



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

FOURTH SECTION

CASE OF L.R. v. SLOVAKIA

(Application no. 52443/99)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

13/09/2006

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 L.R. 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 Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 8 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 52443/99) 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, *inter alia*, a Slovakian national, Mrs L.R. ("the applicant"), on 10 September 1999. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 26 October 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of two sets of civil proceedings. 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

I. THE CIRCUMSTANCES OF THE CASE

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

5. The facts of the case, as submitted by the parties, may be summarised as follows.

**A. Proceedings concerning the validity of a purchase contract
(Bratislava III District Court file 12C 153/91)**

6. On 30 August 1991 the applicant filed an action with the Bratislava III District Court. She claimed that the defendants should be restrained from trespassing on her plot of land and from damaging her property and ordered to compensate her for damage.

7. In the course of 1991 both parties made submission to the court. The applicant submitted further claims.

8. On 5 March 1992 the District Court adjourned the case. The applicant was invited to specify her claims in which, *inter alia*, she contested the validity of a purchase contract which she had concluded with the defendants in 1982. The applicant submitted further documents on 9 March 1992. The defendants commented on them on 31 March and on 13 April 1992.

9. Hearings were held on 26 May 1992, on 1 July 1992 and on 3 September 1992. Between the hearings the applicant continued submitting further documents.

10. On 16 October 1992 the District Court decided to obtain expert opinion on the applicant's legal capacity at the time when she had signed the contract in 1982. On 9 November 1992 the applicant appealed claiming that she was unable to pay an advance on the expert's fee. She withdrew the appeal on 20 January 1992. The file was transmitted to the expert on 27 November 1992. The expert submitted her opinion on 16 February 1993. On 23 March 1993 the court decided on the expert's fee.

11. In July and August 1993 the applicant made further submissions to the court.

12. On 24 September 1993 the court scheduled a hearing for 3 December 1993. It was adjourned to 14 December 1993 at the applicant's request. On 14 December 1993 and on 31 January 1994 the case had to be adjourned as the expert could not attend.

13. A hearing was held on 7 June 1994. In the course of June and July 1994 the parties submitted further documents to the court.

14. On 20 September 1994 the court heard the parties. The case was adjourned as the expert did not appear. On the same day the court gave a decision refusing to exempt the applicant from the obligation to pay the court fee. The applicant appealed against that decision on 12 October 1994.

15. On 27 October 1994 the District Court dismissed the applicant's claim concerning the validity of the purchase contract of 1982 on the ground that the applicant's right to challenge the contract had lapsed. It further found that the remainder of the action, as specified by the applicant on 4 March 1992, concerned compensation for damage. The court decided to deal with that claim in a separate set of proceedings.

16. On 17 November 1994 the applicant appealed against the decision to dismiss her claim concerning the validity of the purchase contract. She submitted further reasons for her appeal on 3 March 1995. The defendants submitted observations in reply on 10 April 1995. The file was transmitted to the Bratislava City Court on 26 April 1995.

17. On 20 June 1995 the Bratislava City Court upheld the District Court's judgment of 27 October 1994 as well as the first instance decision on the applicant's obligation to pay the court fee. The appellate court's judgment was served on the applicant on 14 November 1995. On 6 December 1995 she filed an appeal on points of law.

18. On 12 April 1996 the District Court invited the applicant to pay the fee in respect of her appeal on points of law. On 22 April 1996 the applicant asked to be exempted from the obligation to pay the fee.

19. On 2 October 1996 the Bratislava III District Court discontinued the proceedings on the ground that the applicant had failed to pay the cassation fee. On 14 October 1996 the applicant withdrew her above request and she paid the fee. On 7 April 1997 the District Court quashed its decision of 2 October 1996.

20. The District Court transmitted the file with the applicant's appeal on points of law to the Supreme Court on 5 March 1998.

21. On 24 April 1998 the Supreme Court returned the case to the Bratislava III District Court noting that the Bratislava City Court's judgment of 20 June 1995 had not yet become final.

22. On 20 August 1998 the applicant's mother also filed an appeal on points of law against the City Court's judgment. The defendants submitted their comments in September 1998. The file was transmitted to the Supreme Court on 10 November 1998. The Supreme Court sent the case back to the District Court, on 10 December 1998, as the applicant's mother had not been requested to pay the cassation fee. Following the District Court's request on 7 January 1999, the applicant's mother paid the fee on 15 January 1999. The file was again transmitted to the Supreme Court on 26 January 1999.

23. The Supreme Court dismissed the appeals on point of law on 24 March 1999.

B. Proceedings concerning the claim for damages (Bratislava III District Court files 7 C 87/97 and 12 C 211/98)

24. As stated above, the Bratislava III District Court decided, on 27 October 1994, to deal in a separate set of proceedings with the applicant's claim for damages filed on 4 March 1992.

25. On 27 May 1997 the proceedings relating to this claim were registered under number 7 C 87/97. On 14 July 1998 the same case was again registered under number 12 C 211/98. As both cases concerned the

same subject-matter and parties, the proceedings registered under the former number were formally discontinued on 1 August 2001. That decision became final on 2 October 2001.

26. On 19 August 1998 the District Court requested the applicant to eliminate formal shortcomings in her action. The applicant replied on 28 August 1998.

