



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

FOURTH SECTION

**CASE OF HEGER v. SLOVAKIA**

*(Application no. 62194/00)*

JUDGMENT

STRASBOURG

17 May 2005

**FINAL**

*12/10/2005*

*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 Heger 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 R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 26 April 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 62194/00) 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 a Slovakian national, Mr Marián Heger ("the applicant"), on 12 July 2000.

2. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Kresák, succeeded by Mrs A. Poláčková.

3. On 21 July 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Modra. The facts of the case, as submitted by the parties, may be summarised as follows.

**A. Proceedings concerning the termination of lease of a flat**

5. On 24 August 1993 the Modra municipality sued the applicant before the Bratislava-vidiek District Court. The plaintiff sought to have a contract

of lease terminated in respect of a flat which had been earlier allocated to the applicant.

6. Between 7 September 1993 and 7 December 1993 the District Court scheduled five hearings. The applicant did not appear. On two occasions he informed the court that he was ill and on another two occasions he stated that his duties prevented him from attending the court hearings.

7. On 30 September 1994 a different judge was assigned to deal with the case. A hearing was held on 24 November 1994 at which the applicant failed to appear. The District Court therefore imposed a fine on the applicant as well as on a witness who had also failed to appear.

8. At a hearing held on 19 December 1994 the applicant appealed against the decision on a fine and he also challenged the District Court judge dealing with the case. The file was transmitted to the Bratislava Regional Court. On 25 April 1994 the latter quashed the decision on the fine and refused to exclude the District Court judge from dealing with the case.

9. The file was returned to the District Court on 1 June 1995. A hearing was scheduled for 4 March 1996. The court had difficulties in serving the summons on the applicant. On 1 March 1996 the applicant requested that the hearing be adjourned as he was ill.

10. On 4 April 1996 the case was again adjourned due to the absence of the applicant. The court requested a doctor to submit information on the applicant's health. Both the applicant and the plaintiff's lawyer informed the District Court that they could not attend a hearing scheduled for 5 August 1996.

11. On 17 September 1996 the District Court decided to jointly deal with the above case and an action of 31 July 1996 seeking termination of the applicant's contract of lease on a different ground.

12. On 27 September 1996 the applicant requested that a hearing scheduled for 30 September 1996 be adjourned as he was ill.

13. On 14 November 1996 the District Court heard the parties.

14. In the context of a reform of the judiciary the case was transferred to the Bratislava III District Court. The new judge received the file in May 1997. In February 1998 she scheduled a hearing for 6 April 1998. On 16 March 1998 the applicant informed the court that he was ill. The case was adjourned as both the applicant and the plaintiff had failed to appear.

15. On 17 June 1998 the applicant made a counter-claim.

16. On 31 March 1999 the District Court heard the applicant. On 20 April 1999 the applicant requested that a witness should be heard. Subsequently the case was transferred to a different judge.

17. A hearing was held on 12 December 2000.

18. On 22 February 2001 and on 3 April 2001 the case was adjourned due to the applicant's absence.

19. On 26 April 2001 the Bratislava III District Court dismissed the action. The decision became final on 10 July 2001.

## **B. Enforcement proceedings**

20. By a judicial decision which became final in 1990 the applicant's former wife was ordered to pay a sum of money to the applicant.

21. On 28 January 1991, on the applicant's request of 3 December 1990, the Bratislava-vidiek District Court started enforcement proceedings in which the sum due was to be obtained by means of selling the defendant's car.

22. On 8 March 1991 the defendant appealed. She alleged that she no longer owned the car in question. On 30 August 1991 the appellate court upheld the District Court's decision on enforcement of the judgment in question. On 22 November 1991 the new owner of the car requested that it should be excluded from the enforcement. In March 1992 the police withheld the documents relating to the car at the court's request.

23. On 21 October 1992 the court heard the persons concerned. The defendant submitted a sales contract concerning the car in question and informed the court that she had started paying the debt to the applicant. Subsequently the case was transferred to a different judge. On 2 July 1993 the judge requested that the parties should submit further information and documents. The applicant was asked to specify, *inter alia*, the outstanding sum which the defendant owed him.

24. On 16 July 1993 the applicant informed the court that he did not agree to the instalments which the defendant had proposed to pay to him. On 8 October 1993 the District Court asked the applicant to submit further information including the sum which the defendant had already paid to him.

