



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

FOURTH SECTION

CASE OF D.K. v. SLOVAKIA

(Application no. 53372/99)

JUDGMENT

STRASBOURG

6 May 2003

FINAL

06/08/2003

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 D.K. 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 8 April 2003,

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

PROCEDURE

1. The case originated in an application (no. 53372/99) 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, D.K. ("the applicant"), on 25 July 1999. The applicant requested that his identity be not disclosed.

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

3. On 14 May 2002 the Fourth Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On 15 January 1996 the applicant filed an action for protection of his good name and reputation with the Košice I District Court. He sued a limited liability company on the ground that a newspaper published by the latter contained articles alleging that the applicant had been an agent of the former secret police.

5. On 9 January 1997 the District Court dismissed the action. On 7 March 1997 the applicant appealed. He further requested that he should be exempted from the obligation to pay court fees. The District Court

dismissed the request on 24 July 1997. On 20 August 1997 the applicant appealed against this decision.

6. The case file and the applicant's above two appeals were transmitted to the Košice Regional Court on 9 September 1997. As the applicant's brother was a judge of that court the Supreme Court ordered, on 25 November 1997, that the case should be dealt with by the Prešov Regional Court.

7. On 11 February 1998 the Supreme Court excluded the Regional Court's judge at the latter's request. The case was assigned to a different judge on 26 February 1998.

8. In March and in May 1998 the Regional Court requested the Košice I District Court to submit a judgment and the file concerning a different case in which the applicant was a plaintiff. The Regional Court received the judgment in question on 15 May 1998.

9. On 20 January 1999 the applicant amended his action in that he reduced the amount of the compensation claimed.

10. On 16 March 1999 the Regional Court accepted the applicant's request for the action to be amended and discontinued the proceedings in respect of the claim which the applicant had withdrawn. On the same day the Regional Court quashed the remaining part of the District Court's judgment of 9 January 1997 and sent the case back to the first instance court. It also upheld the District Court's above decision of 24 July 1997.

11. On 13 October 1999 the Constitutional Court found that the Prešov Regional Court had violated the applicant's constitutional right to have his case examined without undue delays. In its finding the Constitutional Court found that the case was not complex and that no delays could be imputed to the applicant. The Constitutional Court further held that the Prešov Regional Court had not effectively proceeded with the case between 18 May 1998 and 16 March 1999.

12. On 9 February 2000 the applicant filed a new petition to the Constitutional Court in which he complained about delays in the proceedings before the Košice I District Court. On 28 June 2000 the Constitutional Court delivered a decision in which it held that the above Constitutional Court's finding of 13 October 1999 covered the overall length of the proceedings before the general courts to the date of its delivery. The Constitutional Court found no undue delays in the proceedings in the subsequent period, that is between 13 October 1999 and 28 June 2000.

13. In the meantime, on 15 March 2000 the Košice I District Court heard the parties, and on 30 March 2000 it dismissed the applicant's action. The judgment with reasons was served on the applicant on 4 May 2000. On 10 May 2000 he filed an appeal. On 12 May 2000 the applicant also appealed against a decision of the District Court of 26 April 2000 concerning the court fees.

14. On 14 July 2000 the applicant was informed that the proceedings concerning his action were stayed as bankruptcy proceedings had been brought against the defendant company.

15. On 21 February 2002 the Košice I District Court dismissed the applicant's request for waiver of court fees. On 25 March 2002 the applicant appealed against this decision. He further requested that the proceedings concerning his action be resumed.

16. According to a letter signed by the President of the Košice I District Court on 28 October 2002, the proceedings have been pending before the Prešov Regional Court since 17 September 2002.

17. On 22 October 2002 the applicant filed a complaint under Article 127 of the Constitution alleging a violation of his right to a hearing without undue delay. The proceedings are pending before the Constitutional Court.

I. RELEVANT DOMESTIC LAW AND PRACTICE

18. 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.

19. Pursuant to Article 130 (3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon the petition (*podnet*) presented by any individual or a corporation claiming that their rights have been violated.

20. According to its case-law under the former Article 130 (3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48 (2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

21. 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. Under this provision the Constitutional Court has the power, in case that it finds a violation of Article 48 (2) of the Constitution, to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to the person whose constitutional right was violated as a result of excessive length of proceedings (for further details see, e.g., *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002).

22. Under Section 79a (2) of the Constitutional Court Act, as in force since 20 March 2002, the Constitutional Court shall reject a complaint which is substantially the same as another matter on which it has already decided.

23. According to an explanatory letter by the President of the Constitutional Court of 6 June 2002, nothing has prevented the Constitutional Court from dealing with complaints about length of proceedings in cases in which proceedings have also been instituted before the European Court of Human Rights provided that the domestic proceedings complained of are still pending at the moment when the constitutional complaint is filed. The letter further states that where the Constitutional Court earlier found a violation of Article 48 (2) of the Constitution, a further complaint about delays in the same proceedings can be entertained only to the extent that it relates to the period after the delivery of the first finding of the Constitutional Court. However, when deciding on such cases the Constitutional Court will, as a rule, take into account that the ordinary courts have failed to proceed with the case without undue delays following its finding of a violation of Article 48 (2) of the Constitution.

