



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

FOURTH SECTION

CASE OF HAVALA v. SLOVAKIA

(Application no. 47804/99)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

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 Havalá v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 22 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 47804/99) 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 a Slovakian national, Mr Karol Havalá ("the applicant"), on 15 February 1999.

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

3. The applicant alleged, in particular, that the length of the proceedings concerning his claim for damages 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 13 September 2001 the Court declared the application partly admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

THE FACTS

7. On 26 March 1993 the applicant claimed damages resulting from the termination of his membership of a co-operative before the Trnava District Court. On 20 September 1993 the latter allowed the applicant's claims in part.

8. The defendant and the applicant appealed respectively on 8 and 13 October 1993. On 13 December 1993 the applicant submitted reasons for his appeal. On 23 December 1993 the case was submitted to the Bratislava Regional Court.

9. On 31 January 1994 the Bratislava Regional Court quashed the District Court's judgment on the ground that the reasoning was insufficient.

10. The District Court held hearings on 30 March, 25 April and 23 May 1994.

11. Another hearing scheduled for 13 June 1994 had to be adjourned as the applicant's lawyer had failed to appear. On 6 July 1994 the District Court again adjourned the case as the applicant's lawyer had failed to submit written observations in time.

12. On 15 July 1994 the applicant challenged the Trnava District Court judge dealing with his case. On 16 August 1994 the Bratislava Regional Court dismissed the objection.

13. On 24 October 1994 the Trnava District Court delivered a new judgment allowing the applicant's claim for damages in part. The parties appealed and the case was submitted to the appellate court on 12 December 1994.

14. On 7 July 1995 the case had to be adjourned as neither the applicant nor his lawyer appeared.

15. On 31 July 1995 the Bratislava Regional Court quashed the first instance judgment on the ground that the District Court lacked jurisdiction to deal with the case. The case was transferred to another chamber of the Regional Court on 2 October 1995.

16. On 24 June 1996 the Ministry of Justice admitted, in reply to a complaint lodged by the applicant, that there had been undue delays in the proceedings.

17. Between 17 July 1996 and 25 December 1996 the judge dealing with the case took several procedural steps.

18. On 24 January 1997 the president of the Bratislava Regional Court apologised to the applicant for delays in the proceedings and informed him that a hearing was scheduled for 28 January 1997.

19. On the latter date the court heard the defendant and adjourned the case until 25 March 1997 as it was not clear whether the applicant's lawyer had received the summons. On 24 March 1997 the applicant's lawyer informed the court that he no longer represented the applicant. On 25 March 1997 the Regional Court therefore adjourned the case until 22 April 1997.

20. On 22 April 1997 the Bratislava Regional Court dismissed the action on the ground that the applicant failed to show that he had suffered damage. On 2 May 1997 the applicant appealed. The case file was transmitted to the Supreme Court on 26 May 1997. On 3 June 1997 the Supreme Court returned the case to the Regional Court and instructed the latter to decide on the fees for the appeal proceedings. The Regional Court delivered a decision on court fees on 14 June 1997 and sent the case to the Supreme Court on 1 August 1997.

21. On 22 December 1997 the Supreme Court quashed the first instance judgment. The Supreme Court held that the Regional Court had not established the relevant facts of the case.

22. On 4 February 1998 the applicant requested the exclusion of the Regional Court judges dealing with his case. He alleged, in particular, that the judges had decided on his claim erroneously and that they had caused delays in the proceedings. The Supreme Court dismissed the request on 24 August 1998. The case file was returned to the Regional Court on 9 October 1998.

23. On 30 November 1998 the Bratislava Regional Court dismissed the applicant's action of 26 March 1993. On 29 December 1998 the applicant appealed. The case was submitted to the Supreme Court on 3 February 1999.

24. On 15 July 1999 the Supreme Court quashed the Regional Court's judgment of 30 November 1998. The Supreme Court found that the applicant was entitled to compensation and held that it was for the first instance court to determine the amount. The case file was returned to the Regional Court on 21 July 1999.

25. On 17 February 2000 the Supreme Court excluded the Regional Court judge dealing with the case at her own request.

26. On 25 April 2000 the case was assigned to another judge.

27. On 22 February 2001 the Constitutional Court found that the applicant's constitutional right to a hearing without undue delay had been violated. The decision stated that the case was not complex and that what was at stake for the applicant called for particular diligence. The Constitutional Court found no particular delays in the proceedings which should be imputed to the applicant. As to the conduct of the general courts, the Constitutional Court pointed out, in particular, that there had been delays imputable to the Bratislava Regional Court between 12 December 1994 and 31 July 1995, between 2 October 1995 and 17 July 1996, between 25 November 1996 and 22 April 1997 and between 21 July 1999 and 4 January 2000. Those delays amounted to an overall period of twenty-five months. Furthermore, the proceedings were slowed down due to the fact that the Supreme Court had to quash repeatedly the lower court's decisions.