25. On 22 December 1993 a different judge was assigned to deal with the case. On 5 October 1994 the case was transferred to another judge.

26. Between 12 June 1995 and 29 October 1996 the file was submitted for examination to a judge dealing in a different set of proceedings with the applicant's claim for compensation against his former wife. On 25 October 1996 the applicant requested that additional evidence should be taken.

27. On 22 November 1996 the case was taken over by the Bratislava III District Court as the Bratislava-vidiek District Court had ceased to exist.

28. On 26 February 1997 the President of the Bratislava III District Court admitted, in reply to the applicant's complaint, that there had been undue delays in the proceedings. The letter stated that the judge dealing with the case had left the judiciary and that the vacant post had not yet been filled.

29. On 27 March 1998 the applicant informed the District Court that the defendant had paid a part of the debt and specified the relevant sum. The court therefore discontinued the enforcement proceedings in respect of that sum.

30. On 22 February 2000 the Bratislava III District Court found that the claim for enforcement was inadmissible as the defendant had sold the car in question on 4 January 1991. The sum due could not, therefore, be enforced as claimed by the applicant.

31. On 5 June 2000 the Bratislava III District Court formally discontinued the enforcement proceedings which had been brought on 28 January 1991.

## THE LAW

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

32. The applicant complained that the length of the above two sets of 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 ... hearing within a reasonable time by [a] ... tribunal...”

33. The Government contested that argument.

34. As regards the proceedings concerning the lease of a flat, the period to be taken into consideration began on 24 August 1993 and ended on 26 April 2001. It thus lasted 7 years, 8 months and 2 days. During this period the merits of the case were examined at a single level of jurisdiction and an appellate court once dealt with the applicant’s appeal against a procedural decision and his request for exclusion of a judge.

35. As regards the enforcement proceedings, the period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, of which Slovakia is one of the successor States, of the right of individual petition took effect. The period in question ended on 5 June 2000. It thus lasted 8 years, 2 months, 18 days for two levels of jurisdiction.

#### **A. Admissibility**

36. 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**

37. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

### *1. As regards the proceedings relating to lease of a flat*

38. The Government submitted that the case was not particularly complex. They admitted that there had been several periods of inactivity due to the reform of judiciary and changes in judges. However, the Government were of the view that the overall length of the proceedings was mainly due to the conduct of the parties and the applicant in particular. In this context they pointed out that the District Court had scheduled 18 hearings in the case and that the applicant had failed to appear at 11 of them.

39. The applicant disagreed and maintained that the length of the proceedings was excessive for reasons which could not be imputed to him.

40. The Court notes that the proceedings were considerably prolonged as a result of the fact that the applicant did not attend a number of hearings before the District Court. It also notes that several delays occurred which, as the Government admitted, were due to the organisation of the judiciary in Slovakia. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the proceedings in issue was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 as a result of the length of the proceedings concerning the lease of a flat.

### *2. As regards the enforcement proceedings*

41. The Government submitted that the length of the proceedings was due to the fact that different proceedings had been held, in parallel, relating to the claim of a third person that the car in question should not be the subject of enforcement in respect of the sum due and to the applicant’s claim for compensation against his former wife. They further argued that the applicant had informed the District Court of the sum which the defendant had already paid to him on 27 March 1998, that is almost five years after he had been requested to do so. Without that information, the District Court had been unable to proceed with the case in an appropriate manner. They concluded that the applicant’s right to a hearing within a reasonable time had not been violated.

42. The applicant contested this conclusion.

43. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see *Frydlender*, cited above).

44. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 as a result of the length of the enforcement proceedings.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 110,000<sup>1</sup> Slovakian korunas (SKK) in respect of damage which he had allegedly suffered as a result of the protracted length of both sets of proceedings.

47. The Government contested the claim.

48. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him 2,800 euros (EUR) under that head.

### B. Costs and expenses

49. The applicant also claimed compensation for postal and other expenses which he had incurred. He submitted that he was not in a position to submit the relevant documents permitting the precise sum in question to be determined.

50. The Government contested the claim as being unsubstantiated.

51. 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

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<sup>1</sup> SKK 110,000 is the equivalent of approximately 2,830 euros.

possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

### C. Default interest

52. 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 as a result of the length of the proceedings concerning the lease of a flat;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of the length of the enforcement 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 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, the above sums to be converted into the currency of the respondent State 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.

Done in English, and notified in writing on 17 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President