THE LAW

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

24. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” principle, provided in Article 6 § 1 of the Convention, which reads as follows:

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

25. The proceedings complained of began on 15 January 1996 and they have not yet ended. The period to be taken into consideration has thus lasted seven years and more than two months.

A. Admissibility

26. The Government objected that the applicant had failed to exhaust domestic remedies as he did not file a constitutional complaint under Article 127 of the Constitution after the relevant amendment had entered into force on 1 January 2002.

27. The applicant contended that on 13 October 1999 the Constitutional Court had found a violation of his constitutional right to a hearing without undue delays and that on 28 June 2000 the Constitutional Court had held that no further violation of that right had occurred during the subsequent period. The applicant explained that he had brought, on 22 October 2002, a third set of proceedings before the Constitutional Court with a view to avoiding any formal shortcomings in his application to the Court. He

considered, however, that the remedy under Article 127 of the Constitution could not be regarded as effective in his case. The applicant requested the Court to decide on the application without waiting for the outcome of the third set of proceedings before the Constitutional Court.

28. The Court has previously found that the complaint under Article 127 of the Constitution is an effective remedy, both in law and in practice, in the sense that it is capable of preventing the continuation of the alleged violation of the right to a hearing without undue delays and of providing adequate redress for any violation that has already occurred. It has held that applicants in cases against Slovakia which concern the length of proceedings should, in principle, have recourse to this remedy notwithstanding that it was enacted after their applications had been filed with the Court or the European Commission of Human Rights (see the *Andrášik and Others v. Slovakia* decision referred to above).

29. In the present case the position is different in that, prior to the entry into force of the amended Article 127 of the Constitution on 1 January 2002, the applicant twice complained about the length of the proceedings under Article 130 (3) of the Constitution. The Constitutional Court found, on 13 October 1999, a violation of the applicant's constitutional right to a hearing without undue delay. The Constitutional Court itself admitted that in similar cases the law then in force did not empower it to provide redress to persons whose constitutional rights were violated. In the second set of proceedings brought by the applicant the Constitutional Court found no undue delays in the proceedings in the subsequent period, that is between 13 October 1999 and 28 June 2000.

30. As regards the third set of proceedings which the applicant brought before the Constitutional Court on 22 October 2002 pursuant to Article 127 of the Constitution, the Court notes that they can formally concern only the period which is not covered by the above earlier two findings (see paragraphs 12, 22 and 23 above). In these proceedings the applicant cannot, therefore obtain full redress in respect of the alleged violation of his right under Article 6 § 1 of the Convention of which he complains before the Court. The applicant is not, therefore required to exhaust this remedy for the purpose of Article 35 § 1 of the Convention, and the Court will proceed with the examination of the application notwithstanding that the third set of proceedings before the Constitutional Court has not yet ended (see, *mutatis mutandis*, *Gavrus v. Romania*, no. 32977/96, § 37, 26 November 2002). Accordingly, the Government's objection must be rejected.

31. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

32. The Government admitted, with reference to the Constitutional Court's finding of 13 October 1999, that the applicant's right to a hearing within a reasonable time had been violated.

33. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

34. On the basis of the above criteria, and considering the above Constitutional Court's finding of 13 October 1999 as well as what has been at stake for the applicant, the Court finds that an overall period of seven years and more than two months cannot be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention in the present case.

35. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant complained that he had not been granted just satisfaction on account of the Constitutional Court's finding of a violation of his constitutional right to a hearing without unjustified delay. He relied on Article 41 (Article 50 prior to the entry into force of Protocol No. 11) of the Convention and which 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."

37. The Court observes that Article 41 provides for the possibility that the Court make an award of just satisfaction in cases where there has been a violation of the Convention. As such, it does not contain any right or guarantee which individual applicants may invoke to challenge legal decisions taken in the context of domestic proceedings.

38. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. The Court found above that the applicant's right to a hearing within a reasonable time had been violated. It must therefore examine, in the light of the parties' submissions, whether an award of just satisfaction under Article 41 of the Convention is called for.

A. Damage

40. The applicant claimed 150,000 Slovakian korunas (SKK) in respect of non-pecuniary damage.

41. The Court considers that the applicant sustained non-pecuniary damage which is not sufficiently compensated by a mere finding of a breach of the Convention. It awards the applicant 3,000 euros (EUR) under this head.

B. Costs and expenses

42. The applicant also claimed SKK 16,850 for the costs and expenses incurred before the domestic courts and SKK 5,500 for those incurred before the Court.

43. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200 covering costs under all heads.

C. Default interest

44. 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. *Declares* the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 3,000 (three thousand 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, plus 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President