



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

FOURTH SECTION

CASE OF KRUMPEL AND KRUMPELOVÁ v. SLOVAKIA

(Application no. 56195/00)

JUDGMENT

STRASBOURG

5 July 2005

FINAL

05/10/2005

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 Krumpel and Krumpelová 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. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 14 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 56195/00) 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 two Slovakian nationals, Mr Ondrej Krumpel and Mrs Anna Krumpelová ("the applicants"), on 17 January 2000.

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

3. On 19 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 applicants are spouses. They were born in 1935 and 1938 respectively and live in Bratislava.

I. THE CIRCUMSTANCES OF THE CASE

5. In 1990 the applicants concluded a contract with M., the owner of a building company. M. undertook to sell a plot of land to the applicants and

to build a family house for them. The applicants paid 600,000 Slovakian korunas (SKK) to M.

6. M. failed to comply with the contract. The applicants therefore revoked it on 28 January 1991.

7. On 5 February 1991 the applicants sued the company of M. before the Považská Bystrica District Court. On 26 April 1991 the court discontinued the proceedings as the applicants had not paid the court fee.

8. In 1991 criminal proceedings were brought against M. as he was suspected of fraud. The applicants declared that they wished to claim damages from M. in the context of the criminal proceedings.

9. On 18 August 1991 the applicants sued M. for damages before the Považská Bystrica District Court. On 16 March 1992 the District Court discontinued the proceedings. The decision stated, with reference to Article 83 of the Code of Civil Procedure, that the applicants had also claimed damages in the context of the criminal proceedings against M. and that those criminal proceedings were pending. On 25 May 1992 an appellate court dismissed the applicants' appeal.

10. In the meantime, on 23 October 1991, a public prosecutor froze property of M.'s company, the value of which corresponded to SKK 2,185,000, with a view to securing the claims of 21 aggrieved persons.

11. On 28 December 1992 M.'s mother returned SKK 50,000 to the applicants. In a written statement of 10 February 1995 M. admitted his debt in respect of the applicants.

12. In 1996 the charges against M. were enlarged to comprise economic offences which had no bearing on the applicants' claim and which the accused had allegedly committed in the context of the dissolution of the former Czech and Slovak Federal Republic.

13. Following the enlargement of the charges against M. his bank account was blocked in the context of the criminal proceedings.

The Government submitted that the sum blocked amounted to SKK 8,885,006.

The applicants submitted, with reference to an article published in a weekly, that the Bratislava Regional Prosecutor had given his consent, in 1997, to unblock the account in which approximately SKK 64 millions had been deposited. The article further states that most of the money had subsequently been transferred abroad. In another article published in the same weekly the General Prosecutor confirmed that he had intended to start disciplinary proceedings against the Regional Prosecutor in that regard. However, the prosecutor had resigned from his post.

14. On 11 February 1998 the Bratislava Regional Prosecutor indicted M. before the Bratislava Regional Court. On 21 June 1999 the Regional Court returned the case to the public prosecutor for further investigation.

15. On 14 September 2001, the applicants made a written submission to the Bratislava Regional Court which was dealing with the criminal charges

against M. The Regional Court interpreted the submission as a civil claim for damages and transferred it to the Považská Bystrica District Court.

16. A new indictment against M. was filed with the Bratislava Regional Court on 3 December 2001. The indictment concerned numerous offences and, in addition to M., two other persons.

17. On 28 February 2002 the criminal judge decided to deal separately with several aspects of the case, including those which were relevant for the determination of the applicants' claim.

18. On 13 August 2003 a Považská Bystrica District Court judge informed the applicants, in reaction to their above submission of 14 September 2001, that criminal proceedings against M. were still pending and that Article 83 of the Code of Civil Procedure prevented the court from dealing with a civil action for damages in the same case. The applicants were invited to inform the court whether they maintained their action and were instructed how to rectify formal shortcoming in their submission.

19. In a letter of 5 September 2003 the applicants replied that their above letter of 14 September 2001 had been meant for the judges dealing with the charges against M. and that they were aware that they could not have separate civil proceedings for damages brought against M. as the criminal proceedings against him were still pending.

20. In the meantime, on 14 March 2003, the applicants complained to the Constitutional Court about a violation of their right to a hearing without unjustified delay.

21. On 19 September 2003 the Považská Bystrica District Court judge informed the Constitutional Court about the contents of her above letter to the applicants of 13 August 2003. No reference was made to the applicants' reply of 5 September 2003.

22. On 25 September 2003 the Constitutional Court dismissed the complaint as being manifestly ill-founded. The decision states:

"It follows from ... the submission of the District Court that, at present, proceedings are pending before it upon the initiative of the [applicants]... The subject-matter of those proceedings is the claim for damages against [M.] which the applicants have also submitted in the context of the criminal proceedings before the Regional Court. The applicants therefore have, provided that they overcome the obstacle of *litis pendens* and bring their [civil] action in compliance with the formal requirements as instructed by the District Court, a different effective remedy at their disposal in the context of proceedings before a civil court...

