



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

FOURTH SECTION

CASE OF CIBULKOVÁ v. SLOVAKIA

(Application no. 38144/02)

JUDGMENT

STRASBOURG

11 October 2005

FINAL

11/01/2006

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 Cibulková 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 20 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 38144/02) 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, Mrs Dagmar Cibulková ("the applicant"), on 11 October 2002.

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

3. On 31 March 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. 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 1957 and lives in Bratislava.

5. On 29 March 1993 the applicant brought an action against the Bratislava II Housing Cooperative (*Stavebné bytové družstvo*), of which she had formerly been a member, in the Bratislava II District Court (at that time *Obvodný súd*, at present *Okresný súd*). She challenged a decision of the defendant of 26 October 1992 concerning her entitlement to a new flat and the procedure applied by the defendant in dealing with her appeal against it.

6. On 16 December 1993 the District Court held a hearing at which the applicant provided further particulars of her action in that she was seeking a ruling declaring that she had the right to the new flat.

7. On 13 January 1994 the District Court ruled that the applicant had a right to the new flat in question. The defendant challenged the judgment by an appeal (*odvolanie*).

8. On 13 October 1994 the Bratislava Regional Court (at that time *Mestský súd*, at present *Krajský súd*) held a hearing of the appeal and invited the defendant to submit further evidence which the defendant did on 27 October 1994.

9. On 26 January 1995, following another hearing of the appeal held on the same day, the Regional Court overturned the judgment of 13 January 1994 and dismissed the action.

10. On 20 April 1995 the applicant challenged the judgment of 24 January 1995 by an appeal on points of law (*dovolanie*).

11. On 21 November 1995 the applicant's lawyer informed the District Court that he was no longer representing her. As legal representation in appeals on points of law was mandatory, the District Court invited the applicant to identify her new representative on 14 December 1995 and, in the absence of a reply, again on 26 March 1996. The applicant finally replied on 25 April 1996. The appeal on points of law was then submitted to the Supreme Court (*Najvyšší súd*) for a determination.

12. On 4 October 1996 the Supreme Court returned the case-file to the District Court without a decision, on the ground that the power of attorney for the applicant's legal representation did not state expressly that it applied to proceedings on appeals on points of law as was required under the applicable procedural rules.

13. On 11 December 1996 and repeatedly on 21 April 1997 the District Court requested that the applicant's lawyer correct the power of attorney, which he did on 15 July 1997.

14. On 28 October 1997 the Supreme Court quashed the judgments of 13 January 1994 and 26 January 1995, finding that the lower courts had determined the action in a manner in which it had never actually been formulated. As the action fell to be determined at first instance by the Regional Court, it was remitted to it.

15. Between 28 March and 17 October 2000 the Regional Court held 6 hearings.

16. On 23 October 2000, following another hearing held on the same day, the Regional Court dismissed the action. The applicant challenged the judgment by an appeal.

17. On 19 December 2001, following a hearing of the appeal held on the same day, the Supreme Court upheld the judgment of 23 October 2000.

THE LAW

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

18. The applicant complained that the length of the proceedings was 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...”

19. The Government contested that argument. They considered that the case was factually, legally and procedurally complex. The proceedings were substantially protracted by the applicant’s conduct in that her submissions were unclear. She changed the subject-matter of her action, lodged the action with a wrong court, failed to secure legal representation in the proceedings on her appeal on points of law and eventually submitted an incorrect power of attorney for that purpose. Except for some delay in the proceedings before the Region Court while acting as the court of first instance, there was no other significant inactivity on the part of the courts.

20. The period to be taken into consideration began on 29 March 1993 and ended on 19 December 2001. It thus lasted 8 years and almost 9 months for 3 levels of jurisdiction.

A. Admissibility

21. 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

22. 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).

23. 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).

24. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 86,025¹ Slovakian korunas (SKK) in respect of pecuniary damage by way compensation for the price she had paid for the flat in dispute. Under this head she also claimed compensation of an unspecified amount in respect of depreciation of price paid. The applicant further claimed SKK 300,000² in respect of non-pecuniary damage.

27. The Government contested these claims.

28. The Court observes that the applicant’s complaint under Article 1 of Protocol No. 1 of an unjustified interference with her possessions was declared inadmissible. It does not discern any causal link between the violation of the applicant’s right under Article 6 § 1 of the Convention to a hearing within reasonable time found above and the pecuniary damage alleged. The Court therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to the circumstances of the case including the applicant’s conduct in the proceedings, the Court awards her 3,000 euros (EUR) under that head.

B. Costs and expenses

29. The applicant also claimed SKK 12,000³ for her legal costs incurred before the domestic courts.

30. The Government contested the claim.

¹ SKK 86,025 is an equivalent of approximately EUR 2,000

² SKK 300,000 is an equivalent of approximately EUR 7,600

³ SKK 12,000 is an equivalent of approximately EUR 300

31. 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. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found. In the present case the Court fails to see any connection between, on the one hand, the costs of the applicant's legal representation in the domestic proceedings and, on the other, the violation found. Regard being had to the information in its possession and the above criteria, the Court finds it appropriate to award the applicant, who was not represented before the Court by a lawyer, EUR 50 for postage and other out-of-pocket expenses which she incurred in the context of filing and pursuing her application.

C. Default interest

32. 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 remainder of 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 in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of incidental costs and expenses, to be converted into Slovakian korunas 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[s] 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 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President