



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

FOURTH SECTION

CASE OF PALGUTOVÁ v. SLOVAKIA

(Application no. 9818/02)

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 Palgutová 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 K. TRAJA,

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. 9818/02) 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, Ms Mária Palgutová ("the applicant"), on 9 April 2002.

2. The applicant was represented by Ms E. Ľalíková, 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 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 1943 and lives in Bratislava.

A. The maintenance proceedings

5. In 1993 the applicant's husband died in a road traffic accident. On 2 March 1995 the person responsible for the accident was convicted of an offence.

6. On 16 October 1995 the applicant filed an action with the Bratislava V District Court. She claimed compensation for her maintenance from the person responsible for the accident.

7. On 12 April 1996 the District Court judge instructed the court's registry to obtain the criminal file relating to the death of the applicant's husband and to notify the defendant of the action.

8. On 4 July 1996 the postal authority informed the District Court, in reply to its request, that the letter could not be served on the defendant.

9. On 6 February 1997 the District Court asked the applicant's representative to submit further information. The representative complied with the request on 9 April 1997.

10. On 22 May 1997 the case was adjourned as the applicant's lawyer failed to appear.

11. On 10 July 1997 the District Court heard the parties. Both parties were requested to submit further documentary evidence.

12. On 2 October 1997 the case was adjourned as the court needed further information from an authority administering the pensions system.

13. On 30 November 1998 and on 13 January 1999 the applicant requested the court to proceed with the case.

14. On 25 February 1999 the case was adjourned as an inquiry had to be made, to the General Prosecutor's Office, concerning the relevant criminal file.

15. On 20 May 1999 the applicant informed the District Court that she had retired as from 1 April 1999 and that she had appealed against the determination of her pension which included both an old-age and a widow's pension. The applicant therefore asked the court to adjourn the case as the outcome of the pension proceedings might have a bearing on her claim.

16. On 5 August 1999 the applicant submitted a decision on her pension. Her lawyer did not appear at the hearing.

17. On 18 November 1999 the applicant's lawyer informed the court that he would submit his authority and also specify the applicant's claims. The District Court asked the lawyer to submit the authority and to specify the

claims on 22 January 2000, on 29 March 2000 and on 13 July 2000. On 25 July 2000 the lawyer informed the court that the applicant maintained her action and that he would submit further information shortly. On 13 September 2000 the court asked the lawyer to submit the information required within fifteen days.

18. The lawyer failed to appear at the hearing held on 12 December 2000.

19. On 18 December 2000 the applicant terminated the authority of the lawyer. She appointed a new lawyer to represent her in the proceedings. The lawyer specified the applicant's claims on 8 January 2001.

20. On 15 February 2001 the case had to be adjourned as the defendant had not appeared. The next hearing was scheduled for 19 April 2001 and the defendant was informed that he could be brought to court by the police.

21. On 12 April 2001 the defendant asked for the case to be adjourned as his lawyer had ceased representing him. For this reason the case was adjourned until 1 June 2001.

22. On 1 June 2001 the case was adjourned as an inquiry was to be made of the Slovak Insurance Company which could possibly become a third party to the proceedings. On 4 July 2001 the Slovak Insurance Company informed the court that it did not wish to join the proceedings as it had no involvement in the case.

23. The next hearing was held, in the absence of the defendant, on 30 November 2001. The court decided to obtain a list of employers of the defendant and of his wife and it adjourned the case until 21 February 2002.

24. On 3 December 2001 the Slovak Insurance Company withdrew its earlier statement and informed the court that it wished to join the proceedings as a third party.

25. On 21 February 2002 the representative of the Slovak Insurance Company submitted documentary evidence. The applicant submitted her comments on 15 April 2002.

26. Hearings before the District Court were held on 23 April 2002 and on 13 May 2002. On the latter date the applicant was requested to submit further information relating to her claim. The applicant replied on 30 May 2002.

27. The District Court adjourned the case on 22 August 2002 and on 17 September 2002. On the latter date the court informed the parties that it had concluded the taking of evidence and that a judgment would be delivered on 23 September 2002.

28. On 23 September 2002 the case was adjourned until 15 October 2002 and the Social Insurance Administration was asked to inform the court about an increase in the applicant's pension.

29. The case was again adjourned on 15 and on 30 October 2002. On the latter date the court decided to hear a witness who was in charge of dealing

with claims relating to road traffic accidents within the Slovak Insurance Company.

30. On 8 November 2002 the applicant's lawyer ceased representing the applicant due to her retirement.

31. On 10 December 2002 the District Court again adjourned the case with a view to hearing the above witness. On 14 January 2003 the person who had been summoned informed the court that she no longer carried out the function in question. The case was adjourned until 6 March 2003 with a view to hearing the relevant person. That witness was heard on 6 March 2003.

32. On 25 March 2003 the District Court adjourned the case at the request of the applicant's representative. The applicant was invited to amend her claims within sixty days.

33. Between 22 September 2003 and 30 October 2003 the file was examined by the Constitutional Court to which the applicant had complained about the length of the proceedings.

34. On 12 February 2004 the case was adjourned as the judge was absent. The next hearing was scheduled for 19 February 2004. The representatives of the parties were unable to attend that hearing.