In the Constitutional Court's view, an action for damages is an effective remedy in respect of [the applicants], as a [civil] claim for compensation by persons who have suffered damage may form the basis of their own case in respect of which (unlike persons who join criminal proceedings with a claim for damages) they enjoy the guarantee of ... a hearing without undue delay...

It follows that the alleged failure of the Regional Court to proceed with [the criminal case against M.] speedily can have no bearing on the applicants' constitutional right to a hearing without undue delay... In the circumstances, it is the applicants' claim for

damages which is to be considered as their case; determination of such a claim is not the purpose of the criminal proceedings and, in addition, the applicants can claim damages before a civil court provided that they comply with the statutory requirements...”

23. On 24 November 2004 the Bratislava Regional Court convicted M. in proceedings concerning the charges which were not related to the applicants’ claim. M. was sentenced to 10 years’ imprisonment and the court ordered him to compensate SKK 58 million to the Ministry of Finance. The convicted persons appealed and the proceedings are pending before the Supreme Court.

24. The Bratislava Regional Court is expected to start determining the remaining charges against M. (which concern fraud in respect of more than 20 individuals including the applicants) in the course of 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Code of Criminal Procedure

25. Article 43(1) and (2) provides, *inter alia*, that a person who has suffered damage, as a result of a criminal offence, can claim compensation from the accused person and request that the court, in a judgment convicting the accused person, order the latter to compensate for such damage.

26. In criminal cases falling within the jurisdiction of regional courts, the court decides, according to the nature of the matter under consideration, whether or not an injured person should be allowed to participate in the proceedings (Article 44(2)). Such decision is taken, as a rule, at the main hearing. In accordance with the Supreme Court’s case-law, an injured party may be prevented from participating in the proceedings for important reasons only, for example where it is required for protection of a State secret.

27. Article 47(1) provides that a claim for damages may be secured, up to an amount corresponding to the estimated damage, on the property of the accused where a justified fear exists that compensation for damage caused as a result of an offence will be jeopardised or rendered difficult.

28. Pursuant to Article 228(1), where a court convicts the accused person of an offence as a result of which damage to third persons was caused, it shall, as a rule, order the convicted person to compensate for such damage, provided that the relevant claim was filed in time.

29. Under Article 229(1), a criminal court shall refer a person claiming damages to a civil court where the evidence available is not sufficient for determining that claim or where the taking of further evidence exceeding the scope of the criminal case is required and the criminal proceedings would be thereby unduly prolonged.

2. *The Code of Civil Procedure*

30. Article 83 of the Code of Civil Procedure provides that, once proceedings have been brought, no other judicial proceedings can be instituted in the same matter.

31. In accordance with the Supreme Court's practice under this provision, the filing of a claim for damages in the context of criminal proceedings is to be considered as the bringing of proceedings, within the meaning of the relevant provisions of the Code of Civil Procedure, and it constitutes an obstacle of *litis pendens* where a civil action is filed after the corresponding claim has been submitted in the context of criminal proceedings (Collection of Supreme Court's Decisions and Opinions, 22/1979, p. 192).

THE LAW

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

32. 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 ... hearing within a reasonable time by [a] ... tribunal..."

33. The Government contended that the application was inadmissible.

34. The period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted 13 years and more than 2 months for the preliminary stage and one level of jurisdiction.

A. Admissibility

35. The Government first contended that the guarantees of Article 6 § 1 of the Convention did not apply to the present case. They referred to the Court's finding in the case of *Perez* (see *Perez v. France* [GC], no. 47287/99, ECHR 2004-...) in which the Court had established certain principles as regards the applicability of Article 6 § 1 of the Convention in

relation to civil-party complaints filed during a criminal investigation in France. They argued that the position under Slovakian law was different.

36. In particular, the Government contended that injured persons claiming damages in the context of criminal proceedings in Slovakia did not automatically become parties to the proceedings. In cases similar to the present one, Article 44(2) of the Code of Criminal Procedure reserves to the regional court dealing with the case the right to decide on the participation of an injured party in criminal proceedings before it. The Government considered that the outcome of the criminal proceedings was not directly decisive for the determination of the applicants' civil rights and obligations within the meaning of Article 6 § 1 of the Convention.

37. In addition, the Government argued that the applicants had not exhausted domestic remedies as they had not sought compensation from the individual concerned by means of a civil action. Since the debtor had recognised his debt in respect of the applicants, a civil court dealing with the case would have been in a position to deliver a summary payment order on the applicants' claim in an accelerated procedure, thereby ensuring an effective and speedy protection of the applicants' right in issue.

