



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

FOURTH SECTION

CASE OF ŠIROKÝ v. SLOVAKIA

(Application no. 69955/01)

JUDGMENT

(18 October 2005)

STRASBOURG

FINAL

18/01/2006

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 Široký v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 27 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 69955/01) 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, Mr Jiří Široký (“the applicant”), on 2 March 2001.

2. The applicant was represented by Mr P. Erben, a lawyer practising in Bratislava. The Slovakian Government (“the Government”) were represented by their Agents, Mr P. Kresák, succeeded by Mrs A. Poláčková as of February 2005.

3. On 10 November 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

4. The applicant was born in 1948 and lives in Bratislava.

1. The proceedings concerning the applicant’s dismissal from work

5. On 15 August 1990 the applicant lodged an action with the Bratislava II District Court (then *Obvodný súd*, at present *Okresný súd*) seeking a judicial ruling declaring void his dismissal from his job earlier in 1990 and an order for payment of an amount of money by way of compensation.

6. On 19 August 1991 the District Court dismissed the action. On the applicant's appeal the Bratislava Regional Court (then *Mestský súd*, at present *Krajský súd*) quashed the judgment on 29 April 1992.

7. On 29 October 1992 the District Court ruled that the applicant's dismissal was void and that he was entitled to financial compensation. As to the scope of the entitlement the District Court granted a part of the claim and dismissed its remainder. No appeal was filed against the ruling concerning the validity of the dismissal and it became final and binding on 3 December 1992. However, both parties challenged the ruling concerning the compensation.

8. On 26 February 1993 the Regional Court quashed the part of the judgment of 29 October 1992 concerning the compensation and remitted this issue to the District Court for the taking of further evidence and re-consideration.

9. In judgments of 30 May 1994, 18 March 1996 and 29 November 2002 the District Court successively granted various parts of the applicant's claim for compensation and dismissed its remainder. These judgments were challenged by appeals, the first two by the applicant and the last one by the defendant.

10. In judgments of 28 March 1995, 23 May 1997 and 1 July 2004 the Regional Court, respectively, quashed the judgment of 30 May 1994 and parts of the judgments of 18 March 1996 and 29 November 2002 as there were numerous procedural and substantive errors. A minor part of the applicant's claim has thus been allowed with final effect but by far the greater part is still pending before the District Court.

11. In the period from 12 October 1993 to 17 May 2005 the District Court and the Regional Court held 15 and 4 hearings respectively. Two of the hearings had to be adjourned as no representative of the defendant appeared, for which it was sanctioned by a procedural fine. A part of the claim was granted by way of an interim award; further and better particulars were obtained from the applicant; he submitted further evidence; the case was assigned to a new judge at the District Court; two members of the Regional Court chamber retired and had to be replaced; and the District Court sought an expert report concerning the calculation of the claimed amount.

2. *The Constitutional Court's finding*

12. On 23 November 2000, on the applicant's petition (*podnet*), the Constitutional Court (*Ústavný súd*) found that the District Court had violated his right under Article 48 § 2 of the Constitution to a hearing without unjustified delay.

13. The Constitutional Court observed that it had jurisdiction *ratione temporis* to consider only the period after 15 February 1993 when it had been established. It nevertheless took into account the state of the

proceedings at that time. The part of the proceedings within its temporal jurisdiction had lasted more than 7 years and 9 months.

The Constitutional Court found that the case was not of a particular complexity and noted that after the District Court's judgment of 29 October 1992 the subject matter of the proceedings had been narrowed to the applicant's claim for compensation. The applicant had not caused any substantial delays and what was at stake for him called for special diligence.

The Constitutional Court pointed out that the District Court's judgments of 30 May 1994 and 18 March 1996 had had to be quashed due to its failure to establish the relevant facts adequately and to follow the instructions of the court of appeal. Moreover, the District Court had been inactive without any justification from 9 April 1993 to 21 January 1994, from 23 October 1997 to 29 July 1998 and from 14 October 1998 to 13 March 2000. The Constitutional Court also noted that the action was still pending before the District Court and that the latter had taken no steps with a view to obtaining the expert report requested on 3 May 2000 in a timely fashion.

THE LAW

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

14. 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..."

15. The Government admitted, with reference to the Constitutional Court's finding of 23 November 2000, that the applicant's right to a hearing within a reasonable time had been violated.

16. The period to be taken into consideration began only on 18 March 1992, when the Convention entered into force with respect to Slovakia. 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 5 months for two levels of jurisdiction.

A. Admissibility

17. 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

18. 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). The Court also reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).]

19. 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).

20. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the above mentioned admission by the Government, the Court considers that in the instant case the length of the two sets of proceedings complained of 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

21. 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

22. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He argued that, as a result of the excessive length of his proceedings which concerned a matter of special sensitivity for him, he had experienced feelings of uncertainty and stress, his personal and family life had been negatively effected, he had been facing difficulties in finding a new job and had suffered mental distress and deterioration of his health in general.

23. The Government contested the claim.

24. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 9,000 under that head.

B. Costs and expenses

25. The applicant made a claim for compensation in respect of his legal costs incurred in the domestic proceedings and before the Court. He however provided no specification of the claim and left the amount of a possible award in this respect to the Court's discretion.

26. The Government argued that the applicant incurred no extra costs and expenses in the domestic proceedings on account of their length. As to the proceedings before the Court, they emphasised that only such costs and expenses should be compensated which had been reasonably incurred.

27. 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 considers it reasonable to award the sum of EUR 700 covering costs under all heads.

C. Default interest

28. 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 in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage and EUR 700 (seven hundred euros) in respect of 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 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 18 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President