35. Hearings were held on 1 and 7 April 2004. On 20 May 2004 the case was adjourned as the social security institution had failed to submit documents requested by the court.

36. On 7 September 2004 the Bratislava V District Court heard the parties. On 9 September 2004 it delivered a judgment in which it partially granted the applicant's claim. The judgment was served on the applicant on 2 November 2004.

37. The parties appealed. The proceedings are pending.

B. The constitutional proceedings

38. On 21 January 2003 the applicant complained about the length of the proceedings to the Constitutional Court. She claimed 100,000 Slovakian korunas¹ (SKK) in just satisfaction.

39. In its finding of 29 October 2003 the Constitutional Court held that the Bratislava V District Court had violated the applicant's right to a hearing without unjustified delay. The Constitutional Court ordered the District Court to proceed with the case without further delays and to compensate for the costs of the applicant's representation in the constitutional proceedings. It further decided not to grant any pecuniary satisfaction to the applicant.

40. The decision stated that the case was not complex as the merits of the applicant's claim had been determined in a different set of proceedings

¹ SKK 100,000 was then the equivalent of approximately EUR 2,500.

and the only outstanding question was the amount of compensation due to the applicant.

41. The Constitutional Court further found that the applicant or her lawyer had contributed to a considerable extent to the length of the proceedings in that the lawyer had not appeared at hearings on 22 May 1999 and on 12 December 2000. Furthermore, the lawyer undertook on 18 November 1999 to submit his authority and to further specify the applicant's claims. The relevant documents were only submitted on 8 January 2001, that is after thirteen months. On 8 November 2002 the applicant's lawyer informed the court that she had retired and the authority of a new lawyer representing the applicant had been submitted to the court on 21 March 2003, that is after more than three months. On 25 March 2003 the case was adjourned as the applicant informed the court that her claims might need to be amended. The applicant's retirement and her appeal against the decision on her pension, the fact that the Slovak Insurance Company had joined the proceedings and changes in lawyers representing the applicant had also slowed down the proceedings.

42. As regards the conduct of the proceedings by the Bratislava V District Court, the Constitutional Court noted that the District Court had taken more than five months to notify the defendant of the action and that it had remained inactive for more than seven months before it asked the applicant's lawyer, on 6 February 1997, to submit further information. Another period of inactivity lasting more than fifteen months occurred between 2 October 1997 and 25 February 1999. Finally, the Constitutional Court held that the District Court had not proceeded in an appropriate manner as it had concluded the taking of evidence on 17 September 2002 and had envisaged delivering a judgment on 23 September 2002 and that, despite this fact, it had held six other hearings subsequently in which further evidence had been taken.

43. As regards the applicant's claim for just satisfaction, the Constitutional Court noted that the applicant or her representatives had contributed to the length of the proceedings to approximately the same extent as the District Court. In those circumstances, the finding of a violation of the applicant's constitutional right and the order that the District Court should proceed with the case without further delay constituted sufficient redress for the applicant.

THE LAW

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

44. 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...”

45. The Government admitted, with reference to the above finding of the Constitutional Court, that there had been undue delays in the proceedings prior to the delivery of that finding. They argued, however, that the applicant could no longer claim to be a victim as the Constitutional Court had afforded appropriate redress to her in that it had acknowledged a violation of her right to a hearing within a reasonable time and had prevented further delays from occurring by ordering the District Court to expedite the proceedings. The fact that the Constitutional Court had awarded no just satisfaction for the past delays in the proceedings could not affect the position as the applicant or her lawyer, by their behaviour, had contributed significantly to the overall length of the proceedings.

46. The Court notes that the period to be taken into consideration began on 16 October 1995 and has not yet ended. It has thus lasted for nine years and more than six months for two levels of jurisdiction. The first instance proceedings alone lasted almost nine years.

A. Admissibility

47. As to the Government’s argument that the applicant is no longer 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 complains before the Court was adequate and sufficient having regard to just satisfaction as 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).

48. In the present case the Constitutional Court found a violation of the applicant’s right to a hearing without unjustified delay. However, it awarded

her no just satisfaction holding that the applicant or her representatives were responsible for substantial delays in the proceedings. In these circumstances, and despite the fact that the Constitutional Court ordered the District Court to proceed with the case without further delay, the Court is not satisfied that the redress obtained at domestic level was 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.

49. 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

50. 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).

51. 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).

52. 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 has been at stake for the applicant and to its case-law on the subject, and notwithstanding that the overall length of the proceedings can partly be attributed to the applicant's or her lawyer's conduct, 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

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

55. The Government contested the claim.

56. The Court considers that the applicant must have sustained non-pecuniary damage and, having regard to sums awarded in comparable cases, awards her the full sum claimed.

B. Costs and expenses

57. The applicant also claimed EUR 750 for her costs and expenses.

58. The Government argued that any compensation for costs and expenses granted by the Court should not be excessively high.

59. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 possession and the above criteria, the Court awards the sum of EUR 500 for the proceedings before the Court.

C. Default interest

60. 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;
3. *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 5,000 (five 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;

4. *Dismisses* the remainder of the applicant's 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