



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

FOURTH SECTION

CASE OF MOLNÁROVÁ AND KOCHANOVÁ v. SLOVAKIA

(Application no. 44965/98)

JUDGMENT

STRASBOURG

4 March 2003

FINAL

04/06/2003

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 Molnarová and Kochanová v. Slovakia,

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

Mr M. PELLONPÄÄ, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 11 February 2003,

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

PROCEDURE

1. The case originated in an application (no. 44965/98) 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 two Slovakian nationals, Mrs Dagmar Molnárová and Mrs Alžbeta Kochanová ("the applicants"), on 21 January 1998.

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

3. The applicants alleged, in particular, that the proceedings concerning their case lasted an unreasonably long time.

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.

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.

7. By a decision of 9 July 2002, the Court declared the application partly admissible.

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

THE FACTS

9. On 23 September 1992 the applicants lodged an action with the Michalovce District Court. They claimed compensation, under the Extra-Judicial Rehabilitations Act, for both real and movable property which had been taken away from their late father.

10. On 20 January 1993 the District Court submitted the action to the defendant authority for comments. On 6 April 1993 the defendant authority submitted its observations in reply.

11. On 28 April 1993 the District Court adjourned the case and requested the applicants to specify the legal provisions on which their claim was based and to submit further documentary evidence. On 24 May 1993 the applicants submitted further documents. They specified the provisions of the Extra-Judicial Rehabilitations Act on which their action was based on 3 September 1993.

12. On 16 September 1993 the District Court heard the applicants.

13. On 5 October 1993 the judge inspected the real property in question in the presence of the parties. The judge also heard a witness.

14. On 8 November 1993 the applicants withdrew their claim concerning compensation for movable property. On 15 December 1993 the District Court discontinued the proceedings in respect of that claim. This decision became final on 11 February 1994.

15. On 14 April 1994 the court heard two witnesses.

16. On 27 April 1994 the judge visited the real property in question and heard two witnesses and an expert.

17. On 11 May 1994 the applicants proposed that the court hear three witnesses. In September 1994 they requested the court not to proceed with the case between 20 October and 1 November 1994 due to the absence of their lawyer.

18. On 7 March 1995 the District Court heard three witnesses and invited the parties to explore the possibility of settling the case. On 18 May 1995 the applicants informed the judge that they were not opposed to her intention to order an expert opinion with a view to evaluating the property should the attempt to settle the case fail. On 29 June 1995 the defendant ministry refused to accept the applicants' claims.

19. On 11 October 1995 the Michalovce District Court dismissed the action. The judgment was served on the parties on 1 and 4 December 1995 respectively.

20. On 15 December 1995 the applicants appealed. The defendant authority submitted its observations in reply on 29 January 1996, and on 20 February 1996 the case file was submitted to the appellate court.

21. On 6 March 1996 the applicants submitted further arguments to the appellate court.

22. On 7 October 1997 the Košice Regional Court upheld the first instance judgment.

23. On 7 January 1998 the applicants lodged an appeal on points of law. They challenged the lower courts' conclusions and complained that the Regional Court had not appointed an expert with a view to establishing the value of the property.

24. On 21 April 1998 the Supreme Court rejected the appeal on points of law. It found that the refusal to order an expert opinion was not a relevant reason for quashing the second instance judgment and held that it lacked jurisdiction to review the appellate court's finding on the merits.

THE LAW

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

25. The applicants complained about the length of the proceedings concerning their action. They alleged a violation of Article 6 § 1 of the Convention the relevant part of which provides:

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

26. The proceedings complained of were brought on 23 September 1992 and the final decision was delivered by the Supreme Court on 21 April 1998. Accordingly, the proceedings lasted five years, six months and twenty-eight days. During this period the case was dealt with by courts at three levels.

27. The Government maintained that the case was complex and that the applicants had contributed to the length of the proceedings in that their original claim was incomplete. The Government explained that at the relevant time the courts faced a particularly heavy workload resulting from a considerable number of restitution claims. In addition, a reform of the judiciary was started as from 1 January 1997 which might have caused a certain delay in the appellate proceedings. In the Government's view, the length of the proceedings was not excessive in the particular circumstances of the case.

28. The applicants submitted that they had not contributed to the length of the proceedings which they considered excessive.

29. 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).

30. The Court accepts that the case under consideration was of a certain complexity. This factor alone does not, however, account for the overall length of the proceedings. In the Court's view, no substantial delay in the proceedings can be imputed to the conduct of the parties.

31. As to the conduct of the domestic courts, the Court notes that the Michalovce District Court did not proceed with the case between 27 April 1994 and 7 March 1995 which is more than ten months. In addition, the Košice Regional Court decided on the applicants' appeal on 7 October 1997, which is more than nineteen months after the case file had been submitted to it on 20 February 1996. Having regard to all the evidence before it the Court finds that the above periods of inertia cannot be regarded as compatible with the "reasonable time" requirement.

32. The Court has noted the Government's argument according to which the length of the proceedings was due to heavy workload of the courts and to a reform of the judiciary carried out in 1997. Assuming that the situation referred to by the Government constituted a temporary backlog of court business in Slovakia, the Court recalls that, according to its established case-law, the international responsibility of the State concerned under the Convention is not engaged in similar cases provided that the State takes effective remedial action with the requisite promptness (see, e.g. *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 84, § 40). However, the respondent Government have failed to show that such remedial measures were taken with the required promptness.

33. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 14,459,339 Slovakian korunas (SKK) in compensation for pecuniary damage. This sum comprised the market value of the property in question and 16% default interest covering the period between 1 January 1994 and 30 September 2002.

36. The Government contended that there was no causal link between the alleged breach of the applicants' Convention rights and the pecuniary damage claimed by them.

37. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found. Accordingly, this claim must be dismissed.

38. The applicants further claimed SKK 2,000,000 in compensation for non-pecuniary damage. They argued that the refusal to grant their claim and the excessive length of proceedings resulted in distress affecting their health.

39. The Government objected that the sum claimed was excessive and that it was open to the applicants to claim compensation for the alleged damage to their health pursuant to the State Liability Act of 1969 in conjunction with Regulation No. 32/1965.

40. The Court is of the view that the applicants have failed to demonstrate that their health was affected as a result of the violation found. However, it considers that they suffered some non-pecuniary damage on account of the length of the proceedings in their case which is not sufficiently compensated by the finding of a violation of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards 1,200 euros (EUR) to each of the applicants.

B. Costs and expenses

41. The applicants claimed SKK 33,437 for costs and expenses incurred in the proceedings before both the national authorities and the Court.

42. The Government maintained that the sum claimed was excessive.

43. 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 incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. As to the costs and expenses relating to the proceedings before it, the Court considers it appropriate to award the global sum of EUR 200.

C. Default interest

44. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank

plus 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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros) each in respect of non-pecuniary damage and the global sum of 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;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President