



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

FOURTH SECTION

CASE OF ŠEBEKOVÁ AND HORVATOVIČOVÁ v. SLOVAKIA

(Application no. 73233/01)

JUDGMENT

STRASBOURG

14 February 2006

FINAL

14/05/2006

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 Šebeková and Horvatovičová 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 24 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 73233/01) 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 two Slovakian nationals, Ms Katarína Šebeková and Ms Edita Horvatovičová ("the applicants"), on 16 June 2001.

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

3. On 26 January 2005 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 applicants were born in 1955 and 1959 respectively and live in Bratislava.

5. The applicants own a residential house. Two flats in the house are occupied under a lease by families P. and S. respectively. The applicants sought a judicial ruling pursuant to Article 711 § 1 of the Civil Code authorising the termination of the leases.

6. On 27 May and 16 December 1993, respectively, the termination of the leases was authorised by the Bratislava I District Court (then *Obvodný súd*, at present *Okresný súd*) and, on appeal, by the Bratislava Regional

Court (then *Mestský súd*, at present *Krajský súd*). The leases were to expire three months after the month in which the ruling became final and binding. Under Article 711 § 2 of the Civil Code the defendants were entitled to “alternative accommodation” and were ordered to vacate the flats at issue within 15 days after such accommodation was provided to them.

7. The judgment terminating the leases became final and binding on 12 March 1994. Consequently, the leases expired on 30 June 1994.

8. On 6 July and 31 October 1994 the applicants applied to the District Court for enforcement of the judgment under the general provisions of the Code of the Civil Procedure against, respectively, family S. and family P.

9. On 7 November 1995 the applicants restated their application. They argued that the defendants had refused to accept the flats where the applicants were currently living as the alternative accommodation to which they were entitled.

10. On 5 December 1995 the District Court issued two separate warrants for enforcement. The first warrant was issued in favour of the first applicant against family S. and authorised the moving of S. to the first applicant’s current flat. The second warrant was issued in favour of the second applicant and authorised the moving of P. to her current flat.

11. On 19 December 1995 the defendants challenged the warrants by appeals to the Regional Court arguing that the alternative accommodation offered to them by the applicants was not adequate.

12. In February and May 1996, respectively, the District Court repeatedly invited the applicants to submit documentary evidence.

13. In October 1996 the defendants challenged the Regional Court judges involved in the determination of their appeals for bias. In December 1996 the Supreme Court dismissed the challenge.

14. On 27 March 1997 the Regional Court quashed the warrants of 5 December 1995 finding that the District Court had failed to examine the defendants’ objections as to the adequacy of the alternative accommodation. The matter was remitted to the District Court for a new determination.

15. On 12 November 1997 the Environment Department (*odbor životného prostredia*) of the Bratislava I District Office (*Okresný úrad*) ordered that the applicants carry out maintenance work on the roof of the house.

16. On 4 December 1997 the District Court issued new warrants against S. and P. respectively. It formally ordered the enforcement. However, it left the determination of the practical modalities of the enforcement for later, once the applicants had secured adequate alternative accommodation for S. and P. The applicants’ appeal against the warrants was unsuccessful.

17. On 28 January 1999 the District Office imposed a fine of 2,000 Slovakian korunas (SKK)¹ on the first applicant on the ground that she had failed to comply with the order of 12 November 1997.

18. In October 1999 the District Court invited the applicants' lawyer to submit evidence that adequate alternative accommodation had been secured for the defendants.

19. On 29 November 1999 the District Court enquired of the owner of the flat where the first applicant was living at that time, the Bratislava Ružinov Municipal Office (*Miestny úrad*), whether it would consent to moving one of the defendants to that flat. On 22 December 1999 the Municipal Office refused such consent.

20. By two separate decisions of 31 January 2000 the District Court ruled that enforcement of the warrants of 4 December 1997 was not permissible (*neprípustný*). The first decision concerned the first applicant and was based on the ground that the owner of the alternative flat would not allow S. to move in. The second decision concerned the second applicant and was based on the argument that the alternative accommodation offered by her to P. did not meet the criteria of "adequacy". On 18 February 2000 the applicants challenged the ruling in an appeal. They disputed the legal definition of "adequate alternative accommodation" applied by the District Court and the factual conclusions at which it had arrived.

