



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

FOURTH SECTION

CASE OF HORVÁTHOVÁ v. SLOVAKIA

(Application no. 74456/01)

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 Horváthová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

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. 74456/01) 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, Mrs Mária Horváthová ("the applicant"), on 5 September 2001.

2. The applicant was represented by Ms Z. Kupcová, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Kresák, succeeded by Ms A. Poláčková.

3. On 8 April 2004 the President of the Chamber decided to give priority treatment to the application in accordance with Rule 41 of the Rules of Court.

4. On 7 September 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of an effective remedy in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the remainder of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lived in Bratislava. She committed suicide on 28 September 2004. On 25 October 2004 the applicant's heirs, Ms V. Čillíková (the sister of the applicant) and Mr J. Bôbik (the applicant's brother) informed the Court of their wish to pursue the application in the applicant's stead.

1. Enforcement proceedings brought on 1 March 2000

6. By a decision which became final on 28 January 1998 the applicant's and her former husband's joint tenancy in respect of a flat was terminated. The Bratislava Regional Court decided that the applicant's former husband should remain the sole tenant of the flat and ordered the applicant to move out of it within fifteen days after she has been provided with alternative accommodation. In the reasons for the judgment the Regional Court explicitly held that the applicant was entitled to use the flat until her former husband found appropriate accommodation for her. However, her former husband did not allow the applicant to enter the flat. She was therefore obliged to temporarily stay at different places including her sister's flat.

7. On 1 March 2000 the applicant requested the Bratislava IV District Court to enforce the above judgment.

8. On 18 January 2002 the President of the Bratislava Regional Court admitted, in reply to the applicant's complaint, that the case had not been proceeded with effectively between 1 March 2000 and 10 January 2002.

9. On 9 December 2002, on 16 and 31 January 2003, on 31 March 2003 and on 28 April 2003 the Bratislava IV District Court adjourned the case as the applicant's former husband failed to appear. The judge had unsuccessfully attempted to have the defendant brought by the police to the hearings held between January and April 2003. According to the applicant, those attempts were unsuccessful also due to the fact that the court had incorrectly indicated the address of the defendant's employer to the police.

10. A hearing was held on 26 May 2003. Both parties attended. The defendant challenged the District Court judge.

11. On 6 October 2003 the Bratislava Regional Court decided on the request for exclusion of the District Court judge. The decision was served on the defendant on 28 November 2003.

12. A hearing scheduled for 4 March 2004 was adjourned as the District Court judge was ill.

13. On 22 April 2004 the applicant filed an enforcement request under a different provision of the Code of Civil Procedure under which a court can, where possible, authorise the person seeking the enforcement of a judicial

decision to have a service carried out by a third person at the expense of the debtor. She also withdrew the authority of her lawyer.

14. On 22 July 2004 the Bratislava IV District Court dismissed the applicant's request for enforcement of 1 March 2004. The decision stated that the judgment to be enforced did not explicitly order the defendant to put accommodation at the applicant's disposal within a specific time-limit. On 24 September 2004 the applicant appealed. In January 2005 the applicant's lawyer informed the Court that the proceedings were still pending before the Bratislava Regional Court.

2. Proceedings before the Constitutional Court

15. On 8 April 2002 the applicant filed a complaint about delays in the proceedings pursuant to Article 127 of the Constitution. She also claimed 200,000 Slovakian korunas (SKK) as just satisfaction.

16. On 10 July 2002 the Constitutional Court found that the applicant's right to a hearing without undue delay guaranteed by Article 48(2) of the Constitution and by Article 6 § 1 of the Convention had been violated. The Constitutional Court held that the case was not complex and that no delays could be imputed to the applicant's conduct. It noted that the only action taken by the Bratislava IV District Court had been a request that the applicant pay the court fee dated 16 November 2001.

17. The Constitutional Court granted the applicant SKK 18,000¹ as just satisfaction. The decision stated that the amount was determined on an equitable basis with regard to the particular circumstances of the case according to the practice of the European Court of Human Rights under Article 41 of the Convention. Its purpose was to attenuate the non-pecuniary damage sustained by the applicant. The sum was to be paid by the Bratislava IV District Court within two months after the Constitutional Court's decision became final. In the decision the Constitutional Court also ordered the Bratislava IV District Court to proceed with the applicant's case without further delay. The decision became final on 12 August 2002.

18. On 28 October 2002 the applicant filed a new complaint with the Constitutional Court. She alleged a violation of her right to a hearing within a reasonable time in that the Bratislava IV District Court had failed to proceed with the case without delay. She further alleged a violation of her right to a fair hearing within a reasonable time and of her property rights in that the District Court had not paid the sum to her as ordered by the Constitutional Court's decision of 10 July 2002.

19. On 29 January 2003 the Constitutional Court dismissed the applicant's second complaint. It found that the applicant had, in separate proceedings, requested the enforcement of the sum granted to her and that it therefore could not examine her complaints in that respect.

¹ The equivalent of approximately 450 euros.

The Constitutional Court further held that, following the final effect of its first finding on 12 August 2002, there had been a delay of more than two months in the enforcement proceedings brought in 2000. However, the overall length of the period under consideration, that is after the delivery of the first finding of the Constitutional Court, was not excessive in the particular circumstances of the case.

3. Other relevant facts

20. As the sum granted to her by the Constitutional Court's finding of 10 July 2002 was not paid to her, the applicant requested that that sum be enforced on 19 November 2002.

21. On 17 December 2002 the District Court paid the sum indicated in the Constitutional Court's decision to the applicant.

