



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

FOURTH SECTION

CASE OF ČÍŽ v. SLOVAKIA

(Application no. 66142/01)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

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 Číž v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 23 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 66142/01) 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 Jozef Číž ("the applicant"), on 18 January 2001.

2. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák as from 1 April 2003.

3. On 18 June 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 1954 and lives in Žiar nad Hronom. At the relevant time he was a police investigator. On 29 October 1996 a private TV company broadcast a statement by a Member of Parliament in which the applicant was accused of covering up crime.

1. Defamation proceedings against a Member of Parliament

5. On 29 November 1996 the applicant sued the Member of Parliament before the Žiar nad Hronom District Court. He claimed that the above statement was defamatory and sought protection of his reputation. On 3 December 1996 the applicant was requested to pay the court fees. On the same day the defendant was asked to submit his observations.

6. On 11 December 1996 the case file was transferred to the Banská Bystrica Regional Court as the District Court judges considered themselves biased. On 30 December 1996 the Regional Court excluded two District Court judges from dealing with the case. The decision was transmitted to the District Court on 7 February 1997. On 7 March 1997 the President of the Žiar nad Hronom District Court returned the case file to the Regional Court with a more detailed explanation as to why all District Court judges considered themselves biased. The Regional Court was requested to transfer the case to another court.

7. On 30 April 1997 the Regional Court excluded the Žiar nad Hronom District Court judges and transferred the case to the District Court in Veľký Krtíš. The case file was transferred to the latter court on 2 June 1997.

8. On 12 June 1997 the District Court in Veľký Krtíš discontinued the proceedings on the ground that the applicant had failed to pay the court fees. On 30 June 1997 the applicant appealed. On 3 July 1997 the District Court quashed the decision as the applicant had paid the fees in the meantime.

9. On 14 August 1997 the Supreme Court, upon the proposal of the District Court judge to whom the case fell to be examined, transferred the case to the Bratislava I District Court. The latter received the case file on 22 September 1997.

10. On 30 January 1998 the applicant claimed that the transfer of the case to the Bratislava I District Court had been unlawful.

11. On 12 February 1998 the Bratislava I District Court heard the parties.

12. On 16 March 1998 the Bratislava I District Court asked the applicant to which court he wished the case to be transferred and to pay the court fee in respect of that request.

13. On 20 March 1998 the applicant replied that he could accept that the case be assigned to any court in the vicinity of Žiar nad Hronom district. On 26 March 1998 the applicant asked the court to specify the legal basis for the request for court fees. The applicant's replies were not included in the case file.

14. On 11 September 1998 the District Court judge reiterated her request of 16 March 1998. On 23 September 1998 the applicant submitted copies of his above letters of 20 and 26 March 1998 and pointed out that he had received no reply to them.

15. On 12 October 1998 the District Court judge again requested the applicant to pay the fee in respect of his request that the case be transferred

to a different court and to specify the court which, in his view, should deal with the case.

16. On 4 November 1998 the applicant reiterated that he wished the case to be examined by a court in the vicinity of Žiar nad Hronom district. He also complained that the judge had failed to proceed with the case.

17. On 7 January 2000 the applicant complained to the President of the Bratislava I District Court that his case had not been proceeded with.

18. On 14 April 2000 the Bratislava I District Court again asked the applicant to specify the court to which the case should be transferred and to pay the fee in respect of this request.

19. On 4 May 2000 the applicant explained that he had not requested that the case be transferred to a different court for reasons of convenience. He argued that the case fell outside the territorial jurisdiction of the Bratislava I District Court and that the determination of that issue was not subject to payment of court fees and fell within the jurisdiction of the Supreme Court.

20. On 12 July 2000 the vice-president of the Bratislava I District Court admitted, in reply to the applicant's complaint, that there had been delays in the proceedings in the course of 1999. The letter further stated that the applicant had contributed to the overall length of the proceedings in that he had failed to co-operate with the court.