21. On 27 April 2000 the Regional Court quashed the decisions of 31 January 2000 on grounds of several procedural flaws at first instance. Among other things, the Regional Court found that it was illegal for the District Court to determine the matter by two separate decisions, each concerning only one of the applicants, given that the flats in issue were in the applicants' co-ownership.

22. On 27 February 2001 the Supreme Court declared inadmissible P.'s "appeal on points of law" against the decision of 27 April 2000 as no such remedy was available.

23. In October 2001 the District Court appointed a buildings expert to draw up a report on the suitability of the alternative accommodation offered by the applicants. The report was submitted on 3 December 2001.

24. On 25 September and 1 October 2002, respectively, the applicants commissioned a judicial enforcement officer (*súdny exekútor*) to enforce the judgment against P. and S. terminating the leases under special legislation - the Enforcement Act (Law no. 233/1995 Coll., as amended).

25. In the meantime the applicants withdrew their petitions of 1994 for enforcement by the District Court under the Code of the Civil Procedure. Consequently, on 18 October 2002, that enforcement was discontinued.

1. SKK 2,000 is an equivalent of approximately 50 euros (EUR)

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

26. Article 48 § 2 provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

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

28. 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 (for further details see, e.g., *Bánošová v. Slovakia* (dec.), no. 38798/97, 27 April 2000).

29. As from 1 January 2002 the Constitution has been amended in that, *inter alia*, natural and legal persons can complain (*sťažnosť*) 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, ECHR 2002-IX).

B. The Constitutional Court Act

30. The implementation of the amended Article 127 of the Constitution is set out in more detail in Sections 49 to 56 of Constitutional Court Act (Law no. 38/1993 Coll., as amended). The relevant amendment (Law no. 124/2002 Coll.) was published in the Collection of Laws and entered into force on 20 March 2002.

31. Section 53 (3) provides that a constitutional complaint can be filed within a period of two months from the date on which the decision in question has become final and binding or on which a measure has been notified or on which a notice of other interference has been given. As

regards the measures and other interferences, the above period commences when the complainant could have become aware of them.

C. The Constitutional Court's Practice

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

33. In proceedings file number I. ÚS 145/02 the Constitutional Court examined a complaint by an individual under Article 127 of the Constitution of delays in proceedings in his civil action of 1995. The action was partially granted at first instance in 1999. That judgment was however quashed on appeal in March 2002 and the matter was remitted to the first instance court where it was still pending.

In a judgment (*nález*) of 6 June 2003 the Constitutional Court found that there had been unjustified delays in the proceedings before the first instance court and awarded the complainant non-pecuniary damages. The Constitutional Court also examined the phase of the proceedings before the court of appeal but found no unjustified delays.

34. In proceedings file number III. ÚS 123/02 the Constitutional Court examined a complaint by an individual under Article 127 of the Constitution of delays in proceedings in a civil action against him. The action was lodged in 1993 with a District Court which, shortly after, transferred it to a Regional Court for reasons of jurisdiction. The action was then pending at the Regional Court until 1998 when the Supreme Court ruled that it should be determined at first instance by the District Court. The action was eventually withdrawn and the proceedings were consequently discontinued by a final decision of January 2003.

In a judgment of 6 June 2003 the Constitutional Court found that there had been unjustified delays in the proceedings both before the District Court and the Regional Court. The complainant was awarded non-pecuniary damages to be paid by both courts.

D. The State Liability Act of 1969

35. Until 1 July 2004 the sphere of State liability for damage caused by wrong decisions and official misconduct was regulated by the State Liability Act of 1969 (Law no. 58/1969 Coll. - *Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom*).

36. Under section 18 (1) of that Act the State was liable for damage caused by the wrongful acts of public officials in the exercise of their duties. An award of compensation could be made if the plaintiff showed that he or she had suffered damage as a result of misconduct on the part of a public authority, quantified its amount, and established a causal link between the damage and the misconduct in question.

THE LAW

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

37. The applicants complained that the length of the enforcement proceedings in their applications of 1994 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...”

