



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

FOURTH SECTION

CASE OF MIKOLAJ AND MIKOLAJOVÁ v. SLOVAKIA

(Application no. 68561/01)

JUDGMENT

STRASBOURG

29 November 2005

FINAL

29/02/2006

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 Mikolaj and Mikolajová 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. 68561/01) 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 Rudolf Mikolaj (“the first applicant”), on 17 February 2001. On 28 November 2002 new complaints were submitted by both the first applicant and his wife, Mrs Anna Mikolajová (the second applicant).

2. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs A. Poláčková.

3. On 22 October 2004 the Court decided to communicate the complaint concerning the length of the proceedings brought in 1991 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants live in Žilina. The first applicant was born in 1939 and the second applicant was born in 1944.

A. Proceedings concerning the first applicant's claim of 1991

5. The first applicant participated in a tender concerning the resolution of a technical problem within a State-owned company. The tender never resulted in a contract as the company went into liquidation.

6. On 20 November 1991 the first applicant claimed compensation (the equivalent of approximately 200 euros) from the company. He later indicated several Ministries as additional defendants.

7. On 23 April 1992 the Ministry of Construction and Works informed the District Court in Žilina that the defendant company had ceased to exist and that it had taken over the company's obligations. The decision concerning the transfer of liabilities of the company was later quashed.

8. On 26 August 1992 the first applicant extended his action to comprise also the above Ministry as defendant. He later indicated three other Ministries as defendants as it was unclear which authority was liable for the original defendant's obligations. On 8 December 1992 the first applicant requested that the District Court should issue a payment order.

9. On 20 February 1995 the Žilina District Court decided to deal separately with the claim to the extent that it concerned three Ministries. At the applicant's request it discontinued the proceedings in respect of the other defendants including the State-owned company which, in the meantime, had ceased to exist.

10. On 7 April 1995 the first applicant sued also the Ministry of Economy in the context of the proceedings. In October 1995 and in January 1996 representatives of that Ministry informed the court that the Ministry of Economy lacked standing in the case.

11. Hearings were held on 28 February 1996 and on 2 September 1996. On 18 July 1996 the applicant requested a change in the defendants. He amended his claim on 3 September 1996.

12. On 5 February 1998 the District Court asked the first applicant to specify which authorities were defendants in the case. The applicant replied on 19 February 1998. On 18 March 1998 he submitted further information.

13. On 31 March 1998 the District Court joined to the proceedings the Ministry of Economy and the Ministry of Construction and Public Works as authorities representing the defendant State. One of the Ministries appealed on 27 April 1998. On 1 April 1998 the District Court discontinued the proceedings in respect of two different authorities.

14. On 28 October 1998 the Banská Bystrica Regional Court quashed the District Court's decision of 31 March 1998.

15. On 20 July 1999 the first applicant made a submission to the District Court.

16. On 1 August 2000, in accordance with the instruction of the Regional Court, the District Court invited the applicant to specify which

authority acted on behalf of the Slovak Republic in the proceedings and to specify the sum claimed. The first applicant replied on 10 August 2000.

17. On 17 October 2000 the District Court asked the defendant for comments on the action. The defendant replied on 30 October 2000. Subsequently the District Court unsuccessfully attempted to obtain documents concerning the work for which the applicant claimed compensation.

18. On 6 June 2001 the District Court dismissed the first applicant's claim. The court found that the State-owned company which had sought the tenders had been liquidated without any successor by a final decision of 31 March 1992.

19. On 27 July 2001 the applicant appealed. The file was transmitted to the appellate court on 11 October 2001.

20. On 5 March 2002 the Žilina Regional Court upheld the first instance judgment which became final on 20 July 2002.

21. In the meantime, on 5 April 2002, the applicant requested that the court fee should be returned to him. That submission was considered as an appeal against the decision ordering the applicant to pay the fee for the appellate proceedings. The Regional Court in Žilina rejected the appeal, on 8 July 2002, as having been filed out of time.

B. Other civil proceedings

22. On 28 November 2002 the applicants extended the application with reference to the facts described below.

23. The first applicant has been involved in (i) proceedings concerning the validity of transfer of ownership which were brought on 20 January 2001 and which are pending before the Žilina District Court and (ii) proceedings concerning an estate which, at the moment when the complaint was filed, had been pending before the Žilina District Court since 1997. Following the appellate court's decision given on 11 October 2004, the latter set of proceedings is now again pending before the Žilina District Court.

24. Both applicants have been plaintiffs in proceedings concerning the validity of a purchase contract. The proceedings were brought on 27 January 2000 and the first instance court gave its decision on 11 November 2004.

25. On 23 April 2001 the applicants brought proceedings concerning the right of lease. The proceedings are pending before the Žilina District Court which is to decide on the case at first instance.

C. Constitutional proceedings

26. On 16 August 2000 the first applicant complained to the Constitutional Court about the length of the proceedings concerning his action of 1991. On 16 November 2000 the Constitutional Court rejected the petition on the ground that the first applicant had failed to appoint a lawyer to represent him in the constitutional proceedings as required by the Constitutional Court Act.

27. As they considered the length of the various sets of proceedings mentioned in point B. above to be excessive, the first applicant or the second applicant sought redress before the Constitutional Court by complaints lodged in June 2002. The applicants were invited to lodge their submissions in accordance with the statutory requirements and, in particular, to appoint a lawyer to represent them in the proceedings as required by the Constitutional Court Act. The applicants replied that the above requirement was discriminatory and contrary to the Constitution.

