



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

FOURTH SECTION

CASE OF ŠIMA v. SLOVAKIA

(Application no. 67026/01)

JUDGMENT

STRASBOURG

7 February 2006

FINAL

07/05/2006

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 Šima 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 17 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 67026/01) 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 Jozef Šima ("the applicant"), on 5 February 2001.

2. The applicant was represented by Mr I. K. Komanický. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Kresák, succeeded by Mrs A. Poláčková.

3. On 19 October 2004 the Court decided to communicate the complaints concerning the length of the proceedings and the absence of an effective remedy in that respect 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Mokroluh.

1. Proceedings concerning the claim of 28 August 1990 (the Bardejov District Court file No. 8C 352/92)

5. On 28 August 1990 the applicant and his wife filed an action with the Bardejov District Court. They claimed that the defendant should be prohibited from entering the plots of land in their ownership and from interfering with their right to peacefully enjoy that property. They also requested that an interim measure should be issued. In the action, the plaintiffs stated, *inter alia*, that one of the relevant plots had been expropriated from them by the Bardejov National Committee decision of 29 June 1990 which, however, had not yet become final as the appellate proceedings in this respect were still pending.

6. On 27 April 1991 the court asked the defendant to submit comments on the action. It reiterated the request on 10 May 1991. On 19 December 1991 the court invited the applicant to specify the relevant plots of land.

7. On 18 September 1992 the court held a hearing where it requested the applicant to rectify shortcomings in the action and to submit relevant documents. On 24 September 1992 the applicant submitted his amended action to the court.

8. On 28 September 1992 and on 17 November 1992 respectively the court sent by registered mail the amended action to the defendant for comments. The delivery of the letter failed twice as the defendant was not present at his domicile.

9. On 28 September 1992 the court asked an administrative authority to inform it about expropriation proceedings concerning one of the plots of land. On 30 November 1992 the administrative authority submitted a decision indicating that the appeal of the applicant and of his wife against the expropriation decision had been dismissed on 23 November 1990. The decision on expropriation of the plot of land had thus become final.

10. At a hearing held on 10 December 1992 the applicant challenged the District Court judge. On 27 January 1993 the Košice Regional Court refused to exclude the judge from hearing the case.

11. The court held hearings on 22 February 1993 and on 5 March 1993. On the latter date, the applicant withdrew his request for an interim measure and modified the action in that he claimed that the defendant and his wife should allow him to pass across plots of land.

12. On 1 April 1993 the court appointed an expert. The parties paid an advance on costs of the expert examination.

13. On 24 May 1993 the District Court rejected the action with respect to the applicant's wife and discontinued the proceedings on the applicant's claim. The court also quashed the decision of 1 April 1993 on the appointment of an expert. The applicant appealed on 18 June 1993. The case file was submitted to the court of appeal on 2 August 1993.

14. On 14 September 1993 the Košice Regional Court quashed the District Court decision and remitted the case to the first instance court.

15. At a hearing held on 8 February 1994 the District Court judge considered one of the defendant's statements as a challenge to his impartiality and submitted the case to the Košice Regional Court. On 25 March 1994 the Regional Court held that by the statement in issue the defendant had not challenged the judge and returned the case file to the District Court.

16. The District Court held hearings on 20 May 1994, on 12 September 1994 and on 31 October 1994. On the last mentioned date the applicant submitted an additional claim for restoration of a plot of land. On the same date the District Court granted the request of the advocate, appointed by the applicant as from 20 May 1994, and stayed the proceedings pending the outcome of a set of proceedings brought against the applicant and his wife. Those proceedings concerned an action for restoration of plots of land and were registered under the Bardejov District Court file No. 7C 554/94 (see point 3 below). They ended on 8 May 1996 when the court of appeal upheld the first instance judgment.

17. On 23 January 1997 the District Court inquired whether the dispute in issue had been settled in the meantime. On 5 February 1997 the applicant and his wife replied that no settlement had been reached with the defendants and that they maintained their claims.

18. On 24 October 1997 the court decided to resume the proceedings. On 12 November 1997 it held a hearing in which the applicant modified his claim. On 13 November 1997 the court requested the Bardejov District Office to submit a case file concerning the expropriation proceedings against the applicant. Prior to 4 May 1998 the court urged the District Office to submit the file on five occasions.

19. The District Court held hearings on 10 September 1998 (witnesses proposed by the defendants were heard) as well as on 22 and 30 September 1998.

