



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

FOURTH SECTION

CASE OF BEŇAČKOVÁ v. SLOVAKIA

(Application no. 53376/99)

JUDGMENT

STRASBOURG

17 June 2003

FINAL

17/09/2003

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 Beňáčková 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 Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 20 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 53376/99) 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, Ms Anna Beňáčková (“the applicant”), on 16 November 1999.

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. The applicant was born in 1947 and lives in Bratislava.

5. On 3 May 1991 the applicant filed an action for damages with the Bratislava I District Court. She claimed compensation for a work-related accident.

6. On 9 September 1993 the District Court dismissed the action. The applicant appealed on 1 October 1993.

7. On 31 August 1994 the Bratislava City Court quashed the first instance judgment.

8. On 31 October 1996 the applicant extended her action in that she also claimed the protection of her right to protection of her reputation.

9. On 31 July 1998 the Bratislava I District Court ordered an expert opinion to be submitted.

10. The applicant filed a petition pursuant to Article 130 (3) of the Constitution in which she complained about the length of the proceedings. On 22 September 1999 the Constitutional Court found that the Bratislava I District Court had violated the applicant's constitutional right to have her case examined without undue delays.

11. On 18 December 2000 the Bratislava I District Court ordered an expert opinion. Subsequently the applicant unsuccessfully challenged the District Court judge.

12. On 12 August 2002 the District Court decided on the expert's fees. The applicant appealed against this decision. On 6 September 2002 she submitted to the court her comments on the expert's conclusions.

13. On 4 March 2003 the District Court invited the parties to submit further information. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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.

15. 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.

16. 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.

17. 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).

18. 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

19. The applicant complained that the length of the proceedings was 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...”

20. The period to be taken into consideration began only on 18 March 1992, when the recognition by the Czech and Slovak Federal Republic, of which Slovakia is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

21. The period in question has not yet ended. It has thus lasted eleven years and more than two months.

A. Admissibility

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

23. The applicant contended that she had had recourse to the Constitutional Court which had found, on 22 September 1999, a violation of

her constitutional right to a hearing without undue delays. In her view, she was therefore not required to seek another finding of the Constitutional Court to the same effect.

24. 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).

25. 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 complained about the length of the proceedings under Article 130 (3) of the Constitution. The Constitutional Court found, on 22 September 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.

26. Given that the applicant tried to obtain redress before the Constitutional Court and that any new proceedings which it is open to her to bring before that judicial authority can formally concern only the period after 22 September 1999 (see paragraph 18 above), 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.

27. 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

28. The Government admitted, with reference to the Constitutional Court's finding of 22 September 1999, that the applicant's right to a hearing within a reasonable time had been violated.

29. 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).

30. The Court takes the view that an overall period of eleven years and more than two months could not, in itself, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention in the particular circumstances of the case.

31. 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 13 OF THE CONVENTION

32. The applicant complained that she had no effective remedy at her disposal in respect of her complaint about the length of the proceedings. She 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.”

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

34. 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, 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

35. 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

36. The applicant claimed 500,000 Slovakian korunas (SKK) in respect of pecuniary damage on account of lost income and medical costs. She also claimed SKK 600,000 in respect of non-pecuniary damage.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it awards the applicant 4,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed SKK 25,000 for the costs and expenses incurred.

39. 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 and expenses under all heads.

C. Default interest

40. 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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) for 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 17 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President