



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

FOURTH SECTION

CASE OF ŠVOLÍK v. SLOVAKIA

(Application no. 51545/99)

JUDGMENT

STRASBOURG

15 February 2005

FINAL

15/05/2005

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 Švolík v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 25 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 51545/99) 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, Mr Jozef Švolík (“the applicant”), on 10 September 1999.

2. The applicant was represented by Mr M. Benedik, a lawyer practising in Bratislava. The Slovakian Government (“the Government”) were represented by their Agent, Mr P. Kresák.

3. The applicant alleged, in particular, that his right to a hearing within a reasonable time had been violated and that he had no effective remedy at his disposal in that respect.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 18 May 2004 the Court declared the application admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1933 and lives in Bratislava.

A. Proceedings concerning the applicant's claim of 5 January 1994

8. On 5 January 1994 the applicant lodged an action for damages relating to the defendant's failure to comply with a lease contract. On 25 January 1994 he paid the court fees. On 21 March 1994 the defendant co-operative submitted its memorial to which the applicant replied on 9 May 1994.

9. On 21 October 1996 the applicant complained to the president of the Bratislava City Court that there was no progress in his case.

10. On 31 October 1996 the Bratislava City Court informed the applicant that it had transferred the case to the Bratislava II District Court. The latter received the file on 5 November 1996. As the Bratislava II District Court considered that it lacked jurisdiction to deal with the case, it requested the Supreme Court to determine the issue. On 24 February 1997 the Supreme Court found that the case fell within the jurisdiction of the Bratislava Regional Court which had taken over the case files of the former Bratislava City Court. The Regional Court received the Supreme Court's decision on 2 May 1997.

11. On 4 March 1998 the Bratislava Regional Court held a hearing and decided to adjourn the case. On 18 March 1998 the applicant submitted further information. Between 8 and 27 October 1998 the file was submitted to the Ministry of Justice.

12. A further hearing before the Bratislava Regional Court was held on 22 February 1999. On 28 May 1999 the Regional Court heard two witnesses. Another hearing before the Bratislava Regional Court scheduled for 24 August 1999 had to be cancelled as a witness failed to appear. The Regional Court therefore requested the Poprad District Court to hear the witness.

13. On 15 March 2001 the Bratislava Regional Court ordered the defendant to pay 3,400 Slovakian korunas (SKK) to the applicant and rejected the remainder of the latter's action. On 12 April 2001 the applicant appealed.

14. By two decisions dated 2 July 2001 the Bratislava Regional Court dismissed the applicant's request for waiver of fees of the appellate proceedings and instructed the applicant to pay those fees. On 31 August 2001 the Supreme Court upheld the Regional Court's decision to dismiss the applicant's request for waiver of court fees. On 9 October

2001 the applicant filed an appeal on points of law against the Supreme Court's decision of 31 August 2001.

15. On 18 January 2004 the applicant informed the Court that the proceedings concerning his action were still pending.

B. Proceedings before the Constitutional Court

1. The first set of constitutional proceedings

16. On 16 June 1998 the Constitutional Court found that the applicant's constitutional right to a hearing without undue delays had been violated in the above proceedings concerning his claim for damages. The Constitutional Court noted, in particular, that the Bratislava City Court had taken more than two years to transfer the case, for reasons of jurisdiction, to the Bratislava II District Court and that the Bratislava Regional Court had remained inactive for ten months after it had received the Supreme Court's decision of 24 February 1997.

2. The second set of constitutional proceedings

17. On 13 March 2002 the applicant filed a complaint with the Constitutional Court alleging a violation of his constitutional rights to a hearing without undue delays and to compensation for damage. On 2 May 2002 the Constitutional Court declared admissible the complaint concerning the alleged delays in the proceedings brought on 5 January 1994. In its decision the Constitutional Court noted that the relevant part of the complaint followed its finding of 16 June 1998. It further rejected the remainder of the applicant's complaint noting, in particular, that it lacked jurisdiction to decide on claims for damages relating to unlawful decisions of public authorities or their erroneous official conduct.

18. In its finding of 12 November 2003 the Constitutional Court concluded that the Bratislava Regional Court had violated the applicant's constitutional right to a hearing without unjustified delay in proceedings concerning the applicant's above claim for damages. The Constitutional Court examined the period after the delivery of its finding of 16 June 1998 and held, in particular, that the Regional Court had remained inactive for two years between September 2001 and November 2003. The Constitutional Court ordered the Bratislava Regional Court to proceed with the case without further delay. Finally, the Constitutional Court granted SKK 20,000¹ to the applicant as just satisfaction. The decision states that it had thereby regard to the overall length of the proceedings before the Regional Court and to the particular circumstances of the case.