20. On 30 September 1998 the Bardejov District Court delivered a judgment in which it dismissed the claim concerning the right to pass across a plot of land. It further decided to deal in a separate set of proceedings with the claim for restoration of a plot of land (the Bardejov District Court file No. 8C 1731/98 - see point 2 below). The judgment became final on 20 November 1998.

21. On 17 July 2001 the Bardejov District Court delivered a decision, in the context of the proceedings brought in 1990, by which it returned a sum to the parties which they had paid as an advance on the expert's costs in 1993. The applicant appealed and complained that the District Court had failed to take the expert evidence in question.

22. On 31 January 2002 the Prešov Regional Court dismissed the appeal noting that the applicant lacked standing to file it. The decision became final on 20 January 2003.

2. Proceedings concerning the claim for restoration of a plot of land (the Bardejov District Court file No. 8C 1731/98)

23. Following the Bardejov District Court's decision of 30 September 1998 to separately deal with the applicant's claim for restoration of a plot of land, the new set of proceedings was registered under number 8C 1731/98. On 16 March 2000 the District Court summoned the parties to a hearing scheduled for 26 April 2000. The defendants requested that the hearing should be postponed. The court granted their request.

24. On 16 May 2000 the District Court dismissed the applicant's claim for restoration of the plot of land. The court established, after having heard the parties and examined documentary evidence that the relevant plot of land had not been duly expropriated and had been incorrectly considered as being in State ownership. It had been allocated to the defendants in 1989 who had become its owners in accordance with the relevant law in 1992. The court noted that the applicant should have claimed restitution of the land in question under the Land Ownership Act of 1991 within the time-limit laid down therein.

25. On 1 June 2000 the applicant appealed. He claimed that the first instance judgment was flawed and arbitrary. He requested that the Slovak Republic should also be joined as a defendant in the case as its authorities were liable for the unlawful transfer of the land to the defendants in 1989.

26. On 18 September 2000 the Prešov Regional Court upheld the District Court judgment of 16 May 2000. The court of appeal confirmed that the first instance court had correctly established the relevant facts and had decided in accordance with the relevant law. The Regional Court recalled that the Code of Civil Procedure did not allow a further defendant to join a case at the stage of appeal proceedings. The decision became final on 31 October 2000.

3. Proceedings concerning the claim for restoration of property of 1994 (the Bardejov District Court file No. 7C 554/94)

27. On 23 September 1994 a Roman-Catholic parochial office filed an action against the applicant and his wife claiming restitution of several plots of land. On 5 and 19 October 1994 the court invited the plaintiff to rectify shortcomings in the action. The plaintiff replied in its letters of 19 October 1994 and of 2 November 1994. The court held hearings on 15 and on 29 December 1994.

28. On 29 December 1994 the District Court dismissed the action. The plaintiff appealed on 6 February 1995.

29. On 8 May 1996 the Košice Regional Court upheld the District Court judgment of 29 December 1994. The decision became final on 8 July 1996.

4. *Constitutional proceedings*

30. On 21 June 2004 the applicant filed a complaint with the Constitutional Court alleging, *inter alia*, a violation of Article 6 of the Convention in respect of the Bardejov District Court proceedings 8C 352/92 and 8C 1731/98 – see points 1 and 2 above).

31. On 30 September 2004 the Constitutional Court rejected the complaint for falling short of the statutory requirements. The decision stated, in particular, that the lawyer representing the applicant had not substantiated the complaint despite an explicit request to that effect.

5. *Related proceedings*

32. In 2000 the applicant brought a new set of proceedings against the same defendants challenging their ownership rights in respect of one of the plots of land. These proceedings are apparently still pending.

33. In 2001 the applicant sued the State represented by the Ministry of Justice for damages. He relied on the courts' decisions given in the proceedings concerning his claim for restoration of a plot of land (the Bardejov District Court file No. 8C 1731/98). The final decision in respect of one of the applicant's claims was given on 21 April 2004. The proceedings concerning the outstanding claim are still pending.

THE LAW

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

34. The applicant complained that the length of the proceedings concerning his action of 28 August 1990 had been excessive and that the domestic courts' decisions given in those proceedings were arbitrary. He alleged a violation of Article 6 § 1 of the Convention the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. *Alleged unfairness of the proceedings*

35. The Court notes that the final decision on the applicant's claim for a right to pass across a plot of land was given by the Bardejov District Court on 30 September 1998. Since the application was introduced on 5 February 2001, in this respect the applicant has not complied with the six month time-limit laid down in Article 35 § 1 of the Convention. The fact that the courts subsequently issued a decision on a procedural issue cannot affect the position as regards the complaint about unfairness of the relevant proceedings.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

36. As to the complaint about the arbitrariness of the decisions on the remaining issue, namely the restoration of a plot of land, the Court recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. It is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I).