21. On 6 September 2000 the applicant informed the District Court that he would not attend the hearing scheduled for 25 September 2000 as he considered that that court lacked jurisdiction to deal with the case. As a result, the case was adjourned.

22. On 25 September 2000 the District Court imposed a fine on the applicant on the ground that he had failed to appear. On 18 October 2000 the applicant appealed against the decision to fine him. He also requested the exclusion of the judge. On 30 November 2000 the Bratislava Regional Court upheld the decision on the fine and found that the Bratislava I District Court judge was not biased.

23. On 20 February 2001 the applicant informed the court that he was ill and that he would not be able to attend a hearing scheduled for 22 February 2001.

24. On 9 March 2001 the applicant informed the court that he wished to withdraw the action and requested that the court fees be returned to him. He explained that he had lost confidence in the proper administration of justice as the Bratislava I District Court had failed to proceed with the case.

25. On 12 March 2001 the District Court discontinued the proceedings with reference to the applicant's request. It further decided that the sum which the applicant had paid in court fees should be restored to him and that he had to pay the defendant's costs.

26. On 27 April 2001 the applicant appealed against the decision concerning the defendant's costs. On 9 May 2001 he submitted reasons for the appeal.

27. On 28 August 2001 the Bratislava Regional Court upheld the relevant part of the District Court's decision. The court fees paid by the applicant were returned to him on 5 June 2002.

2. Defamation proceedings against a TV company

28. On 13 December 1996 the applicant sued the TV company which had broadcast the above statement by a Member of Parliament. He claimed that the statement was defamatory and sought protection of his reputation.

29. On 7 January 1996 the applicant was invited to pay the court fees.

On 13 January 1997 the case file was submitted to the Banská Bystrica Regional Court as the District Court judges considered themselves biased. On 14 January 1997 the Regional Court excluded one of the District Court judges from dealing with the case.

30. On 10 and 13 February 1997 the defendant company submitted observations on the applicant's action.

31. On 7 March 1997 the president of the District Court sent the case file again to the Banská Bystrica Regional Court with the explanation that all judges of the District Court considered themselves biased. In an annex, the judges concerned explained in more detail why they considered that they lacked impartiality. The Regional Court was requested to transfer the case to a different court.

32. On 30 April 1997 the Regional Court excluded the Žiar nad Hronom District Court judges and transferred the case to the District Court in Veľký Krtíš. The case file was transferred to the latter court on 2 June 1997.

33. On 12 June 1997 the District Court in Veľký Krtíš discontinued the proceedings on the ground that the applicant had failed to pay the court fees. On 30 June 1997 the applicant appealed. On 3 July 1997 the District Court quashed the decision as the applicant had paid the fees in the meantime.

34. On 21 August 1997 the Supreme Court, upon the proposal of the District Court judge to whom the case fell to be examined, transferred the case to the Bratislava I District Court. The latter received the case file on 22 September 1997.

35. On 26 January 1998 the Bratislava I District Court discontinued the proceedings on the ground that the designation of the defendant company in the applicant's action was not correct. The applicant appealed on 9 March 1998. The case file was submitted to the Bratislava Regional Court on 16 April 1998. It quashed the District Court's decision on 29 May 1998.

36. On 21 July 1998 the applicant claimed that the transfer of the case to the Bratislava I District Court had been unlawful.

37. On 7 September 1998 the Bratislava I District Court adjourned the case with reference to the applicant's above objection.

38. On 25 September 1998 the Bratislava I District Court asked the applicant to specify to which court he wished the case to be transferred and to pay a court fee in respect of that request.

39. On 4 November 1998 the applicant replied that he considered that the Bratislava I District Court lacked territorial jurisdiction to deal with the case and that it should be examined by a court in the vicinity of Žiar nad Hronom district.

40. On 14 April 2000 the District Court judge reiterated her request of 25 September 1998.

41. On 1 May 2000 the applicant explained that he had not requested that the case be transferred to a different court for reasons of convenience. He argued that the case fell outside the territorial jurisdiction of the Bratislava I District Court and complained about delays in the proceedings. The applicant also asked the judge to specify any further points which, as the case might be, were to be explained by him.

