



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

FOURTH SECTION

CASE OF JENČOVÁ v. SLOVAKIA

(Application no. 70798/01)

JUDGMENT

STRASBOURG

4 May 2006

FINAL

04/08/2006

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 Jenčová v. Slovakia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 4 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 70798/01) 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, Mrs Elena Jenčová ("the applicant"), on 14 May 2001.

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

3. On 5 October 2004 the Court decided to communicate the application 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 1952 and lives in Bratislava.

5. On 20 June 1997 the applicant claimed a sum of money (the equivalent of approximately 500 euros) from an individual before the Bratislava III District Court.

6. On 27 August 1997 the District Court issued a payment order under which the debtor was obliged to pay the sum in issue to the applicant. The payment order was served on the applicant and on the defendant on 9 September 1997. It became final and binding on 25 September 1997.

7. On 20 April 1998 the applicant requested the Bratislava III District Court to enforce its order.

8. On 15 May 1998 the court asked the applicant to submit further information as regards her enforcement request and to pay a court fee. The applicant replied on 25 May 1998. In particular, she proposed that the sum in issue should be obtained by selling movable property from the premises of the debtor's company.

9. On 28 May 1998 the District Court granted the applicant's request and ordered enforcement of the sum in question by means of selling the defendant's movables.

10. On 6 August 1998 a court bailiff visited the domicile of the defendant for the purpose of serving him with the District Court's decision of 28 May 1998 and making a list of his movables. The action failed as the bailiff established that the defendant had been absent from his domicile for more than two years.

11. On 7 August 1998 the court asked the Central Register of Citizens and the police for information about the defendant's domicile. On 19 August 1998 and on 7 September 1998 the court received replies according to which the defendant had not been present at his domicile for two years and his whereabouts were unknown.

12. On 7 September 1998 the court unsuccessfully requested information about the defendant's whereabouts from the police and the Central Register of Prisoners.

13. On 27 October 1998 the District Court delivered a decision declaring the enforcement of its order by selling the defendant's movable property inadmissible on the ground that the whereabouts of the defendant were unknown. The applicant was notified of the court's decision on 12 November 1998. The service of that decision on the defendant failed.

14. On 24 November 1998 the applicant appealed against the District Court's decision of 27 October 1998 and indicated the place where the defendant was staying.

15. On 10 December 1998, on 13 January 1999 and on 16 February 1999 respectively the court sent by registered mail the applicant's appeal to the defendant. The delivery failed as the defendant was present neither at his domicile nor at the address indicated by the applicant. On 10 March 1999 the letter was finally returned to the court as undeliverable.

16. In April and November 2000 the applicant requested the District Court to proceed with the case. On 19 February 2001 she complained about delays in the proceedings to the Ministry of Justice.

17. On 3 November 2000 the case file was transferred to the Bratislava Regional Court for a decision on the applicant's appeal.

18. On 21 February 2001 the Regional Court upheld the District Court's decision of 27 October 1998.

19. On 18 May 2001 the Bratislava III District Court discontinued the enforcement proceedings. On 28 June 2001 the District Court appointed a guardian to the defendant as his whereabouts were unknown. The District Court's decision of 18 May 2001 was delivered to the guardian and it became final on 20 July 2001.

THE LAW

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

20. The applicant complained that the length of the enforcement 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..."

21. The Government contested that argument.

22. The period to be taken into consideration began on 20 April 1998 and ended on 18 May 2001. It thus lasted 3 years and 29 days at two levels of jurisdiction.

A. Admissibility

23. 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

24. The Government contended that there had been no particular delays in the enforcement proceedings imputable to the Slovak authorities except for the period when the District Court had attempted to serve the applicant's appeal on the defendant. They pointed out that the applicant had contributed to the length of the proceedings as she had appealed against the decision declaring the enforcement by selling the defendant's movable property inadmissible although it had been then obvious that the defendant had not stayed at his address for two years and that it would thus have been difficult for the court to find him for the purpose of selling his movable property. They also recalled that the applicant had insisted on enforcement by means

of selling the defendant's movable property and she had not proposed any other means of enforcement.

25. The applicant disagreed with the arguments of the Government. She submitted, in particular, that she had known the situation of the debtor which did not permit the recovery of the debt by other means of enforcement than that which she had suggested. Furthermore, the sum could have been obtained by selling material stored in the debtor's company, but the District Court had disregarded her request to that effect.

26. 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).

27. The enforcement proceedings under consideration were not complex. The Court accepts the Government's argument that their length was mainly due to the fact that it had been impossible to establish the whereabouts of the debtor. It considers that by her behaviour the applicant did not contribute in a significant manner to the length of the proceedings.

28. As to the conduct of the domestic courts, more than 19 months elapsed between 10 March 1999, when the letter sent to the defendant by registered mail was returned to the District Court as being undeliverable, and 3 November 2000, when the District Court transferred the case file to the Regional Court for appellate proceedings. No explanation has been provided for such a delay. The Court considers that such a delay is incompatible with the reasonable time requirement in the circumstances of the case notwithstanding that the proceedings as a whole cannot be qualified as being particularly lengthy.

29. There has accordingly been a breach 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 52,775 Slovak korunas (SKK) in respect of pecuniary damage and SKK 100,000¹ in respect of non-pecuniary damage.

¹ SKK 100,000 is the equivalent of approximately 2,670 euros.

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 700 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed SKK 34,656² for the costs and expenses incurred before the domestic courts and before the Court. That sum comprised compensation for time spent by her on studying the relevant provisions of the Convention and domestic law (SKK 34,000), court fee paid on 25 May 1998 (SKK 390) and postal expenses relating to the correspondence with the Court (SKK 266).

35. The Government contested the claim with the exception of the last mentioned item.

36. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 awards the applicant, who was not represented by a lawyer, the sum of EUR 50 in respect of incidental expenses related to the proceedings before it.

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. *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

² The equivalent of approximately 920 euros.

Article 44 § 2 of the Convention, EUR 700 (seven hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses, 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 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 4 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President