



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

FOURTH SECTION

CASE OF PISKURA v. SLOVAKIA

(Application no. 65567/01)

JUDGMENT

STRASBOURG

27 May 2003

FINAL

24/09/2003

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 Piskura 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 6 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 65567/01) 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 František Piskura ("the applicant"), on 27 November 2000.

2. The Government of the Slovak Republic ("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. The applicant was born in 1953 and lives in Fintice.

5. On 29 December 1994 the applicant filed an action for outstanding salary to the Prešov District Court.

6. The District Court heard the parties on 22 March 1995. It discontinued the proceedings in respect of two defendants.

7. On 10 May 1995 the District Court delivered an interim judgment to the effect that the defendant owed salary to the applicant.

8. On 19 June 1995 the defendant appealed. The case file was submitted to the Košice Regional Court on 22 August 1995. On 29 March 1996 the latter quashed the judgment of 10 May 1995.

9. In October 1996 the above District Court's decision of 22 March 1995 was served on the parties. On 14 October 1996 one of the defendants appealed and challenged the District Court's decision on costs of the proceedings.

10. Hearings before the District Court were held on 13 November 1996, 18 December 1996 and on 23 April 1997. On 9 January 1997 the case was taken over by another judge.

11. On 9 June 1997 the case file was submitted to the Prešov Regional Court for a decision on the defendant's appeal of 14 October 1996. The Regional Court decided on the appeal on 27 June 1997 and the case file was returned to the District Court on 7 October 1997.

12. Another hearing before the District Court was held on 25 May 1998. The parties failed to appear before the court on 3 June 1998. On 30 September 1998 the District Court heard the applicant.

13. On 12 October 1998 the defendant requested the District Court to take further evidence. The District Court heard witnesses on 26 October 1998 and in the course of November 1998 it obtained further documentary evidence. On 3 December 1998 the applicant specified his claim.

14. Hearings before the District Court were held on 27 January 1999 and on 1 February 1999. On 3 February 1999 the District Court dismissed the applicant's action.

15. On 19 March 1999 the applicant appealed. The case file was submitted to the Prešov Regional Court on 27 April 1999. On 20 December 1999 the appellate court quashed the first instance judgment. The case file was returned to the District Court on 10 January 2000.

16. Hearings before the District Court were held on 20 March 2000 and on 10 May 2000. On 1 June 2000 the District Court ordered that an expert opinion be submitted within fifty days. On 16 September 2000 the expert requested the District Court to specify her task. The District Court replied to the expert on 25 September 2000. On 2 January 2001, 5 April 2001 and on 11 May 2001 the District Court urged the expert to submit the opinion.

17. On 11 March 2001 the expert requested the defendant to submit further information to her. The defendant complied with the request on 26 June 2001. The expert opinion was submitted to the District Court on 12 July 2001. On 27 August 2001 the District Court asked for the parties' comments on the opinion. The parties replied in September 2001.

18. A hearing before the District Court was held on 24 October 2001. The applicant requested that a second expert opinion be ordered. On 2 November 2001 the applicant specified the issues to be addressed by the second expert.

19. On 31 July 2001 the applicant complained about the length of the proceedings to the Constitutional Court. On 1 February 2002 he supplemented his submissions in that, *inter alia*, he claimed compensation pursuant to Article 127 of the Constitution, as in force from 1 January 2002.

20. On 28 February 2002 the Constitutional Court found that the Prešov District Court had violated the applicant's constitutional right to have the case examined without undue delays. In its finding the Constitutional Court admitted, on the one hand, that the factual background of the case was complex. On the other hand, the Constitutional Court found that what was at stake for the applicant called for particular diligence and that no particular delays in the proceedings were imputable to the applicant. The decision stated that the District Court had failed to proceed with the case effectively in that, in particular, it had failed to ensure that the expert opinion was submitted in time. In the decision the Constitutional Court did not address the applicant's claim for damages under Article 127 of the Constitution.

