



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

FOURTH SECTION

CASE OF ŽIAČIK v. SLOVAKIA

(Application no. 43377/98)

JUDGMENT

STRASBOURG

7 January 2003

FINAL

07/04/2003

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 Žiačik v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

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 22 October 2002 and on 3 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 43377/98) 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 Juraj Žiačik ("the applicant"), on 25 May 1998.

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

3. The applicant alleged, in particular, that the length of criminal proceedings instituted against him had been excessive and that he had no effective remedy at his disposal in that respect.

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). 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. 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. In its partial decision on the admissibility of the application delivered on 27 January 2000 the Court declared inadmissible the complaints relating to the applicant's dismissal from the police.

7. In the final decision on the admissibility of 8 January 2002 the Court joined to the merits the Government's objection that by failing to lodge a claim for damages under the State Liability Act of 1969 the applicant had

not complied with the requirement as to the exhaustion of domestic remedies laid down in Article 35 §1 of the Convention. The Court further declared admissible the applicant's complaints about the length of the proceedings and about the absence of an effective remedy.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 20 December 1996 the applicant was accused of an offence of attempting to sell explosives.

9. On 28 January 1997 he was arrested in the context of the criminal proceedings. On 30 January 1997 a judge ordered his release.

10. On 3 February 1997 the Minister of the Interior dismissed the applicant from the police. The decision referred to the conclusions reached by the Police Corps Inspection Office according to which the applicant had offered to sell explosives, and that on 8 June 1996 he had driven a car in which the police later found explosives.

11. On 26 March 1997 an expert opinion on the applicant's mental health was submitted to the Žilina Regional Office of Investigation in the context of the criminal proceedings.

12. On 28 May 1997 the Žilina Regional Prosecutor indicted the applicant, charging him with two offences of involvement in the unauthorised transport of explosives before the Žilina Regional Court.

13. On 11 June 1997 the case was assigned to a different judge as the judge to whom the case had originally fallen to be examined was an acquaintance of the applicant.

14. On 25 November 1997 the Regional Court judge requested the Prievidza District Court to submit decisions concerning one of the accused.

15. On 16 April 1999 the Regional Court returned the case to the public prosecutor for further investigation. The prosecutor appealed on 27 April 1999. On 11 May 1999 the case was submitted to the Supreme Court. On 18 August 1999 the latter quashed the Regional Court's decision of 16 April 1999 and ordered the first instance court to proceed with the case. The case file was returned to the Regional Court on 11 October 1999.

16. A hearing scheduled for 12 January 2000 had to be adjourned as one of the accused persons' lawyers was absent.

17. Hearings were held on 17 February 2000, on 10 March 2000, on 16 June 2000 and on 27 July 2000. The case was adjourned as it was necessary to hear further witnesses.

18. On 13 September 2000 and on 26 October 2000 the case had to be adjourned as witnesses failed to appear.

19. On 29 November 2000 the Regional Court heard three witnesses. The case was adjourned as the court considered it necessary to hear another witness in respect of whom an arrest warrant had been issued. On 1 and 22 December 2000 and on 3 April 2001 the Regional Court asked the police to establish the whereabouts of the witness.

20. On 14 February 2001 the president of the Žilina Regional Court informed the applicant that the case had not been proceeded with in January 2001 as the presiding judge was ill.

21. On 10 May 2001 the Žilina Regional Court acquitted the applicant. On 17 August 2001 the public prosecutor appealed. One of the applicant's co-accused also filed an appeal. The case file was transmitted to the Supreme Court on 27 August 2001. On 15 November 2001 one of the accused submitted observations on the public prosecutor's appeal.

22. A hearing before the Supreme Court scheduled for 12 December 2001 was cancelled.

23. On 30 January 2002 the Supreme Court dismissed the appeals. The decision became final on the same day.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

24. Article 48 (2) of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

25. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127 the relevant part of which reads as follows:

“1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who

violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated.” ...