22. On 4 June 2003 and on 17 July 2003 the applicant complained to the police that her former husband had denied her access to the flat in which she was entitled to live. The police found that the conduct of the applicant's former husband could be qualified as a minor offence and transferred the case to the Bratislava IV District Office. The applicant unsuccessfully complained about the way in which the police had dealt with the case to public prosecutors at two levels.

23. On 24 September 2003 the applicant asked the Bratislava IV District Office to order her former husband not to disturb her in her right to use the flat in question. On 29 December 2003 the Bratislava IV District Office set the case aside. The decision stated that the administrative authority could not deal with it as (i) enforcement proceedings on the point at issue were pending before the District Court and (ii) the Bratislava IV police department were dealing with criminal complaints which the applicant and her former husband had filed against each other and on which no final decision had yet been taken.

24. On 24 October 2003 the applicant claimed compensation for pecuniary damage from the Ministry of Justice before the Bratislava IV District Court. She relied on the State Liability Act of 1969 and on the Constitutional Court's finding of 10 July 2002 and claimed a sum corresponding to the rent for the flat in which she had the right to live and which she could not use. After the applicant's death her siblings expressed the wish to join the proceedings as plaintiffs in her stead. The proceedings are pending.

THE LAW

I. AS TO THE LOCUS STANDI OF Ms ČILLÍKOVÁ and Mr BÔBIK

25. The applicant's siblings, Ms Čillíková and Mr Bôbik expressed the wish to pursue the application following the death of their sister. They explained that they were the only heirs of the applicant and that they had provided accommodation to the applicant who had had no stable place to live since 1998. As a result, they had partially experienced the harm which the applicant had suffered due to the protracted length of proceedings under consideration.

26. The Court recalls that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court. It has done so most frequently in cases which primarily involved pecuniary, and, for this reason, transferable claims. However, the question whether such claims are transferable to the persons seeking to pursue an application is not the exclusive criterion. In fact, human rights cases before the Court generally also have a moral dimension and persons near to an applicant may have a legitimate interest in seeing to it that justice is done even after the applicant's death (see, with further references, *Karner v. Austria*, no. 40016/98, §§ 22 and 25, ECHR 2003-IX and *Mihailov v. Bulgaria* (dec.), no. 52367/99, 9 September 2004).

27. Having regard to the particular circumstances of the case, the Court accepts that the applicant's heirs have a legitimate interest in pursuing the application in the late applicant's stead. It will therefore continue dealing with the case at their request.

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

28. The applicant 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 ... hearing within a reasonable time by [a] ... tribunal..."

29. The Government admitted, with reference to the above finding of the Constitutional Court, that there had been undue delays in the proceedings. They argued, however, that the applicant could no longer be considered as a victim as the Constitutional Court had afforded appropriate redress to her.

30. The applicant and her heirs disagreed with the Government's objection and maintained, in particular, that the just satisfaction granted by the Constitutional Court was disproportionately low.

31. The period to be taken into consideration began on 1 March 2000 and has not yet ended. It has thus lasted for more than 5 years and 1 month at two levels of jurisdiction.

A. Admissibility

32. As to the Government's argument that the applicant could not be considered as a victim, the Court recalls that an applicant's status as a victim within the meaning of Article 34 of the Convention depends, *inter alia*, on whether the redress afforded at domestic level on the basis of the facts about which he or she complains before the Court was adequate and sufficient having regard to the awards of just satisfaction provided for under Article 41 of the Convention. While there is no requirement under the existing case-law that the domestic authorities should award the same sum by way of compensation as the Court would be likely to award under Article 41 of the Convention, the level of just satisfaction granted at national level must nevertheless not be manifestly inadequate in the particular circumstances of the case (see *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003 and *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

33. In the present case the Constitutional Court awarded the applicant the equivalent of approximately EUR 450 as just satisfaction for the violation of her constitutional right to a hearing without unjustified delay. Having regard to its case-law and the particular circumstances of the case, the Court finds that this sum is not sufficient to deprive the applicant of the status of a victim for the purpose of Article 34 of the Convention. The Government's objection must therefore be dismissed.

34. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. 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).

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

37. Having examined all the material submitted to it, the Court finds no argument capable of persuading it to reach a different conclusion in the present case. Having regard to what was at stake for the applicant and to its case-law on the subject, the Court considers that in the instant case the length of the proceedings has been excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

38. Lastly, the applicant complained that she had no effective remedy at her disposal as regards her complaint under Article 6 § 1 of the Convention. 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.”

39. The Government submitted that the applicant had an effective remedy at her disposal, namely a complaint under Article 127 of the Constitution.

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

41. The applicant was able to obtain partial redress before the Constitutional Court which found a violation of Article 6 § 1, granted the applicant a certain sum as just satisfaction and ordered the ordinary court concerned to proceed with the case without further delay. In these circumstances, and having regard to its above finding under Article 6 § 1 of the Convention, the Court finds that it is not necessary to examine separately the applicant’s complaint under Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The heirs of the applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government contested the claim.

45. The Court notes that the applicant was able to obtain only partial reparation at domestic level. Ruling on an equitable basis, it awards the applicant’s heirs the global sum of EUR 4,000 in respect of non-pecuniary damage sustained by the applicant.

B. Costs and expenses

46. The applicant’s heirs also claimed EUR 500 for the costs and expenses incurred before the domestic courts and the Court.

47. The Government contested the claim.

48. The Court notes that the applicant was represented by a lawyer and awards the sum claimed under this head in full.

C. Default interest

49. 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. *Holds* that the applicant’s heirs have standing to continue the present proceedings in her stead;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that a separate examination of the complaint under Article 13 of the Convention is not called for;
5. *Holds*
 - (a) that the respondent State is to pay the applicant's heirs, 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 500 (five 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;
6. *Dismisses* the remainder of the claim for just satisfaction.

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