28. By three decisions delivered on 20 August 2002 and by another two decisions delivered on 23 October 2002 the Constitutional Court rejected the applicants' complaints as falling short of the procedural requirements. The decisions stated, *inter alia*, that the applicants had not appointed a lawyer to represent them before the Constitutional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. 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.

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

31. 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 the event 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 the person whose constitutional rights

have 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).

32. The implementation of the amended Article 127 of the Constitution is set out in more detail in sections 49 to 56 of Law no. 38/1993 (the Constitutional Court Act), as amended. The relevant amendments came into force on 20 March 2002.

33. 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).

34. The Government submitted to the Court nine decisions given by the Constitutional Court between March and September 2002. In them the Constitutional Court decided on complaints under Article 127 of the Constitution about the length of proceedings which had been filed between 7 January 2002 and 18 February 2002. The complaints concerned proceedings before ordinary courts which had been brought prior to 1 January 2002. All those proceedings were pending before the first instance court at the moment when the complaint under Article 127 of the Constitution was filed.

THE LAW

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

35. The applicants complained that (i) the length of the above proceedings before the ordinary courts was excessive and (ii) that their right to defend themselves in person was violated in the proceedings before the Constitutional Court as it did not allow them to act before it without the assistance of a lawyer. They relied on 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...”

A. Admissibility

1. *As regards the right of access to the Constitutional Court*

36. The Court notes that in their complaints to the Constitutional Court the applicants exclusively complained about the length of the proceedings before the ordinary courts. The outcome of the constitutional proceedings complained was not, therefore, directly decisive for the applicants' civil rights and obligations (see *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 41).

37. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. *As regards the length of the proceedings*

a) Proceedings concerning the first applicant's action of 1991

38. The Government contended that the first applicant had not exhausted domestic remedies as he had not filed, in accordance with the applicable requirements, a complaint under Article 127 of the Constitution as operative since 1 January 2002.

39. The first applicant contended that the first instance court had decided on his claim and that he had filed his complaint to the Court prior to 1 January 2002 when the new remedy under Article 127 became available. Furthermore, the sums of just satisfaction usually awarded by the Constitutional Court were excessively low.

40. The Court notes that 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. Unlike in the cases on which the Government relied in their observations, the proceedings in issue were no longer pending before the court of first instance when the relevant amendment to the Constitution took effect. The Court is therefore not satisfied that the applicant could successfully complain about the overall length of the proceedings brought in 1991 under Article 127 of the Constitution, as operative since 1 January 2002.

41. The Court further notes that the relevant part of the application was introduced on 17 February 2001. At that time it had been its general practice to assess whether domestic remedies had been exhausted with reference to the date on which the application was lodged with it. The Court decided to make an exception to this rule in respect of cases against Slovakia which, as the present one, were submitted to it prior to 1 January 2002 in the

Andrášik and Others v. Slovakia decision referred to above. That decision was adopted on 22 October 2002, that is at a time when a final decision had already been given in the proceedings brought by the first applicant.

42. In the above circumstances, the Government's objection relating to non-exhaustion of domestic remedies cannot be upheld.

43. The proceedings in issue were brought on 20 November 1991. However, 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. The period in question ended on 5 March 2002. It thus lasted 10 years less 13 days for two levels of jurisdiction.

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.

b) The other sets of proceedings

45. The applicants filed their complaint about the length of the other sets of proceedings set out in paragraphs 23-25 above on 28 November 2002. At that time the proceedings at issue were pending before the courts of first instance. Having regard to the practice of the Constitutional Court and its decision in the case of *Andrášik and Others* referred to above, the applicants were required, for the purpose of Article 35 of the Convention, to use the constitutional remedy prior to submitting this complaint to the Court.

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

46. The Government admitted that there had been several periods of inactivity imputable to domestic courts in the proceedings concerning the first applicant's action of 1991. They further pointed out that the overall length of the proceedings was also due to the fact that the first applicant had frequently changed the defendants as well as the amount of the sum claimed.

47. The applicant contended that after the State owned company which had owed money to him had ceased to exist, he had been obliged to sue the State represented by an authority liable for the debt. The modifications of defendants had been caused by frequent transfers of powers between the governmental authorities in Slovakia.

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 accepts that the length of the proceedings was partly due to frequent changes in defendants resulting from the fact that the first applicant had difficulties in identifying the authority which had taken over the obligations of the debtor company. Having regard to its case-law on the subject, the Court considers, nevertheless, that in the instant case the overall length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1 as a result of the length of the proceedings brought by the first applicant in 1991.

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.”

52. The applicants submitted claims under Article 41 in respect of all proceedings set out above.

53. The Court found a violation of Article 6 § 1 of the Convention in respect of the first applicant’s complaint about the length of proceedings brought in 1991, and it declared the remainder of the application inadmissible. It can therefore take into account only the first applicant’s claims which relate to those proceedings.

A. Damage

54. The first applicant claimed SKK 93,080 in respect of non-pecuniary damage.

55. The Government contested the claim.

56. The Court considers it appropriate that it should award the equivalent of the sum claimed, namely EUR 2,400.

B. Costs and expenses

57. The first applicant also claimed SKK 303.20 for the costs and expenses incurred in respect of the proceedings brought in 1991.

58. The Government did not contest the claim.

59. The Court awards the first applicant EUR 10 under this head which corresponds approximately to the sum claimed.

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 first applicant's complaint concerning the length of the proceedings brought in 1991 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of the length of the proceedings concerning the first applicant's action of 1991;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 10 (ten 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 first applicant's claims 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