28. According to its case-law, the Constitutional Court lacked jurisdiction, at the relevant time, to draw legal consequences from its

finding of a violation of a person's right to a hearing within a reasonable time. It could neither award damages to the person concerned nor impose a sanction on the public authority liable for such a violation.

29. On 23 February 2001 the president of the Bratislava Regional Court assigned the case to another judge as the judge appointed on 25 April 2000 had left the court.

30. Hearings were held on 16 and 31 May 2001. On the latter date the case was adjourned, until 20 September 2001, as the applicant's representative could not attend due to illness.

31. On 25 September 2001 the Bratislava Regional Court allowed the applicant to extend his claims for compensation for pecuniary damage. It further decided to deal with the applicant's claim for non-pecuniary damages in a separate set of proceedings. On 13 November 2001 the Supreme Court dismissed the defendant's appeal against this decision.

32. A hearing scheduled for 29 November 2001 was cancelled as the Supreme Court had not yet returned the file to the Regional Court.

33. On 14 March 2002 the Bratislava Regional Court delivered a judgment in which it granted a part of the applicant's claims. On 2 May 2002 the applicant appealed. The proceedings are pending.

THE LAW

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

34. The applicant complained about the length of the proceedings concerning his claim for damages. He alleged a violation of Article 6 § 1 of the Convention which, in 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...”

35. The applicant maintained that the case is not complex and that the length of the proceedings was imputable exclusively to the conduct of the domestic courts.

36. The Government submitted that the length of the proceedings was due to objective reasons, namely the complex character of the case and a change in the organisation of the justice system in Slovakia as a result of which the assignment of cases to judges had to be modified in 1997. The applicant and his lawyer contributed to the length of the proceedings by their conduct. The Government pointed out, in particular, that the lawyer had failed to appear at hearings on several occasions, that several submissions by the applicant had been unclear and that the applicant had challenged the judges.

37. The Court recalls that 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, 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, § 67, ECHR 1999-II and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

38. The proceedings in question began on 26 March 1993 and they are still pending. Their length has therefore exceeded nine years and six months.

39. In the Court's view, the case is not particularly complex. The delays which the Government impute to the applicant do not appear substantial and they cannot account for the overall length of the proceedings. As to the conduct of the national courts, the Court concurs with the Constitutional Court's finding that substantial delays have been caused, in particular, by the Bratislava Regional Court in that it failed to proceed with the case in an effective manner (see paragraph 27 above). Undue delays in the proceedings were also conceded by the Ministry of Justice and the president of the Bratislava Regional Court (see paragraphs 16 and 18 above).

40. Having regard to the circumstances of the case, in particular to the fact that the applicant's gainful activity is at issue, the Court finds that the overall duration of the proceedings has exceeded a "reasonable time". There has, thus, been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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. Damage

42. The applicant claimed 1,370,158 Slovakian korunas (SKK) in compensation for pecuniary damage. This sum included the applicant's lost income of SKK 553,015 and default interest of SKK 817,143.

43. The Government argued that there was no causal link between the alleged breach of the applicant's right to a hearing within a reasonable time guaranteed by Article 6 § 1 of the Convention and the sum claimed by the applicant.

44. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found. In particular, it is not for the Court to speculate on what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

45. The applicant further claimed SKK 1,000,000 in compensation for non-pecuniary damage. He explained, *inter alia*, that his personality rights were affected, that the courts' failure to decide on his case within a reasonable time has resulted in distress, and that he has been therefore unable to live decently.

46. The Government objected that the claim was unsubstantiated and clearly excessive.

47. Having regard to its case-law, the importance of the proceedings at issue for the applicant, and making an assessment on an equitable basis, the Court awards the applicant 3,500 euros (EUR).

B. Costs and expenses

48. The applicant claimed SKK 24,812 in compensation for his costs and expenses. This sum included the costs of the proceedings concerning his claim for damages, the fees of the applicant's representatives in the proceedings before both the general courts and the Constitutional Court, travelling costs relating to his participation in hearings in his case as well as postal and photocopying expenses. In addition, the applicant claimed SKK 20,000 in compensation for the time which he had lost while trying to obtain redress before the domestic authorities.

49. The Government contended that the claim was excessive.

50. The Court observes that an award under this head may only be made to the extent that the costs and expenses claimed can be considered as having been incurred in an attempt to prevent or redress the violation found. Considering that unreasonable delays in proceedings necessarily involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999) and making an assessment on an equitable basis, the Court awards the applicant EUR 300.

C. Default interest

51. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see the case of *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

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, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, to be converted into Slovakian korunas at the rate applicable at the date of settlement, together with any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President