38. The period to be taken into consideration began on 6 July 1994 and ended on 18 October 2002. It thus lasted 8 years and over 3 months for 2 levels of jurisdiction.

A. Admissibility

39. Relying on the Constitutional Court judgments in the proceedings, file numbers I. ÚS 145/02 and III. ÚS 123/02, the Government objected that the applicants had not exhausted domestic remedies as required under Article 35 § 1 of the Convention. In their view, the applicants could have challenged the overall length of their enforcement proceedings by means of a complaint under Article 127 of the Constitution, effective from 1 January 2002, lodged in accordance with the applicable procedural requirements.

40. The applicants maintained that they had complied with the exhaustion rule pursuant to Article 35 § 1 of the Convention.

41. The Court observes first of all that the proceedings in question enjoyed the guarantees afforded under Article 6 § 1 of the Convention (see *Hornsby v. Greece*, no. 18357/91, § 40, ECHR 1997-II).

42. In view of the rather divergent Constitutional Court practice as regards the examination of the overall length of proceedings which took place before several authorities, the present case raises a question whether the complaint under Article 127 of the Constitution was a remedy which was sufficiently certain not only in theory but also in practice at the relevant

time and, in particular, which offered the applicants reasonable prospects of success as envisaged by Article 35 § 1 of the Convention (see *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX).

The Court however finds that it is not necessary to rule on this point as the applicants were in any event not required to exhaust this remedy for the following reasons.

43. The application was introduced on 16 June 2001. At that time it was the Court's general practice to assess whether domestic remedies had been exhausted with reference to the date on which the application was lodged. 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 the enforcement in the present case had already been discontinued.

In the above circumstances, the Government's objection relating to non-exhaustion of domestic remedies cannot be upheld (see *Vujčik v. Slovakia*, no. 67036/01, § 50, 13 December 2005).

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. Merits

45. 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).

46. 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).

47. Having examined all the material submitted to it, the Court considers that no arguments have been put forward 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 the proceedings 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 TO THE CONVENTION

48. The applicants further complained that during and as a consequence of the excessively long and ineffective enforcement proceedings they had been prevented from the peaceful enjoyment of their property – the flats at issue. They relied on Article 1 of Protocol No. 1 which provides that:

“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.”

Admissibility

49. The Government argued that the applicants had failed to exhaust domestic remedies, as required under Article 35 § 1 of the Convention, in that they had not asserted their rights under Article 127 of the Constitution and under the State Liability Act of 1969.

50. The applicants disagreed.

51. The Court observes that, in the present case, the families P. and S. were ordered to vacate the flats at issue after alternative accommodation of certain standard was provided to them. The subject-matter of the enforcement proceedings was *inter alia* to determine whether the accommodation offered by the applicants was up to that standard. As this issue has actually never been determined, the applicants’ legal position remained uncertain (see, *a contrario*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V).

52. The Court further observes that what lies at the heart of this complaint is the material loss that the applicants claim to have incurred as a result of the improper conduct of the enforcement.

There is however no indication that the applicants would be unable to claim compensation in respect of such material damage under section 18 (1) of the State Liability Act of 1969 or that such claim would be bound to fail (see *Csepyová v. Slovakia* (dec.), no. 67199/01, 8 April 2003).

53. Thus, even assuming that the applicants’ legal position as regards the flats in question in the specific circumstances of the present case amounted to “property” within the meaning of the Article invoked, the complaint made in reliance on it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicants claimed SKK 1,680,000¹ each in respect of pecuniary damage and SKK 500,000² each in respect of non-pecuniary damage. They made no claim in respect of costs and expenses.

56. The Government contested these claims.

57. With reference to the finding of the violation of the applicants’ right under Article 6 § 1 of the Convention to a hearing within a reasonable time (see paragraph 47 above) and in so far as the claim has been substantiated, the Court does not discern any pecuniary damage. On the other hand, it considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of them 5,600 (EUR) euros under that head.

B. 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 complaint concerning the excessive length of the proceedings 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*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in

1. SKK 1,680,000 is an equivalent of approximately EUR 43,500

2. SKK 500,000 is an equivalent of approximately EUR 12,950

accordance with Article 44 § 2 of the Convention, EUR 5,600 (five thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Slovakian korunas 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 amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President