38. The applicants disagreed with the Government's arguments. They submitted that they had a preference for claiming damages in the context of the above criminal proceedings as (i) they had considered that their claim could be satisfied by bank interest paid on the money from the blocked account of M. and (ii) they would be liable to pay high court fees in the context of civil proceedings.

39. The Court notes that under Slovakian law, as interpreted and applied by domestic courts, the filing of a claim for damages in the context of criminal proceedings is to be considered as the introduction of proceedings, within the meaning of the relevant provisions of the Code of Civil Procedure, and it prevents the person concerned from submitting the same claim to a civil court in parallel. This alone suffices to conclude that the civil claim of an injured person which is to be determined in the context of criminal proceedings comes within the scope of Article 6 § 1 of the Convention.

40. The fact that in certain circumstances the criminal courts are entitled to decide, according to the nature of the matter under consideration, whether or not an injured person should be allowed to participate in the criminal proceedings, or that they may refer a person claiming damages to a civil court where, for example, the evidence available is not sufficient for determining that claim, cannot affect this position. Until such a decision has been given, injured persons claiming damages in the context of criminal proceedings are entitled to benefit from the guarantees of Article 6 § 1 of the Convention as such proceedings are decisive for the determination of their "civil rights".

41. As the applicants' claim for damages is still a component of the pending criminal proceedings against M., the Government's argument that their application is incompatible *ratione materiae* with the provisions of the Convention cannot be upheld.

42. The Government further objected that the applicants did not exhaust domestic remedies as they had not claimed the sum in question before a civil court.

43. The Court held earlier that, where there is a choice of remedies open to an applicant, the requirement of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention must be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (see *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000, with further references).

44. The Slovakian law has given the applicants the possibility of claiming the sum in question in two different ways. The applicants were aware of this as they first filed a civil claim for damages. The proceedings were discontinued, on 26 April 1991, as they had not paid the court fee. Subsequently the applicants filed their claim in the context of criminal proceedings brought against the individual concerned. Unless they withdraw that claim, the applicants are unable to re-submit it validly to a civil court.

45. The position in the present case is specific. On the one hand, the criminal proceedings in question have concerned several charges and accused persons as well as a considerable number of victims. Given the scope and complexity of the case, the applicants must have been aware that certain time was required before the courts could decide on the claim, such a decision being subject to the prior determination of the criminal charges against the debtor. Furthermore, the charges against the individual concerned were substantially enlarged in 1996, and the criminal court later decided to first determine the charges which were unrelated to the applicants' claim.

46. On the other hand, the situation has been rather clear under civil law: the debtor explicitly acknowledged his debt in respect of the applicants. Thus a civil court called upon to determine the applicants' claim for the sum in question could, in principle, do so speedily, possibly by issuing a summary payment order as argued by the Government.

47. However, on the basis of the documents before it, the Court accepts the applicants' argument that they had decided to pursue their claim in the context of criminal proceedings as they believed that they had a better prospect of actually recovering the sum in question. In fact, at the initial stage of the criminal proceedings a public prosecutor had frozen the property of the accused with a view to securing the claims of the injured persons. In this respect the Court recalls that the Convention is intended to guarantee rights that are not theoretical or illusory, but rights that are

practical and effective (*Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I).

48. Thus the applicants' preference for claiming damages in the context of criminal proceedings against the debtor was not unjustified in the particular circumstances of the case. Once the applicants opted for this remedy, they were entitled to have their claim determined within a reasonable time. They were not required to try, for the purpose of Article 35 § 1 of the Convention, the other remedy available under Slovakian law. 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. It further notes 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 applicants and 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).

51. The Court notes that the length of the criminal proceedings in the context of which the applicants' claim is to be determined has been partly due to the complexity of the case resulting from both the scope of offences imputed to the accused and the number of injured persons. However, this alone does not account for the overall length of the proceedings. There is no indication that the applicants by their conduct contributed to the length of the proceedings. Having examined all the material submitted to it and 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicants claimed 1,783,500 Slovakian korunas¹ (SKK) in respect of pecuniary damage and SKK 500,000² in respect of non-pecuniary damage.

54. The Government contested these claims.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to the fact that the length of the proceedings in issue has been partly due to their complexity, it awards them EUR 10,000 under that head.

B. Costs and expenses

56. The applicants also claimed SKK 1,700³ for the lawyer's fees relating to the filing of their claim for damages with the Považská Bystrica District Court in 1991.

57. The Government contested the claim.

58. 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 possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

59. 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.

¹ The equivalent of approximately 45,900 euros.

² The equivalent of approximately 12,900 euros.

³ The equivalent of approximately 45 euros.

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 applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, 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 amount 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 5 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President