



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

FOURTH SECTION

CASE OF ZÁBORSKÝ AND ŠMÁRIKOVÁ v. SLOVAKIA

(Application no. 58172/00)

JUDGMENT

STRASBOURG

16 December 2003

FINAL

16/03/2004

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 Záborský and Šmáriková 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. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 58172/00) 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 Mr Elemír Záborský and Ms Edita Šmáriková, Slovakian nationals, ("the applicants"), on 22 February 2000.

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 17 December 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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

4. The first applicant, Mr E. Záborský, was born in 1912 and died on 9 April 2000. Ms G. Strešnáková, his daughter, has acted in his stead in pursuing the case. The second applicant, Ms E. Šmáriková, was born in 1917 and lives in Bratislava.

5. On 10 February 1992 the applicants claimed, together with several other persons, restitution of real property pursuant to the Extra-Judicial Rehabilitations Act of 1991. They alleged that their legal predecessors had donated the property to the State under duress. On 27 February 1992 the

applicants submitted further documents and on 18 March 1992 the defendant submitted observations on the action.

6. In two separate actions filed on 25 February 1992 further persons claimed restitution of a part of the same property. On 15 April 1992 the court decided to examine all actions in a single set of proceedings. On 22 May 1992 the defendant submitted an expert opinion concerning the property.

7. On 25 June 1992 the Banská Bystrica District Court adjourned the case as further documents were necessary. On 20 July 1992 it appointed an expert with a view to establishing whether or not the property in question had been re-built in a substantial manner as claimed by the defendant. The opinion was submitted on 7 September 1992. Hearings were held on 25 November 1992 and on 7 January 1993.

8. On 11 January 1993 the Banská Bystrica District Court decided the case in that it ordered the defendant to conclude with one of the plaintiffs an agreement on restitution of the property. The judgment was served in June 1993. The defendant and the unsuccessful plaintiffs appealed. On 16 September 1993 the Banská Bystrica Regional Court quashed the first instance judgment and instructed the District Court to take further evidence. The appellate court's decision was served on 5 November 1993, and the parties were invited to specify which evidence they proposed to take. The District Court also took further evidence of its own initiative.

9. A hearing was held on 21 February 1994. The plaintiffs were invited to submit further documents.

10. On 22 April 1994 the District Court appointed an expert with a view to establishing whether the property had been substantially rebuilt following its transfer to the State in 1962. On 5 May 1994 the institution concerned informed the court that it was not in a position to submit an expert opinion.

11. On 8 August 1994 the District Court appointed the Construction Faculty of the Slovak Technical University in Bratislava as expert and ordered that the opinion on the above issue be submitted within thirty days. On 23 November 1994 the court urged the expert to submit the opinion. It was submitted on 12 January 1995. In February and March 1995 the parties submitted their comments on the opinion.

12. Several plaintiffs and the representative of the defendant failed to appear at hearings held on 15 May 1995 and on 12 July 1995. The parties were instructed to submit further information.

13. Further hearings were held on 6 and 11 December 1995. On the latter date the Banská Bystrica District Court delivered a new judgment in which it ordered the defendant to restore the property in question to the plaintiffs. The judgment was served on the parties in the course of August 1996. On 6 and 17 September 1996 the defendant appealed.

14. On 8 October 1996 the president of the Banská Bystrica District Court admitted, in reply to the applicants' complaint, that there had been undue delays in drafting the judgment of 11 December 1995 with reasons.

15. On 25 October 1996 the District Court delivered a supplementary judgment in which it corrected certain errors in the judgment of 11 December 1995. On 13 and 18 November 1996 the plaintiffs appealed against the supplementary judgment. The case-file was transmitted to the Banská Bystrica Regional Court on 21 November 1996.

16. On 20 May 1997 the Banská Bystrica Regional Court quashed the District Court's judgment of 11 December 1995, as subsequently amended, as being erroneous. It instructed the District Court to have the scope of the claim specified by the plaintiffs and to take further evidence. The decision stated, *inter alia*, that the first instance court had not correctly specified the experts' task and that, as a result, their opinions were not sufficient. The appellate court's decision was served in June 1997.

17. On 20 June 1997 Mr E. Záborský requested that the case be transferred to a District Court in Bratislava. He objected, in particular, that the length of the proceedings was excessive. On 29 July 1997 the applicant withdrew his request.

18. On 13 October 1997 the court requested the plaintiffs to specify, within fifteen days, which share of the property each of them claimed and to provide further information concerning the property claimed. The legal representative of five plaintiffs replied on 3 November 1997. On 18 November 1997 the legal representative of the other plaintiffs asked for an extension of the time-limit on the ground that he had been ill and that the information requested was complex.

19. On 12 January 1998 the District Court discontinued the proceedings on the ground that the plaintiffs had not complied with its order of 13 October 1997. The parties appealed. The case-file was transferred to the Regional Court on 9 February 1999. On 3 March 1998 the Regional Court quashed the decision of 12 January 1998 on the ground that the District Court had not instructed the plaintiffs how the shortcomings in their actions should be remedied and that the time-limit set for that purpose had not been adequate, in particular in view of the fact that information from the land registry was required and that the plaintiffs were represented by several lawyers.

20. On 6 March 1998 the District Court instructed the plaintiffs to submit complementary information concerning their claims within thirty days.

21. On 17 June 1998 the District Court heard the parties and decided to obtain a second expert opinion.

22. On 2 July 1998 the representative of five plaintiffs specified the subject-matter of the claims.

23. By a decision of 26 October 1998 the District Court appointed the Construction Faculty of the Technical University in Košice as expert. It was instructed to establish which parts of the house had been re-built after 1962 and to submit the opinion within thirty days. On 24 November 1998 the Banská Bystrica District Court sent the case-file to the Košice II District Court which was to transmit it to the expert. The university appointed as expert received the file on 23 March 1999.