42. On 12 June 2000 the vice-president of the Bratislava I District Court admitted, in reply to the applicant's complaint, that there had been delays in the proceedings in the course of 1999. The letter further stated that the applicant had contributed to the overall length of the proceedings in that he had failed to co-operate with the court.

43. On 1 September 2000 the applicant informed the District Court that he would not attend the hearing scheduled for 25 September 2000 as he considered that that court lacked jurisdiction to deal with the case and that his complaints in that respect had been to no avail.

44. On 25 September 2000 the District Court imposed a fine on the applicant on the ground that he had failed to appear at a hearing.

45. On 18 October 2000 the applicant appealed against the decision to fine him. He also requested the exclusion of the judge.

46. On 30 November 2000 the Bratislava Regional Court upheld the decision on the fine and found that the Bratislava I District Court judge was not biased.

47. On 20 February 2001 the applicant excused his absence, due to illness, at a hearing before the District Court scheduled for 22 February 2001.

48. On 9 March 2001 the applicant informed the District Court that he wished to withdraw the action and requested that the court fees be returned to him. He explained that he had lost confidence in the proper administration of justice as the Bratislava I District Court had failed to proceed with the case.

49. On 12 March 2001 the District Court discontinued the proceedings with reference to the applicant's request. It further decided that the sum which the applicant had paid in court fees should be restored to him and that he had to pay the defendant's costs.

50. On 27 April 2001 the applicant appealed against the decision concerning the defendant's costs. On 9 May 2001 he submitted reasons for the appeal. On 30 July 2001 the Bratislava Regional Court upheld the relevant part of the District Court's decision. The court fees paid by the applicant were returned to him on 5 June 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. 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.

52. 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 corporation claiming that their rights have been violated.

53. 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.

54. The right to protection of a person's dignity, honour, reputation and good name is guaranteed by Article 11 et seq. of the Civil Code.

55. Article 200i (4) of the Code of Civil Procedure, as in force at the relevant time, provided that courts were under the obligation to decide on claims for protection of one's reputation within one year after the introduction of the action.

56. The above provision was quashed with effect from 1 January 2003 following the Constitutional Court's finding of 7 November 2002 declaring it contrary to Article 6 § 1 of the Convention.

THE LAW

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

57. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement 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 ... hearing within a reasonable time by [a] ... tribunal..."

58. The Government contested that argument.

A. Admissibility

59. The Government first contended that following the applicant's withdrawal of his actions the Bratislava I District Court had to discontinue the proceedings without examining the merits of the applicant's claims. They concluded that Article 6 § 1 of the Convention was not applicable.

60. The applicant disagreed.

61. The Court notes that by his actions the applicant sought the protection of his reputation which is guaranteed by Article 11 et seq. of the Civil Code. Thus the proceedings complained of were aimed at the determination of the applicant's "civil" rights within the meaning of Article 6 § 1 of the Convention; there is no indication before the Court that the applicant's actions were abusive or that his intention to have the issue determined was not genuine. The fact that the applicant, after more than four years, withdrew his actions and that, as a result, the District Court did not ultimately determine their merits is not relevant from the point of view of the alleged violation of the applicant's right to a hearing within a reasonable time. Accordingly, the Court has competence *ratione materiae* to examine whether the length of the proceedings was compatible with the reasonable time requirement laid down in Article 6 § 1.

62. The period to be taken into consideration began on 29 November 1996 in respect of the first set of proceedings and on 13 December 1996 in respect of the second set of proceedings. It ended on 12 March 2001 in respect of both sets of proceedings when the Bratislava I District Court discontinued the proceedings following the applicant's withdrawal of his actions. It thus lasted 4 years, 3 months and 13 days in respect of the first set of proceedings and 4 years, 2 months and 30 days in respect of the second set of proceedings.

