



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

FOURTH SECTION

CASE OF GÁBRIŠKA v. SLOVAKIA

(Application no. 3661/04)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/03/2006

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 Gábriška 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 29 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 3661/04) 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 Stanislav Gábriška ("the applicant"), on 8 January 2004.

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

3. On 20 August 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Senec.

A. Proceedings concerning the applicant's debt

5. On 10 February 1999 a company sued the applicant for a sum of money which he allegedly owed for the lease of his flat and for services provided by the company.

6. On 27 May 1999 the Bratislava III District Court issued a payment order under which the applicant was obliged to pay the equivalent of approximately 1,000 euros to the plaintiff.

7. On 10 June 1999 the applicant challenged the payment order. The case was therefore to be heard by the first instance court in accordance with the relevant provisions of the Code of Civil Procedure.

8. The District Court held hearings on 18 May 2000, on 12 June 2000, on 11 September 2000 and on 9 October 2000. At the last mentioned hearing the plaintiff extended the action.

9. On 27 March 2003 the District Court appointed an expert and asked him to submit an opinion.

10. On 1 December 2003 the judge instructed the court's registry to transmit the file to the expert. The expert received the file on 29 December 2003. He submitted his opinion to the court on 24 February 2004.

11. On 4 May 2004 the District Court decided on the expert's fee. The expert opinion was delivered to the parties on 13 and 14 May 2004 respectively. On 1 June 2004 the applicant submitted his comments on it.

12. Hearings before the District Court were held on 27 September 2004 and on 11 October 2004. A hearing scheduled for 2 December 2004 was adjourned.

13. In May 2005 the applicant informed the Court that there had been no further progress in the case.

B. Constitutional proceedings

14. On 11 March 2003 the applicant filed a complaint about the length of proceedings to the Constitutional Court. He claimed, *inter alia*, 800,000 Slovakian korunas (SKK) in compensation for non-pecuniary damage.

15. On 13 August 2003 the Constitutional Court found that the applicant's right to a hearing without unjustified delay had been violated and ordered the District Court to proceed with the case without further delays. The decision stated that the District Court had remained inactive between 15 June 1999 and 28 January 2000, that is for more than 7 months, and also between 9 October 2000 and 27 March 2003, that is for more than 29 months.

16. The Constitutional Court dismissed the applicant's claim for compensation noting that the applicant had by his conduct considerably contributed to the fact that the dispute had come into being and that the proceedings had been protracted, since in particular he had not regularly paid the sums due and the company therefore had to extend the action. The Constitutional Court ordered the District Court to reimburse the costs related to the constitutional proceedings to the applicant.

II. RELEVANT DOMESTIC LAW

17. 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.

18. 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 the relevant part of which reads as follows:

“1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person’s rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated.” ...

THE LAW

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

19. 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 in its relevant part 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...”

20. The period to be taken into consideration began on 10 February 1999 and has not yet ended. It has thus lasted 6 years and more than 9 months for one level of jurisdiction.

A. Admissibility

21. The Government recalled that the Constitutional Court had acknowledged that the applicant's right to a hearing without unjustified delay had been violated. It had ordered the District Court to proceed with the case without any further delay and the District Court had complied with that order. Thus the applicant obtained an appropriate redress at domestic level and he could no longer claim to be a victim of a violation of Article 6 § 1. With reference to the reasons invoked by the Constitutional Court the Government considered that the refusal to award any just satisfaction to the applicant was justified in the circumstances of the case. Such a refusal was not contrary to the practice of the Court.

22. The applicant disagreed. He maintained, in particular, that further delays in the proceedings had occurred as from 2 December 2004. Furthermore, it was irrelevant from the point of view of the alleged violation of his right to a hearing within a reasonable time whether or not by his conduct he had given rise to the proceedings in issue.

23. The Court recalls that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the question whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004, with further references).

24. In the present case the question arises whether the redress afforded at domestic level on the basis of the facts about which the applicant complains before the Court was adequate and sufficient having regard to the principles governing the Court's awards of just satisfaction as provided for under Article 41 of the Convention.

25. As a rule, the Court has considered it appropriate to award a sum of money in compensation for damage of non-pecuniary nature where an applicant's right to a hearing within a reasonable time was violated. Similarly, it has previously emphasised the importance of a reasonable amount of just satisfaction being awarded in the domestic system for the remedy in question to be considered as effective under the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

26. In view of the above, the Court cannot accept the Government's argument that the Constitutional Court has provided appropriate redress to the applicant in respect of the violation found of his right to a hearing without unjustified delay. The applicant can, therefore, still claim to be a victim within the meaning of Article 34 of the Convention.

27. 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

28. 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).

29. 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).

30. In the present case the Court concurs with the view expressed by the Constitutional Court that there have been unjustified delays imputable to the District Court. As regards the period not covered by the finding of the Constitutional Court, the Court notes that the expert, who had been appointed on 27 March 2003, received the file on 29 December 2003. After the hearing scheduled for 2 December 2004 had been adjourned, the District Court apparently failed to proceed with the case for at least 5 months.

The Court has also taken into consideration the conclusion of the Constitutional Court according to which the proceedings were protracted by the applicant's failure to regularly pay the sums due as a result of which the plaintiff company had to modify its action.

Having examined all the material submitted to it and having regard to its case-law on the subject, the Court concludes 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

31. 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

32. The applicant claimed SKK 1 million¹ in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,800 under that head.

B. Costs and expenses

35. The applicant also claimed SKK 59,750² for the costs and expenses incurred before the Court.

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

37. 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 applicant, who was represented by a lawyer, EUR 1,200 under this head.

C. Default interest

38. 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 3,800 (three thousand eight hundred euros) in respect of non-pecuniary damage and EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, the above

¹ 1 million Slovakian korunas is the equivalent of approximately 25,700 euros.

² The equivalent of approximately 1,500 euros.

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 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President