21. In a judgment delivered on 18 September 2002 the Prešov District Court ordered the defendant to pay salary to the applicant for the period from 14 November 1992 to 30 September 2002. Subsequently the District Court delivered a decision rectifying clerical errors in the judgment. On 27 November 2002 the defendant appealed. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. 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.

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

24. 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 the event 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 rights have been 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).

25. The implementation of the above constitutional provision is set out in more detail in sections 49 to 56 of Law no. 38/1993 (the Constitutional Court Act), as amended. The relevant amendments entered into force on 20 March 2002.

26. Thus Section 79a (1) of the Constitutional Court Act provides that a petition which has not been decided upon at the time of the entry into force of the relevant amendment of the Constitutional Court Act is to be examined as a complaint under Article 127 of the Constitution provided that the person concerned filed a request to that effect within thirty days from the entry into force of the amendment of the Constitutional Court Act.

Under paragraph 2 of Section 79a of the Constitutional Court Act, the Constitutional Court shall reject a complaint which is substantially the same as another matter on which it has already decided.

27. 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

28. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, 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...”

29. The period to be taken into consideration began on 29 December 1994 and has not yet ended. It has thus lasted eight years and more than four months.

A. Admissibility

30. 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. They explained that in the proceedings leading to its finding of 28 February 2002 the Constitutional Court had no power to examine the applicant's submissions under Article 127 of the Constitution as the relevant amendments to the Constitutional Court Act had not yet been operative. The Government maintained that the applicant still can file a complaint under Article 127 of the Constitution.

31. The applicant contended that he had had recourse to the Constitutional Court which had found, on 28 February 2002, a violation of his constitutional right to a hearing without undue delays. In his view, he was therefore not required to seek another finding of the Constitutional Court to the same effect.

32. The Court notes that in its above finding of 28 February 2002 the Constitutional Court neither addressed the applicant's claim for just satisfaction nor did it provide the applicant with any specific redress. Since any further proceedings which it has been open to the applicant to bring before the Constitutional Court can formally concern only the period after 28 February 2002, the Court finds that the applicant is not required to have recourse to the remedy available under Article 127 of the Constitution (see, *mutatis mutandis*, *Gavrus v. Romania*, no. 32977/96, § 37, 26 November 2002). The Government's objection must therefore be rejected.

33. The Court notes that 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

34. The Government admitted, with reference to the Constitutional Court's finding of 28 February 2002, that the applicant's right to a hearing within a reasonable time had been violated.

35. 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).

36. The Court concurs with the Constitutional Court's finding of 28 February 2002 according to which the Prešov District Court failed to ensure that the case be decided upon without undue delays. Consequently, it takes the view that an overall period of eight years and more than four months could not be deemed to satisfy the "reasonable time" requirement in

Article 6 § 1 of the Convention in the particular circumstances of the case. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained that he had no effective remedy at his disposal in respect of her complaint about the length of the proceedings. He relied on 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.”

38. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

39. 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 now been available in Slovakia, the Court finds that it is not necessary to examine the applicant’s complaint under Article 13 of the Convention (see, *mutatis mutandis*, *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003, unreported) .

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. In respect of pecuniary damage the applicant claimed 2,779,120 Slovakian korunas (SKK). In this context he submitted an expert opinion in which his lost income is evaluated. The applicant further claimed SKK 700,000 in respect of non-pecuniary damage.

42. As regards the applicant’s claim for pecuniary damage, the Court cannot speculate what the outcome would have been if the applicant had obtained a final decision on his action within a reasonable time. The Court accordingly dismisses the claim under this head.

On the other hand, the Court awards the applicant 3,700 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant also claimed SKK 98,400 for the costs and expenses incurred before both the domestic courts and the Court.

44. 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 300 covering costs under all heads.

C. Default interest

45. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that a separate examination of the complaint under Article 13 of the Convention is not called for;
4. *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 3,700 (three thousand seven 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, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President