¹ SKK 20,000 is the equivalent of approximately 500 euros.

C. Applicant's claim for damages under the State Liability Act of 1969

19. Since at the relevant time the Constitutional Court lacked jurisdiction to order that the applicant be compensated for the violation of his right to a hearing without undue delay which it had found on 16 June 1998, he claimed compensation for delays in the proceedings under the State Liability Act of 1969 with reference to the Constitutional Court's finding on 16 June 1998. On 17 November 1998 the Ministry of Justice dismissed the request and informed the applicant that he could seek redress before a court.

20. The applicant filed an action against the Ministry of Justice claiming (i) protection of his personal rights under Article 11 et seq. of the Civil Code and (ii) compensation for non-pecuniary damage under the State Liability Act of 1969. He referred to the Constitutional Court's finding of 16 June 1998.

21. On 26 May 1999 the Bratislava I District Court dismissed the applicant's action. It found that the defendant Ministry had not interfered with the applicant's personal rights when determining his claim for compensation. As to the claim for non-pecuniary damages under the State Liability Act of 1969, the court held that the damages claimed corresponded to lost income and related to the subject matter of the compensation proceedings which the applicant had brought on 5 January 1994 and which were still pending. The applicant had therefore to claim compensation from persons who were liable for such damage.

22. The applicant appealed and claimed that the above Constitutional Court's finding was a valid ground for compensating him for delays in the proceedings brought on 5 January 1994.

23. On 16 November 1999 the Bratislava Regional Court upheld the District Court's judgment of 26 May 1999. The appellate court found that the applicant had not shown that, as a result of the courts' dealing with his case, he had suffered material damage which could be expressed in terms of money and which could be redressed by means of the payment of a sum of money to him. As regards the applicant's argument that he had suffered damage of a non-pecuniary nature as a result of delays in the proceedings in question the Regional Court held:

“Cases in which the State is liable for damage caused by unlawful decisions delivered by a court in the context of judicial proceedings are specified in Act No. 58/1969 on liability for damage caused by the decision of a State authority or by its erroneous official conduct, and the present case does not fall within one of the classes of case in which compensation can be granted.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *The Constitution and the relevant practice*

24. Article 48(2) provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

25. Pursuant to Article 130(3), 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 had been violated.

26. According to its case-law under the former Article 130(3), 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.

27. 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), to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to a person whose constitutional right has 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).

28. It has been the Constitutional Court's practice, in cases where it earlier found a violation of Article 48(2) of the Constitution, to formally entertain further complaints about delays in the same proceedings only to the extent that they relate to the period after the delivery of the first finding of the Constitutional Court. In dealing with such cases the Constitutional Court can, where it considers it appropriate, to 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).

29. Article 144(1) provides that judges are independent and bound only by law. Under paragraph 2 of Article 144, judges are bound also by international instruments where the Constitution or law so provide.

2. *The State Liability Act of 1969*

30. Section 18(1) of Act No. 58/1969 on the liability of the State for damage caused by a State organ's decision or by its erroneous official action

(*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* – “the State Liability Act”) renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from erroneous official actions of persons entrusted with the exercise of these functions. A claim for compensation under this provision can only be granted when the plaintiff shows that he or she suffered damage as a result of an erroneous action of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the erroneous action in question.

3. Regulation No. 32/1965

31. Regulation No. 32/1965 governs compensation for damage caused to a person's health. Section 2 provides for compensation for pain resulting from damage to a person's health, subsequent medical treatment and the elimination of the effects of damage to health. The amount of the compensation is to be determined in accordance with the principles and rates attached to the regulation.

32. Under paragraph 2 of Section 2, compensation for pain is not payable in cases of simple psychic reactions affecting a person's health which are of a passing character or of short-term changes in a person's health which do not require medical treatment or which cannot be established in an objective manner.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

33. In its decision on the admissibility of the case the Court joined to the merits the Government's objection relating to the exhaustion of domestic remedies.

34. In particular, the Government referred to the applicant's allegation that he had contracted diabetes as a result of suffering related to the excessive length of the proceedings and that it had also caused insomnia. They argued, with reference to the opinion of an expert, that the applicant could have claimed compensation under the State Liability Act of 1969 read in conjunction with Regulation No. 32/1965.

35. The Government further submitted that, following the delivery of the Court's judgment in the case of *Kudla v. Poland* (application no. 30210/96, judgment of 26 October 2000), the applicant could have requested, with reference to Article 144 of the Constitution, that the domestic courts should apply the State Liability Act of 1969 in accordance with the requirement

of an effective domestic remedy under Article 13 of the Convention, as interpreted by the Court. In the Government's view, in such case the domestic courts would be obliged to compensate the applicant for non-pecuniary damage resulting from the protracted length of the proceedings.

