



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

FOURTH SECTION

CASE OF VANEK v. SLOVAKIA

(Application no. 53363/99)

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 Vanek 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 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. 53363/99) 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 a Slovakian national, Mr Richard Vanek ("the applicant"), on 3 November 1999.

2. The applicant was represented by Mr J. Klimko, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms A. Poláčková.

3. The applicant alleged, in particular, that the length of two sets of proceedings in which he was involved was excessive.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 31 May 2005 the Court declared the application partly admissible.

THE FACTS

6. The applicant was born in 1939 and lives in Bratislava.

A. Background to the case

7. The inhabitants of the house in which the applicant lives asked the owner of the house to transfer to them the ownership of the respective flats

pursuant to the Flat and Other Premises Ownership Act of 1993. The administrator of the house, the Bratislava - Staré mesto municipality, proposed to sell the flats to the inhabitants. However, it excluded the loft from the sales contracts as it envisaged selling it to a third person who planned to build new flats there. Subsequently the following relevant facts occurred and decisions were taken.

B. Proceedings concerning the validity of the building contract

8. On 4 November 1998 the applicant and nine other inhabitants challenged the validity of the construction contract concluded between the municipality Bratislava - Staré mesto and the company RAFT, s.r.o. concerning the construction of flats at the roof level of the house in which the plaintiffs lived.

9. On 11 July 2001 the President of the Bratislava I District Court informed the applicant that the judge dealing with the case had a heavy workload and that she had therefore not yet started examining the case.

10. On 18 October 2002 the Bratislava I District Court declared the contract void. The defendants appealed. The proceedings are pending before the Bratislava Regional Court.

C. Proceedings concerning the transfer of ownership of apartments to the applicant and the other inhabitants of the house

11. On 23 July 1999 the applicant and the other inhabitants of the house claimed that the Bratislava I District Court should deliver a judgment replacing the declaration of intent of the Bratislava - Staré mesto municipality and permitting the transfer of ownership of the flats, including the loft, to them under the Flats and Other Premises Ownership Act of 1993. The plaintiffs claimed that the defendant municipality had failed to comply with its statutory obligation to do so.

12. On 4 November 1999 the plaintiffs submitted further information at the court's request.

13. On 28 February 2000 the District Court discontinued the proceedings on the ground that the action was incomplete.

14. The plaintiffs appealed and the Bratislava Regional Court, on 25 May 2000, quashed the first instance decision.

15. The appellate court's decision was served in June 2000. On 1 February 2001 the District Court requested the defendant to submit comments on the action.

16. On 10 May 2001 the applicant submitted further information at the District Court's request.

17. On 26 November 2002 the Bratislava I District Court dismissed the action. It noted that several plaintiffs had already concluded purchase

contracts in respect of their apartments and that in the draft contracts attached to their action the plaintiffs proposed to buy the apartments from a person other than the defendant.

18. On 5 February 2003 the applicant and the other plaintiffs appealed.

19. On 9 September 2003 the Bratislava Regional Court upheld the first instance judgment concluding that the plaintiffs had failed to comply with the relevant statutory requirements.

D. Proceedings before the Constitutional Court

20. On 31 August 2001 the Constitutional Court found that the applicant's constitutional right to a hearing without undue delay had been violated by the Bratislava I District Court in both the above sets of proceedings. It held that the District Court had failed to proceed with the cases in an appropriate manner as a result of which there had been unjustified delays in the proceedings. As regards the proceedings concerning the sale of the apartments in particular, the Constitutional Court held that the District Court had remained inactive for a period of 7 months between 16 June 2000 and 1 February 2001.

21. At the moment of delivery of its finding the Constitutional Court lacked power to provide redress to plaintiffs whose right to a hearing within a reasonable time had been violated (for further details see, e.g., *Švolík v. Slovakia*, no. 51545/99, §§ 24-28, 15 February 2005).

THE LAW

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

22. 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..."

23. The Government did not contest that argument.

24. 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).

A. As regards the proceedings concerning the validity of the building contract

25. The period to be taken into consideration began on 4 November 1998 and it has not yet ended. It has thus lasted 7 years for two levels of jurisdiction.

26. 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).

27. Having examined all the material submitted to it, 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.

B. As regards the proceedings concerning the transfer of ownership of apartments

28. The period to be taken into consideration began 23 July 1999 and ended on 9 September 2003. It thus lasted 4 years, 1 month and 17 days. During this time the case was examined twice by courts at two levels of jurisdiction.

29. The Court considers, in the light of the criteria established by its case-law on the question of “reasonable time”, and having regard to all the material in its possession, that, despite certain delays imputable to domestic courts, the overall length of the proceedings in the present case was not contrary to the reasonable time requirement laid down in Article 6 § 1 of the Convention.

There has accordingly been no violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 2,969,200¹ Slovakian korunas. That sum included remuneration for legal work which he had carried out, as a lawyer, in the context of the proceedings in issue. It also comprised indirect damage

¹ The equivalent of approximately 76,300 euros.

resulting from price increases in Slovakia as well as court fees paid in domestic proceedings. The applicant also alleged that his mental and physical health had deteriorated as a result of the difficulties encountered in the course of the proceedings in issue. It was impossible for him to express in terms of money the damage thus suffered.

32. The Government contested these claims.

33. 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, it awards the applicant EUR 4,700 in respect of non-pecuniary damage.

B. Costs and expenses

34. As stated above, the sum of 2,969,200 Slovakian korunas claimed by the applicant included compensation for the costs and expenses.

35. The Government requested that the Court should grant the applicant only compensation for reasonably incurred costs and expenses.

36. 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

37. 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. *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 validity of the building contract;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention as a result of the length of the proceedings concerning the transfer of ownership of apartments;

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 4,700 (four thousand seven hundred euros) in respect of non-pecuniary damage and EUR 700 (seven hundred euros) in respect of costs and expenses, the above sums 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 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