26. The text of the above amendment was adopted on 23 February 2001 and published in the Collection of Laws on 17 March 2001.

B. The Constitutional Court Act of 1993 and the Constitutional Court’s practice

27. The implementation of the above constitutional provisions is set out in more detail in Sections 49-56 of Act no. 38/1993 (the Constitutional Court Act), as amended with effect from 20 March 2002.

28. After that date the Constitutional Court delivered a number of decisions in which it found a violation of Article 48 (2) of the Constitution, ordered the general court concerned to avoid any further delays in the proceedings and awarded the successful complainants financial compensation in respect of delays which had already occurred. The Constitutional Court has held that it can examine complaints about delays in proceedings only when the proceedings complained of were pending at the moment when the constitutional complaint was filed.

C. The State Liability Act of 1969 and the domestic courts’ practice

29. Section 18 (1) of Act No. 58/1969 on the liability of the State for damage caused by a State organ’s decision or by its erroneous official action (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* – “the State Liability Act”) renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from erroneous official actions of persons entrusted with the exercise of these functions. A claim for compensation under this provision can only be granted when the plaintiff shows that he or she suffered damage as a result of an erroneous action of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the erroneous action in question.

30. Under the domestic courts’ practice, the State Liability Act of 1969 does not allow for compensation for non-pecuniary damage unless it is related to deterioration of a person’s health. In such cases the amount of compensation is governed by Regulation No. 32/1965.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

31. The Government objected that the applicant had not exhausted domestic remedies as he had failed to lodge a claim for compensation for damage caused by the alleged delays in the proceedings in accordance with the relevant provisions of the State Liability Act of 1969. In their submissions dated 21 January 2002 the Government submitted, in addition, that as from 1 January 2002 the applicant could have sought redress before the Constitutional Court by means of a complaint pursuant to Article 127 of the Constitution.

32. The applicant argued that his application cannot be rejected for non-exhaustion of domestic remedies.

33. As to the remedy under the State Liability Act of 1969, the Court has found that, in view of the domestic courts' practice, a claim for compensation for non-pecuniary damage resulting from the length of proceedings does not offer reasonable prospects of success and that such a remedy need not be exhausted for the purposes of Article 35 § 1 of the Convention (see *J.K. v. Slovakia* (dec.), no. 38794/97, 13 September 2001 and *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001, both unreported). It sees no reason for reaching a different decision in the present case.

34. The Court further notes that the constitutional amendment introducing the new remedy under Article 127 of the Constitution entered into force on 1 January 2002. It was practically open to the applicant to file such a remedy only between that date and 30 January 2002 when the final decision in the criminal proceedings against him was delivered (see paragraph 28 above). However, at that time there existed no case-law showing that such a remedy was effective in practice. In fact, the Constitutional Court was in a position to proceed with the examination of complaints under Article 127 only after 20 March 2002 when the relevant amendments to the Constitutional Court Act of 1993 entered into force.

35. In these circumstances, the Court is not satisfied that at the relevant time a complaint under Article 127 of the Constitution could have been regarded with a sufficient degree of certainty as an effective remedy in respect of the length of the criminal proceedings of which the applicant complains.

36. The Government's preliminary objection must therefore be dismissed.

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

37. The applicant alleged that the criminal proceedings against him had not been concluded within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which reads:

“In the determination of any criminal charge against him ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

38. The proceedings started on 20 December 1996 and ended with the delivery of the Supreme Court’s decision of 30 January 2002. Accordingly, the period under consideration lasted five years, one month and ten days. During this period the case was dealt with twice by courts at two levels of jurisdiction.

39. As to the reasonableness of the length of 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).

40. The Government contended that the length of the proceedings was mainly due to the complex character of the case and to the fact that it had to be adjourned for objective reasons on several occasions. Transformation of the judiciary during the relevant period and a temporary shortage of judges also contributed to the length of the proceedings.