36. The applicant contended that the remedy under the State Liability Act of 1969 taken in conjunction with Regulation No. 32/1965 was not effective as it was not capable of directly redressing the alleged violation of his right under Article 6 § 1 of the Convention and that it did not permit the obtaining of compensation for damage of non-pecuniary nature relating to excessive length of proceedings. He further pointed out that diabetes was not included among diseases for which compensation could be granted under Regulation No. 32/1965, that it had been diagnosed after he had filed the application and that, in any event, damage to health was not the only damage of a non-pecuniary nature which he had suffered as a result of the length of the proceedings.

37. The Court notes that the remedy invoked by the Government may result in compensation for damage to health occasioned by excessive length of proceedings provided that a link between the two is established. Under section 2(2) of Regulation No. 32/1965, compensation for pain is not payable in cases of simple reactions affecting a person's health which are of a passing character or of short-term changes in a person's health which do not require medical treatment or which cannot be established in an objective manner. Even admitting that the applicant could have obtained redress in respect of damage to his health which can be established in an objective manner, the Court is not satisfied that this remedy was capable of providing appropriate redress in respect of his complaint under Article 6 § 1 about the excessive length of the proceedings. In particular, it has not been shown that the relevant law permitted the domestic courts to compensate the applicant for non-pecuniary damage other than that occasioned to his health and which the Court usually takes into account when deciding on just satisfaction where it finds a violation of Article 6 § 1 of the Convention.

38. Similarly, the Court is not satisfied that the applicant's possibility of obtaining redress by requesting the domestic courts to interpret and apply the State Liability Act of 1969 in accordance with the Court's case-law was sufficiently certain in practice and offered reasonable prospects of success (see, *mutatis mutandis*, *Pavletić v. Slovakia*, no. 39359/98, § 71, 22 June 2004).

39. Accordingly, the Government's preliminary objection must be dismissed.

II. THE APPLICANT'S VICTIM STATUS

40. The Court notes that in its finding of 12 November 2003 the Constitutional Court concluded that the Bratislava Regional Court had violated the applicant's constitutional right to a hearing without unjustified delay. While it formally examined only the period subsequent to the delivery of its finding of 16 June 1998, the decision states that, when determining the amount of just satisfaction, the Constitutional Court had regard to the overall length of the proceedings before the Regional Court.

41. Given that the length of the proceedings in issue exceeded 10 years, the Court considers that the just satisfaction which the Constitutional Court granted to him, that is the equivalent of approximately 500 euros, did not provide adequate and sufficient redress to the applicant in respect of the alleged violation of Article 6 § 1 of the Convention (see, *a contrario*, *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004, with further references). The applicant can therefore still claim to be a victim of a violation of his Convention rights within the meaning of Article 34 of the Convention.

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

42. The applicant complained that the length of the proceedings in his case was excessive. He relied on Article 6 § 1 of the Convention the relevant part of which provides:

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

43. The Government admitted, with reference to the Constitutional Court's findings, that there had been certain delays in the proceedings complained of.

44. The proceedings in issue were brought on 5 January 1994 and according to the information submitted by the parties, they have not yet ended. Having regard to the documents before it, the Court concurs with the Constitutional Court's findings of 16 June 1998 and of 12 November 2003 that the length of the proceedings was excessive.

45. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complained that he had no effective remedy at his disposal as regards his complaint under Article 6 § 1 of the Convention. 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.”

47. The Government contended that an action for compensation under the State Liability Act of 1969 in conjunction with Regulation No. 32/1965, taken together with a complaint under Article 127 of the Constitution as effective since 1 January 2002 represented, taken as a whole, an effective remedy for the purpose of Article 13.

48. The applicant disagreed.

49. In the light of its above finding under Article 6 § 1 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 in similar cases, the Court finds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention (see *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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.”

51. Under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

52. On 25 May 2004, after the present application had been declared admissible, the Court invited the applicant to submit his claims for just satisfaction. He did not submit any such claims within the time-limits fixed for that purpose.

53. In these circumstances, the Court makes no award under Article 41 of the Convention (see, for example, *Ryabykh v. Russia*, no. 52854/99, §§ 67–68, ECHR 2003-X).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that it is not necessary to examine the complaint under Article 13 of the Convention;
5. *Decides* to make no award under Article 41 of the Convention.

Done in English, and notified in writing on 15 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President