24. In June, July and October 1999 the Banská Bystrica District Court urged the expert to submit the opinion. It was submitted on 24 November 1999. Between 13 December 1999 and 1 February 2000 the parties submitted their comments on the opinion.

25. Hearings before the District Court were held on 21 February 2000 and on 6 March 2000. On the latter date the District Court dismissed the action with reference to the conclusions reached by an expert who had been earlier appointed and by the Construction Faculty of the Technical University in Košice.

26. At the judge's request the President of the District Court extended the time-limit for drafting the judgment in writing until 30 May 2000 on the ground that the judge had a heavy workload, that the case was complex and, later, that the judge had difficulties with his health.

27. On 22 May 2000 the lawyer representing several of the plaintiffs informed the District Court that Mr E. Záborský had died on 9 April 2000. The lawyer further requested the court to allow Mr. Záborský's wife and daughter to join the proceedings in his place.

28. The first instance judgment was served in the course of June 2000. The plaintiffs appealed. On 12 July 2000 the representative of six plaintiffs submitted reasons for the appeal at the court's request. On 3 August 2000 the case was submitted to the appellate court.

29. On 10 October 2000 the Banská Bystrica Regional Court upheld the first instance judgment. The Regional Court further quashed the first instance decision on the costs of the proceedings. On 6 April 2001 the Banská Bystrica District Court decided that the State was not entitled to have the costs of the proceedings reimbursed by the unsuccessful plaintiffs. Reference was made to the complex character of the point at issue and also to the length of the proceedings.

THE LAW

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

30. The applicants 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 within a reasonable time... by [a] ... tribunal...”

31. The Government contested that argument.

32. The proceedings were brought on 10 February 1992. However, the period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. The period in question ended on 10 October 2000 when the Banská Bystrica Regional Court delivered the final judgment on the merits of the applicants' claim. It thus lasted 8 years, 6 months and 23 days.

A. Admissibility

33. 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. It must therefore be declared admissible.

B. Merits

34. The Government contended that the length of the proceedings was mainly due to the complex character of the case. They pointed out that the courts had had to take a considerable amount of evidence including expert opinions and that there had been many participants to the proceedings. The domestic courts proceeded with due diligence and possible delays in the proceedings caused by them were exceptional and of short duration.

As to the conduct of the parties, the Government maintained that the plaintiffs had failed to submit further information within the time-limit set by the court on several occasions and that their representatives had not appeared at several hearings. Several plaintiffs died in the course of the proceedings and there was a change of the defendant. The length of the proceedings taken as a whole was therefore not excessive.

35. The applicants maintained that the domestic courts had caused undue delays totalling more than three years. In their view, the case was not particularly complex and the length of the proceedings was not due to the

conduct of the parties. In particular, the case had never had to be adjourned because of the absence of the plaintiffs or their representatives. As several of the plaintiffs were aged, the courts should have dealt with the case with special diligence. They concluded that their right to a hearing within a reasonable time had been violated.

36. 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 applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

37. The Court accepts that the case was difficult to determine due to both the relatively complex character of the subject-matter and the considerable number of plaintiffs. It considers that by their conduct the parties did not contribute to the length of the proceedings in a substantial manner.

38. As to the conduct of the domestic courts, the Court notes that the Banská Bystrica District Court's judgments of 11 January 1993 and of 11 December 1995 were served respectively more than four and seven months after their delivery. Moreover, the judgment delivered on 11 December 1995 contained errors. A supplementary judgment had therefore to be delivered and served on the parties. In its decision of 20 May 1997 the Banská Bystrica Regional Court found that the first instance court had dealt with the case erroneously in that, in particular, it had not correctly specified the experts' tasks as a result of which the experts had not been in a position to submit a sufficient opinion. The case was therefore sent back to the first instance court and further expert opinion had to be ordered. On 12 January 1998 the Regional Court quashed the first instance decision to discontinue the proceedings as it found that the time-limit set for the plaintiffs to submit further information had been too short. The Court further notes that the Banská Bystrica District Court decided to obtain an expert opinion on 17 June 1998. It appointed an expert for that purpose on 26 October 1998, that is after more than four months. Almost another five months elapsed before the expert received the case-file on 23 March 1999. Finally, more than three months lapsed before the District Court's judgment of 6 March 2000 was drafted and served on the parties.

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

II. 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. The applicants claimed 200,000 Slovak korunas (SKK) each in respect of non-pecuniary damage.

42. The Government contended that the claim was excessive.

43. The Court awards the applicants 2,500 euros each (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicants also claimed SKK 108,000 for the costs and expenses incurred before both the domestic courts and the Court. That sum comprised SKK 100,000 which the applicants had paid to the lawyer representing them in the proceedings before the domestic courts, SKK 5,000 paid for an expert opinion in the context of the domestic proceedings and SKK 3,000 corresponding to postage and other expenses.

45. The Government objected that the applicants' claim was unsubstantiated.

46. 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). To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicants were incurred by them for this purpose.

The Court notes that the applicants were not represented by a lawyer in the proceedings before it. Making its own assessment on an equitable basis, the Court awards the applicants EUR 100 for postage and other out-of-pocket expenses which they incurred in the context of filing and pursuing their application.

C. Default interest

47. 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 remainder of the application admissible;
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 to the second applicant and to the daughter of the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
 - (i) EUR 2,500 (two thousand five hundred euros) each in respect of non-pecuniary damage;
 - (ii) the global sum of EUR 100 (one hundred euros) in respect of costs and expenses, the above sums 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President