37. The Court notes that the domestic courts held several hearings where they heard the parties and witnesses and examined relevant documentary evidence. Having regard to the documents before it, the Court finds no appearance of unfairness, within the meaning of Article 6 § 1 of the Convention, in the manner in which the domestic courts dealt with the case in issue.

It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. *As regards the length of the proceedings*

38. In the proceedings complained of the applicant originally sought protection of ownership rights and, after it had been established that the land was in the ownership of different persons, he requested that the defendants should allow him to pass across several plots of land. Those issues were determined in Bardejov District Court proceedings 8C 352/92. On 31 October 1994 the applicant submitted an additional claim for restoration of a plot of land. That claim was subsequently examined in a separate set of proceedings (Bardejov District Court file No. 8C 173/98). In these circumstances, the Court considers it appropriate to separately examine the

length of the above two sets of proceedings related to the applicant's respective claims.

a) Proceedings concerning the claim of 1990, as amended

39. The period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. The proceedings on the merits of the case ended on 30 September 1998. Thus the relevant period lasted 6 years, 6 months and 12 days. During this time the merits of the case were examined twice at first instance and once by the court of appeal. At the applicant's request, the proceedings were stayed, on 31 October 1994, pending the outcome of a different set of proceedings. Those proceedings ended in a decision given on 8 May 1996, that is one and a half years later.

The Court has also noted that, on 17 July 2001, the Bardejov District Court gave an additional decision by which it returned to the parties a sum paid in advance of the costs of an expert. On 31 January 2002 the Prešov Regional Court dismissed the applicant's appeal as such a remedy was not available.

40. The Government recalled that the last decision given in the Bardejov District Court proceedings No. 8C 352/92 became final on 20 January 2003. They argued that the applicant should have sought redress for the alleged violation of his right by means of a complaint under Article 127 of the Constitution enacted with effect from 1 January 2002. They further argued that the length of the proceedings was not contrary to the requirements of Article 6 § 1 of the Convention.

41. The applicant submitted that he could not have used the above constitutional remedy as the final decision on the merits in the first set of proceedings had been given on 30 September 1998. He maintained that the decision mentioned by the Government was only of a procedural nature and that it could not have affected the merits of the case.

42. The Court does not find it necessary to determine whether or not the applicant should have used the remedy invoked by the Government as this part of the application is any event inadmissible for the following reasons.

43. 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).

44. The proceedings were of a certain complexity as the court was required to identify the plots of land and to clarify the ownership rights in their respect. This was partly due to the applicant who had failed to

sufficiently specify his action and who had modified his claims several times.

During the period under consideration, the merits were examined twice at first instance and once by the court of appeal. The District Court held no less than 12 hearings in the case. In addition, the court of higher instance was required to decide on the applicant's request for exclusion of the District Court judge.

At the applicant's request, the proceedings were stayed, on 31 October 1994, pending the outcome of a different set of proceedings. Those proceedings ended in a decision given on 8 May 1996 and the applicant made no particular complaint about their length.

45. The Court has noted that certain delays in the proceedings occurred after the other proceedings had ended and before the District Court resumed the proceedings in the case on 24 October 1997. Having regard to its case-law on the subject and the documents in its possession, it finds, however, that in the instant case the overall length of the period under consideration was not contrary to the "reasonable time" requirement.

46. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) Proceedings relating to the claim of 31 October 1994

47. The applicant filed his claim for restoration of property on 31 October 1994. The proceedings related to that claim ended by the Prešov Regional Court decision given on 18 September 2000. The period under consideration thus lasted 5 years, 10 months and 18 days for two levels of jurisdiction.

48. The Government contended that this part of the application was manifestly ill-founded as the length of the proceedings was not excessive.

49. The applicant disagreed.

50. 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. Merits

51. The Government contended that the proceedings were rather complex and that the domestic courts had had to obtain and examine extensive documentary evidence. The delay between the decision to deal with the claim in issue in a separate set of proceedings and the subsequent hearing was explained by the fact that during that period, the court had prepared the case so that the action could be determined at a single hearing.