41. The Government admitted a delay between 11 June 1997 and 16 April 1999. It was due to the fact that, following the restructuring of courts as from 1 January 1997, a new Regional Court was established in Žilina and that the judge dealing with the applicant’s case had become its president. In the Government’s view, the fact that the case was subsequently proceeded with without delays indicated that the problems relating to the restructuring of courts had been rapidly overcome. They concluded that the applicant’s case had been decided upon within a reasonable time.

42. The applicant contended that the charges against him had not been determined within a reasonable time and that, as a result, he had lost his post in the police.

43. It does not appear from the information before the Court that the case was of a particular complexity notwithstanding that the first instance court had experienced certain difficulties in ensuring the attendance of witnesses. There is no indication that the applicant impeded the conduct of the proceedings.

44. As regards the conduct of the domestic authorities, the Court notes that the case was not proceeded with effectively between 11 June 1997 and 16 April 1999, that is for more than twenty-two months. As regards the

Government's argument that this delay was due to changes in the organisation of the judiciary, the Court recalls that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet the requirements of this provision (see the *Portington v. Greece* judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2633, § 33).

45. The Court further notes that five months lapsed before the Supreme Court decided on the public prosecutor's appeal of 27 April 1999 and returned the case to the Žilina Regional Court.

46. In these circumstances the Court finds, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, that the length of the proceedings failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant also submitted that he had no effective remedy whereby he could raise the issue of the excessive length of the proceedings. This, in his view, amounted to a violation of Article 13 of the Convention which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

48. The Government contended that the applicant had the possibility of lodging a claim for damages under the State Liability Act of 1969 and, after 1 January 2002, to seek redress by means of a complaint under Article 127 of the Constitution. In their view, the applicant thus had effective remedies in respect of the length of the proceedings in his case.

49. The applicant disagreed.

50. In the light of its above finding under Article 6 of the Convention and having regard to the fact that a new remedy under Article 127 of the Constitution has been available in Slovakia since 1 January 2002 in similar cases, the Court finds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed compensation for material damage which he had suffered as a result of his dismissal from the police. He alleged, in particular, that his annual income prior to the dismissal had amounted to 300,000 Slovakian korunas (SKK), that his father had to pay SKK 3,000 a month with a view to contributing to the maintenance of the applicant's family, and that he had suffered a further financial loss of SKK 275,520 as a result of his dismissal. He also requested that he should be re-admitted to the police.

In addition, the applicant claimed SKK 10,000,000 as compensation for non-pecuniary damage.

53. The Government contended that there was no causal link between the pecuniary damage allegedly sustained by the applicant and the Convention complaints which the Court had declared admissible. As to the claim for non-pecuniary damages, the Government considered that it was unsubstantiated and excessive.

54. The Court notes that in its partial decision of 27 January 2000 on the admissibility of the present application it declared inadmissible the complaints relating to the applicant's dismissal from the police (see paragraph 6 above). It concurs with the Government that there is no causal link between the pecuniary loss or damage complained of and the violation of Article 6 § 1 found. Finally, the applicant's request that he should be re-admitted to the police falls outside the Court's competence. The claims under this head must therefore be dismissed.

As to the claim for non-pecuniary damages, the Court considers that the applicant has suffered damage, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants a total sum of 3,500 euros (EUR) under this head.

B. Costs and expenses

55. The applicant claimed SKK 400,000 in compensation for costs and expenses without having submitted any documents in support of such a claim.

56. The Government argued that the applicant had failed to substantiate the claim which they considered excessive.

57. Making its assessment on an equitable basis, the Court finds it reasonable to award the applicant the amount of EUR 200 for his costs and expenses.

C. Default interest

58. 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

1. *Dismisses* by six votes to one the Government's preliminary objection concerning the exhaustion of domestic remedies;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one that a separate examination of the complaint under Article 13 of the Convention is not called for;
4. *Holds* by six votes to one
 - (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 200 (two 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;
5. *Dismisses* by six votes to one the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 7 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following dissenting opinion of Mrs Strážnická is annexed to this judgment.