63. The Court notes that this complaint 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. The Court will therefore declare this complaint admissible.

B. Merits

64. The Government maintained that the overall length of the proceedings was not excessive in the particular circumstances of the case. They pointed out that the courts had been called upon to decide on a series of procedural issues, such as the judges' requests for their exclusion and their proposal that the case be dealt with by a different court. In the Government's view, the length of the proceedings was mainly due to the applicant's conduct. In this respect the Government pointed out, in particular, that the proceedings had first been discontinued as the applicant had failed to pay the court fees, that he had challenged the jurisdiction of the

Bratislava I District Court to deal with the case and requested the exclusion of the judge dealing with the case. The Government also contended that the proceedings had been delayed as the applicant had misinterpreted the relevant provisions of the Slovakian legal order and that he had failed to appear at several hearings scheduled before the Bratislava I District Court.

65. The applicant maintained that the transfer of the case from the Veľký Krtíš District Court to the Bratislava I District Court had been unjustified. The fact that he sought the protection of his procedural rights in that respect could not be held against him when considering the length of the proceedings. The applicant further contended that he had tried to have the proceedings accelerated in that he had filed several complaints about the court's failure to proceed with the case.

66. 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).

67. The Court notes that the relevant facts underlying both sets of proceedings complained of, including their overall length, are almost identical. It therefore finds no reason for addressing separately the question whether the reasonable time requirement was complied with in the two sets of proceedings.

68. The Court considers that the cases were not particularly difficult to determine. It accepts the Government's argument that the applicant contributed to a certain extent to the length of the proceedings in that, in particular, he requested the exclusion of the District Court judge and that he failed to appear at several hearings.

69. Undue delay in the proceedings resulted from the fact that the request for exclusion of the Žiar nad Hronom District Court judges, who considered themselves biased, had to be re-submitted to the Banská Bystrica Regional Court for a second decision. Approximately four months elapsed until the Bratislava I District Court started to proceed with the case after the case file had been transmitted to it on 22 September 1997.

Considerable time was spent on exchanges between the applicant and the judge dealing with the case in the context of the applicant's objection regarding the Bratislava I District Court's jurisdiction to deal with the case. While it is not for the Court to determine whether or not the applicant's above objection was justified, the documents submitted indicate that he clearly stated his position on the matter in several letters submitted to the District Court between 20 March and 4 November 1998. The Court notes that the Bratislava I District Court, instead of taking an appropriate action with respect to the applicant's position, remained inactive between

4 November 1998 and 14 April 2000, that is for more than seventeen months. That delay occurred two years after the actions had been filed, and the domestic law then in force required that similar actions be determined not later than one year after their introduction. Subsequently a hearing in the case took place four months after the applicant had submitted his reply to the judge's request of 14 April 2000.

70. In the light of the above considerations, and taking note of what was at stake for the applicant, the Court takes the view that the applicant's cases were not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention in both sets of proceedings.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

71. The applicant further complained that he had no effective remedy at his disposal in respect of his complaint of the excessive length of proceedings. He relied on Article 13 of the Convention which provides as follows:

“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.”

72. The Government did not consider it necessary to address separately this complaint.

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

74. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It has found earlier that neither a petition under Article 130 (3) of the Constitution, as in force at the relevant time, nor a claim for damages under the State Liability Act of 1969 were capable of effectively redressing alleged violations of the right to a hearing within a reasonable time (see, for example, *Bánošová v. the Slovak Republic* (dec.), no. 38798/98, 27 April 2000 and *Žiačik v. Slovakia*, no. 43377/98, § 33, 7 January 2003).

75. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law whereby the applicant could have obtained redress as regards his right to have his cases heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 12,000 euros (EUR) in respect of both pecuniary and non-pecuniary damage.

78. The Government maintained that the claim was unsubstantiated and clearly excessive.

79. The Court discerns no causal link between the violation found and any pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Default interest

80. 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.

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 in respect of both sets of proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention in respect of both sets of proceedings;
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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, 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 amount 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 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President