 1994. In a letter of 5 October 1994 a judge of the Constitutional Court informed the applicant that, in his view, there had been no excessive delays in the proceedings.

24. On 28 June 1994 the District Court appointed an expert and invited the parties to pay his fees. On 12 July 1994 the applicant's brother challenged the expert.

25. The District Court unsuccessfully tried to hear the expert on 17 and 24 October 1994. On 8 November 1994 the expert appeared and was heard.

26. On 17 January 1995 the District Court dismissed the plaintiff's request for exclusion of the expert of 12 July 1994. On 2 February 1995 the plaintiff appealed.

27. On 3 February 1995 the District Court delivered a decision on the expert's fees. On 6 and 22 February 1995 the plaintiff challenged this decision.

28. On 30 March 1995 the District Court transmitted the case file to the Bratislava Regional Court. On 29 September 1995 the latter upheld the District Court's decisions of 17 January and of 3 February 1995. The case file was returned to the District Court on 10 November 1995.

29. On 5 December 1995 the District Court invited the expert to submit his opinion. On 15 January 1996 the expert informed the court that he was not qualified in evaluation of construction works.

30. On 30 January 1996 the applicant informed the Senica District Court about his readiness to settle the case.

31. On 15 February 1996 the District Court appointed another expert. The plaintiff did not allow the expert to examine the property on 1 March 1996. The plaintiff asked the court to postpone the examination as he was ill. On 25 April 1996 a doctor informed the judge that the plaintiff could not attend an examination of the property and that his health was unlikely to improve.

32. On 30 May 1996 the president of the Senica District Court dismissed the applicant's complaints about the length of the proceedings. The applicant was further invited to specify whether he challenged the District Court judges.

33. On 12 June 1996 the applicant again complained about the length of the proceedings to the president of the Senica District Court. He also requested that the case should be transferred to another court.

34. On the same day the District Court instructed the expert to examine the property. In a separate letter the court invited the plaintiff to let the expert carry out his job and informed him that he could be represented by his lawyer on that occasion should he be unable to attend. The letter further stated that the plaintiff was obliged to allow the examination of the property and that a procedural fine could be imposed on him under Section 53 of the Code of Civil Procedure should he obstruct the conduct of the proceedings.

35. On 1 July 1996 the plaintiff requested that the examination of the property be postponed until 1997 with reference to his health problems.

36. On 22 July 1996 the expert informed the District Court that he had not been able to examine the property because of the plaintiff's disagreement.

37. On 20 November 1996 the expert returned the file to the District Court. He explained that the plaintiff had excluded the possibility of having the property examined in the next few months.

38. On 20 January 1997 the District Court asked the plaintiff's lawyer to indicate when the plaintiff would allow the property to be examined. On 24 February and on 2 May 1997 the judge reiterated the request. On 23 May 1997 the lawyer replied that he was not in a position to indicate when the plaintiff's health would improve so that he could attend the examination. A hearing was scheduled for 14 January 1998.

39. On 8 January 1998 the plaintiff requested the District Court to exempt him from the obligation to pay court fees. On 13 January 1998 the plaintiff informed the District Court that he had terminated the authority of his lawyer as he was indigent. He requested that the same lawyer be appointed to represent him at the court's expenses.

40. On 12 January 1998 the applicant challenged the Senica District Court judges for bias and proposed to transfer the case to another court.

41. On 14 January 1998 the District Court heard the plaintiff. The applicant failed to appear. On 27 May 1998 the case file was transmitted to the Trnava Regional Court. On 11 June 1998 the latter dismissed the applicant's request for exclusion of the District Court judges. The case file was returned to the District Court on 10 July 1998.

42. On 2 September 1998 the District Court appointed a lawyer to represent the plaintiff in the proceedings. By another decision of 23 October 1998 the District Court exempted the plaintiff from the obligation to pay the court fees.

43. On 6 November 1998 the plaintiff's lawyer requested that another lawyer be appointed. On 2 December 1998 the District Court appointed another lawyer to represent the plaintiff. The latter appealed on 28 December 1999.

44. On 3 December 1999 the District Court again invited the plaintiff to indicate when the property could be examined. The plaintiff was informed that his lawyer could represent him during the examination.

45. The expert examined the property in question in February 2000. He submitted his opinion on 15 March 2000. It was sent to the parties for comments.

46. On 11 April 2000 the court adjourned the case as both the plaintiff and the legal representative of the applicant failed to appear.

47. The District Court held hearings on 25 April 2000 and on 18 May 2000.

48. On 22 May 2000 the District Court delivered a judgment by which it assigned the house to the plaintiff's ownership and granted the applicant financial compensation. The judgment was served on the applicant on 16 February 2001. On 23 February and 2 March 2001 respectively the parties appealed. On 12 and 15 March 2001 respectively the applicant and the plaintiff submitted comments on the appeal of the other party.