52. The applicant argued that his right to a hearing within a reasonable time had been violated.

53. The Court finds that the case was not particularly complex. It notes that the proceedings were stayed, at the applicant's request, on 31 October 1994, pending the determination of a prejudicial question in a different set of proceedings. That issue was determined by a decision given by the court of appeal on 8 May 1996 which took final effect on 8 July 1996. For this reason, the District Court in Bardejov could not proceed with the applicant's claim in issue for one year and a half.

54. However, the District Court resumed the proceedings in the case only 15 months later, on 24 October 1997. On 30 September 1998 the Bardejov District Court decided to deal in a separate set of proceedings with the claim in issue. The judge took a step in the case on 16 March 2000, that is after more than 15 months, when it summoned the parties to a hearing scheduled for 26 April 2000. In the absence of any further specification, the Court cannot accept the Government's argument according to which such a long period of time was necessary to prepare the case so that the point at issue could be determined at a single hearing.

55. Having examined all the material submitted to it, the Court considers that, because of the two periods identified above, the length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

56. The applicant complained that he had been deprived of his possessions as several plots of land had been taken away from him unlawfully and as the courts had not granted his claims. He relied on Article 1 of Protocol No. 1 the relevant part of which provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

57. In its judgment of 16 May 2000 the District Court in Bardejov dismissed the applicant's claim for restoration of a plot of land. The court established, after having heard the parties and examined documentary evidence, that the relevant plot of land had not been duly expropriated and had been incorrectly considered as being in State ownership. It had been allocated to the defendants in 1989 who had become its owners in accordance with the relevant law in 1992. The applicant should have

claimed restitution of the land in question under the Land Ownership Act of 1991 within the time-limits mentioned therein. On 18 September 2000 the Prešov Regional Court upheld the first instance judgment.

58. The Court finds no indication that the domestic court's above conclusion was unlawful or otherwise contrary to the applicant's rights under Article 1 of Protocol No. 1 which, in addition, does not guarantee a right to acquire property (*Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

It follows that this complaint is inadmissible as being manifestly ill-founded and incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

59. The applicant complained that he had been discriminated against with reference to his complaints under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1. He relied on Article 14 of the Convention which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Court has examined this complaint but finds, to the extent that it has been substantiated and falls within its competence, that it does not disclose any appearance of a violation of the Convention or its protocols.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

60. The applicant alleged that he had no effective remedy at his disposal in respect of his above complaints. He relied on Article 13 of the Convention which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

1. As regards the alleged absence of an effective remedy in respect of the complaint under Article 6 § 1 of the Convention about the length of the proceedings concerning the claim of 31 October 1994

61. The Government submitted that this complaint was inadmissible as the relevant complaint under Article 6 § 1 was manifestly ill-founded.

62. The applicant disagreed.

63. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. As regards the alleged absence of an effective remedy in respect of the remaining complaints

According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

64. The Court has above found that the applicant's remaining complaints under Article 6 § 1 as well as his complaints under Article 1 of Protocol No. 1 and under Article 14 were inadmissible. For similar reasons, the applicant did not have an "arguable claim" and Article 13 is therefore inapplicable to the relevant part of his case.

65. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

B. Merits

66. The Government argued that a separate examination of the complaint under Article 13 relating to the length of the proceedings on the applicant's claim of 31 October 1994 was not called for.

67. The applicant maintained that there had been a violation of Article 13 taken together with Article 6 § 1 of the Convention.

68. The Court notes that the proceedings concerning the claim of 31 October 1994 ended by a decision which took final effect on 31 October 2000. At that time the applicant had no effective remedy at his disposal in respect of the alleged excessive length of the proceedings

(*Bzdúšek v. Slovakia*, no. 48817/99, § 27, 21 June 2005, with further reference).

69. In these circumstances, the Court concludes that there has been a violation of Article 13 of the Convention in respect of the complaint under Article 6 § 1 about the length of the proceedings concerning the claim of 31 October 1994.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 353,400 Slovak korunas (SKK) in respect of pecuniary damage and SKK 150,000¹ in respect of non-pecuniary damage.

72. The Government contested these claims.

73. 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 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant also claimed SKK 30,000² for the costs and expenses incurred before the domestic authorities and before the Court.

75. The Government contested the claim.

76. The Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 250 under this head.

C. Default interest

77. 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.

¹ SKK 150,000 is the equivalent of approximately 3,900 euros.

² The equivalent of approximately 790 euros.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention concerning the excessive length of the proceedings related to the claim of 31 October 1994 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 250 (two hundred and fifty euros) in respect of costs and expenses, to be converted into the currency of the respondent State at a 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President