N.B.
M.O'B.

DISSENTING OPINION OF JUDGE STRÁŽNICKÁ

In my opinion, there has been no violation of the Convention in the present case for the following reasons.

1. The only domestic remedies which Article 35 of the Convention requires to be exhausted are those that are available and sufficient to afford redress for applicants in respect of the breaches alleged. As regards effectiveness, a remedy is considered to be effective when it is capable of remedying directly the situation complained of or can be expected to produce an effective and adequate result.

2. Having regard to recent developments in the legislation and practice of several Contracting States that have incorporated new domestic remedies into their national machinery for human-rights protection, the Court has reconsidered its general rule that exhaustion of domestic remedies is to be assessed with reference to the date when the application was lodged with the Court. The Court has declared inadmissible a large number of applications against Italy raising similar issues (for example, *Brusco v. Italy* (dec.), no. 69789/01, 6 September 2001, and *Giacometti and Others v. Italy* (dec.), no. 34939/97, 8 November 2001), and has held in some cases against Croatia (for example, *Nogolica v. Croatia* (dec.), no. 77784/01, 5 September 2002) that there were special circumstances justifying a departure from that general principle. That approach has also been followed in several cases against Slovakia (for example, *Andrášik and Others v. Slovakia*, nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002), reflecting the Court's jurisdiction to reject any application which it considers inadmissible under Article 35 of the Convention at any stage of the proceedings.

3. It is well known that an increasing number of applications have been lodged against Slovakia about the excessive length of proceedings and the absence of an effective domestic remedy in the Slovakian legal system. The amendment of Article 127 of the Constitution was adopted on 23 February 2001, was published in the Collection of Laws on 17 March 2001 and entered into force on 1 January 2002. As a result of that amendment a new domestic remedy has been introduced in the Slovakian legal system. The wording of the amended constitutional provisions sets forth the new constitutional complaint as a remedy capable both of preventing the continuation of an alleged violation of the right to have a hearing within a reasonable time and of providing adequate redress for any violation that has already occurred, including just satisfaction.

4. In the instant case the applicant complained about the excessive length of criminal proceedings instituted against him and the absence of a remedy in this respect. He argued that the new domestic remedy had been introduced after the date on which his application had been lodged with the Court.

There are similarities between the present case and the *Nogolica* case, in which the applicant lodged his application with the Court before the new legislation providing for an effective remedy had entered into force. In its decision on admissibility the Court noted that although the Constitutional Court had not yet adopted any decision following the introduction of the new remedy, the wording of the relevant legislation was sufficiently clear and the applicant was obliged to avail himself of the remedy.

In my view, the applicant in the present case was in the same position. He must have been aware of the existence of the new constitutional remedy as from March 2001, when the amendments were published in the Collection of Laws, although the new remedy at national level, by which the applicant could lodge a constitutional complaint with the Constitutional Court, was open to him for a limited period (from 1 January until 30 January 2002).

According to the clear wording of the amendment, the Constitutional Court is empowered to take a final decision on complaints by natural and legal persons alleging a violation of their fundamental rights and freedoms and, moreover, in cases where the violation was found as a result of a failure to act, to order the authority which violated such rights or freedoms to take the necessary action to prevent the continuation of the alleged breach. There is no doubt that the new remedy provided redress of both a preventive and a compensatory nature with a reasonable prospect of success for the applicant and, as such, was effective from the date of entry into force of the amendment of the Constitution.

5. With reference to the subsidiarity principle whereby individual rights should preferably be protected at national level, and within the meaning of the requirement to exhaust domestic remedies under the Convention, the applicant should first have lodge a constitutional complaint with the Constitutional Court pursuant to the amended Article 127 of the Constitution.

It is my opinion, that the Government's objection concerning the non-exhaustion of domestic remedies is well-founded and that the applicant had an effective remedy at his disposal as required by Article 13 of the Convention.