49. On 13 November 2001 the Trnava Regional Court upheld the Senica District Court's judgment of 22 May 2000. It is not clear whether the decision has become final.

THE LAW

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

50. The applicant complained that the proceedings lasted unreasonably long 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...”

51. The proceedings started on 18 April 1989. However, the relevant period began only on 18 March 1992 when the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor states, ratified the Convention and recognised the right of individual petition pursuant to former Article 25 of the Convention. The Court notes that on 13 November 2001 the Trnava Regional Court upheld the first instance judgment and that it is not clear from the documents before it whether this decision has become final. Thus the period under consideration has exceeded nine years and seven months. In order to determine the reasonableness of the time that elapsed after 18 March 1992, the Court must take account of the state of the proceedings at that time (see *Proszak*

v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

52. The Government contended that the case is complex as, in particular, several expert opinions were necessary with a view to evaluating the property and examining whether or not it could be divided, and that a considerable amount of evidence had to be taken. The Government further maintained that both the applicant and the plaintiff had considerably contributed to the length of the proceedings in that they had refused to settle the case, that they had challenged most of the decisions delivered in the case including those of purely procedural nature, and that they had not co-operated with the experts. As regards the behaviour of the applicant in particular, the Government pointed out that he had repeatedly requested the exclusion of the Senica District Court judges. Finally, the length of the proceedings was also caused by a reform of the judiciary in 1997 as a result of which the number of the Senica District Court judges had been reduced by half. The Government concluded that the reasonable time requirement had not been exceeded.

53. 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).

54. The Court accepts that the case is of a certain complexity due to the necessity to have the property examined by experts and that the applicant contributed to the length of the proceedings in that he requested the exclusion of the District Court judges. However, these factors alone do not account for the overall length of the period under consideration.

55. In respect of the conduct of the Slovakian authorities, the Court notes that more than eight months elapsed before the Bratislava Regional Court decided on the applicant's request for exclusion of the District Court judge of 1 July 1992. This delay was apparently caused by the fact that the applicant's request had not been duly registered by the District Court's registry.

56. The District Court took more than six months to decide on the plaintiff's request of 12 July 1994 that an expert be excluded. On 30 March 1995 the District Court transmitted the case file to the Bratislava Regional Court which took almost six months to decide on the plaintiff's appeals concerning the appointment of the expert and the latter's fees.

57. Considerable delays in the proceedings resulted from the fact that the expert was unable to examine the property due to the plaintiff's state of health. In particular, the case was not effectively proceeded with for this

reason throughout 1996 and 1997. While the health problems of the plaintiff cannot, as such, be held against the respondent Government, the Court notes that on 12 June 1996 the District Court informed the plaintiff that the expert could examine the property in the presence of his lawyer and that a procedural fine could be imposed should the plaintiff hamper the examination of the property. Thus the plaintiff's illness was apparently not a relevant reason for not proceeding with the case and the domestic law provided for a possibility of exerting pressure on the plaintiff in case he obstructed the conduct of the proceedings. The District Court has not, however, availed itself of this possibility.

58. Finally, the Court notes that the District Court's judgment of 22 May 2000 was served on the applicant on 16 February 2001, i.e. more than eight months after its delivery. The Government have not provided an explanation for this delay which occurred when the proceedings had already been pending for more than eleven years.

59. Having regard to all the evidence before it and to the state of the proceedings at 18 March 1992 (see paragraph 51 above) the Court finds that the overall duration of the period under consideration cannot be regarded as reasonable. 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 774,717 Slovakian korunas (SKK) representing the value of his part of the property in question, compensation for its depreciation while the proceedings were pending, lost income as well as default interest.

62. The Government contended there was no ground for any award under this head.

63. The Court notes that by its decision of 8 March 2001 it declared inadmissible the applicant's complaint that he was not able to use the property which he jointly owned with his brother (see paragraph 6 above). The Court further finds no causal link between the applicant's request for compensation for the value of the property and the violation of the

Convention found above. Accordingly, the applicant's claim in respect of pecuniary damage must be dismissed.

B. Non-pecuniary damage

64. The applicant claimed SKK 1,000,000 on account of emotional stress resulting from the excessive length of the proceedings.

65. The Government considered the claim unsubstantiated and excessive.

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

C. Costs and expenses

67. The applicant claimed SKK 53,552 as compensation for costs and expenses incurred in the context of the domestic proceedings and SKK 10,253 in respect of the proceedings before the Court.

68. The Government contended that the claim in respect of costs and expenses before the national authorities should be rejected.

69. 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, 12 April 2001, § 34). 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 applicant 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 awards the applicant the sum claimed, namely SKK 10,253.

D. Default interest

70. 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, the following amounts: SKK 100,000 (one hundred thousand Slovakian korunas) in respect of non-pecuniary damage and SKK 10,253 (ten thousand two hundred and fifty-three Slovakian korunas) for 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 applicant's claims for just satisfaction.

Done in English, and notified in writing on 18 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President