27. On 16 February 2000 the District Court again requested the applicant to bring her submissions into line with the formal requirements. On 14 March 2000 the applicant replied that she had complied with the relevant requirements. She further requested that the proceedings be stayed pending the outcome of proceedings on her application filed with the Court.

28. On 5 June 2000 the Bratislava III District Court dismissed the request as it found no relevant reason for staying the proceedings. The applicant appealed.

29. On 13 October 2000 the Bratislava III District Court informed the applicant that her original action was still incomplete and invited her to eliminate formal shortcomings in it.

30. On 24 November 2000 the District Court discontinued the proceedings No. 12 C 211/98 as it found that the claim did not conform to the formal requirements. On 29 December 2000 the applicant appealed against this decision.

31. On 31 January 2001 the Bratislava Regional Court upheld the first instance decision of 5 June 2000 by which the applicant's request for the proceedings to be stayed had been dismissed.

32. On 26 February 2002 the Bratislava Regional Court upheld the District Court's decision to discontinue the proceedings delivered on 24 November 2000. That decision thus became final on 29 April 2002. The Regional Court concluded that, despite several requests, the applicant had failed to describe the relevant facts and to sufficiently specify the claim on which the courts were called upon to decide.

33. On 30 April 2002 the applicant lodged an appeal on points of law against the Bratislava Regional Court's decision. The Supreme Court rejected the appeal on points of law on 28 May 2003.

C. Constitutional proceedings

34. On 3 April 2003 the applicant lodged a complaint with the Constitutional Court pursuant to Article 127 of the Constitution, as in force since 1 January 2002. She alleged, *inter alia*, a violation of her right to a hearing without undue delay in the proceedings registered under No. 7 C 87/97 and in the proceedings concerning the validity of the purchase contract of 1982.

35. On 3 December 2003 the Constitutional Court dismissed the complaint. Since the proceedings concerning the validity of the purchase contract had ended on 24 March 1999, the applicant's complaint in their respect was submitted after the expiry of the statutory two months' time-limit. As to the complaint about the length of Bratislava III District Court proceedings No. 7 C 87/97, the Constitutional Court found that final decision had been given in 2001. However, it could only entertain such complaints where the proceedings complained of were pending at the moment when a complaint under Article 127 of the Constitution was filed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. Article 48(2) of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

37. Pursuant to Article 130(3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon the petition ("*podnet*") presented by any individual or a corporation claiming that their rights had been violated.

38. According to its case-law under the former Article 130(3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48(2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights had been violated.

39. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127. Under this provision the Constitutional Court has the power, in case that it finds a violation of Article 48(2) of the Constitution, to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to a person whose constitutional right has been violated as a result of excessive length of proceedings (for further details see, e.g., *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002).

40. It has been the Constitutional Court's practice to entertain complaints about excessive length of proceedings only where the proceedings complained of are pending, at the moment when such complaints are lodged with it, before the authority liable for the alleged violation (e.g., decision IV. ÚS 96/02, with further references, or decision IV. ÚS 176/03).

THE LAW

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

41. The applicant complained that the length of the above two sets of 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...”

42. The Government did not contest that argument as regards the proceedings concerning the validity of a purchase contract.

43. The period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, of which Slovakia is one of the successor states, of the right of individual petition took effect.

In the proceedings concerning the validity of the purchase contract the period to be considered ended on 24 March 1999. It thus lasted 7 years and 6 days for three levels of jurisdiction.

In the proceedings concerning the claim for damages the period in question ended on 28 May 2003. It thus lasted 11 years, 2 months and 10 days for three levels of jurisdiction.

A. Admissibility

1. Proceedings concerning the validity of a purchase contract

44. The Court notes that this complaint 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.

2. Proceedings concerning the claim for damages

45. The Government objected that the applicant had not exhausted domestic remedies as she had not used the remedy under Article 127 of the Constitution introduced with effect from 1 January 2002.

46. The greater part of the period under consideration relates to proceedings before the first instance court which decided on the applicant’s claim on 24 November 2000. The applicant appealed on 29 December 2000. Subsequently the case was dealt with by the appellate court which gave its decision on 26 February 2002 and, ultimately, by the Supreme Court which decided on the appeal on points of law on 28 May 2003. Having regard to the Constitutional Court’s practice to examine complaints about the length

of proceedings only to the extent that the proceedings are pending, at the moment when a constitutional complaint is filed, before the authority responsible for the alleged violation, the Court is not satisfied that it was open to the applicant to effectively complain under Article 127 of the Constitution (as operative since 1 January 2002) about the overall length of the proceedings in issue. Accordingly, the Government's objection cannot be upheld.

47. The Court further notes that this complaint 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

48. 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).

49. 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).

50. 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 both 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 in both sets of proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 8,425,963 Slovakian korunas (SKK) in respect of pecuniary damage and SKK 500,000 in respect of non-pecuniary damage.

53. The Government contested these claims.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, having regard to the circumstances of the case, it considers it appropriate to award the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant also claimed SKK 46,651 for the costs and expenses incurred before both the domestic courts and the Court.

56. The Government left the matter to the Court's discretion.

57. 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 are 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 applicant, who was not represented by a lawyer, the sum of EUR 300 under this head.

C. Default interest

58. 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 in both sets of proceedings;

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, the global sum of EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of costs and expenses, the above sums to be converted into the national 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 29 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President