



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

FOURTH SECTION

CASE OF MAGURA v. SLOVAKIA

(Application no. 44068/02)

JUDGMENT

STRASBOURG

13 June 2006

FINAL

13/09/2006

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 Magura v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 23 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 44068/02) 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 Michal Magura (“the applicant”), on 22 November 2002.

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

3. On 30 March 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1946 and lives in Košice.

5. On 22 October 1997 the applicant’s employer sent him a notice of termination of his employment with immediate effect for an alleged serious breach of work discipline.

A. Proceedings concerning the applicant's dismissal

6. On 9 January 1998 the applicant challenged his dismissal before the Košice II District Court (*Okresný súd*).

7. On 25 November 1998 the District Court decided the case and on 27 May 1999 the Košice Regional Court (*Krajský súd*) quashed its judgment on appeal. The case was remitted to the District Court for re-examination.

8. On 9 February 2000 the District Court decided the case again and on 22 June 2000 the Regional Court again quashed its judgment on appeal. It was held that the District Court had failed to establish the relevant facts adequately and that its conclusions were therefore premature. The case was remitted to it for re-examination.

9. On 29 September 2000 the District Court judge in charge of the lawsuit requested that the Regional Court remove her from the case as she felt biased as a result of the applicant's written submission of 25 March 2000 in which he had expressed doubts as to her impartiality in a gross and offensive manner.

10. On 30 November 2000 the Regional Court disqualified the above District Court judge from dealing with the case and on 11 January 2001 it was assigned to a new judge. As the second judge later ceased to be a judge, on 8 January 2002 the case was assigned to a third judge.

11. On 2 December 2002 the applicant extended his action by claiming also compensation in respect of wages lost as a consequence of his dismissal.

12. On 6 March 2003 the District Court ruled that the applicant's claim for lost wages necessitated the taking of further evidence and ruled that it would be determined in a separate set of proceedings which was later opened under a new file number (see below). At the same time, the District Court ruled that the termination of the applicant's employment was void.

13. On 22 October 2003 the Regional Court upheld the judgment of 6 March 2003 on the defendant's appeal. No further appeal was available and the ruling concerning the validity of the applicant's dismissal became final and binding on 18 December 2003.

14. In the above part of the proceedings the District Court held 8 hearings whereas the Regional Court held 3.

B. Proceedings concerning lost wages

15. On 30 April 2003 the applicant supplemented his claim for lost wages.

16. The District Court heard the case on 2 June and 27 June 2005. Following the latter hearing, on the same day, it dismissed the claim.

17. On 15 August 2005 the applicant challenged the judgment of 27 June 2005 by an appeal which is still pending.

C. Constitutional complaints

18. On 6 March 2002 the applicant lodged a complaint about the length of his proceedings with the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution, as in force from 1 January 2002. He sought an order that the District Court proceed with his action and pay him 200,000¹ Slovakian korunas (SKK) by way of just satisfaction in respect of his non-pecuniary damage.

19. On 27 March 2002 the Constitutional Court declared the complaint admissible.

20. On 15 October 2002 the Constitutional Court found that in the proceedings concerning the validity of the applicant's dismissal the District Court had violated his right under Article 48 § 2 of the Constitution to a hearing "without unjustified delay", and his right under Article 6 § 1 of the Convention to a hearing "within a reasonable time". It found that the subject-matter of the proceedings was not of a particular complexity; that the applicant's conduct had been active and cooperative; and that there was an unjustified period of inactivity on the part of the District Court from 10 January 2001 to 23 September 2002. The Constitutional Court ordered that the District Court proceed with the matter without delays and pay the applicant SKK 15,000² by way of just satisfaction for his non-pecuniary damage. It determined this amount "on an equitable basis" referring to Article 41 of the Convention and the practice of the European Court of Human Rights. It took into account the "circumstances of the case" and pointed out that just satisfaction was awardable in respect of non-pecuniary damage only and that it did not have the function of affording redress in respect of possible pecuniary damage.

21. On 28 April 2005 the applicant lodged a fresh constitutional complaint. He completed it on 30 May 2005 in that he contested unjustified delays in the proceedings concerning the validity of the termination of his employment and the lost wages and claimed SKK 50,000³ in compensation for his non-pecuniary damage.

22. On 29 June 2005 the Constitutional Court declared the complaint admissible, having interpreted it as being aimed at the part of the proceedings after 2 December 2002, which concerned the claim for lost wages.

¹ SKK 200,000 is equivalent to approximately 5,250 euros (EUR).

² SKK 15,000 is equivalent to approximately EUR 380.

³ SKK 50,000 is equivalent to approximately EUR 1,300.

23. On 5 October 2005 the Constitutional Court found that in the given part of the proceedings the District Court had violated the applicant's right to a hearing "without unjustified delay" and "within a reasonable time". The Constitutional Court ordered that the District Court proceed with the matter without delays and awarded the applicant SKK 20,000¹ in just satisfaction for his non-pecuniary damage. The applicant was also awarded the reimbursement of his legal costs.

In the Constitutional Court's view the matter was not legally or factually complex and no delays were imputable to the applicant. However, the District Court was inactive without any justification between 25 November 2003 and 6 April 2005.

THE LAW

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

24. 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 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..."

25. The period to be taken into consideration began on 9 January 1998 when the applicant challenged the validity of the termination of his employment. The relevant period has not yet ended. It has thus lasted more than 8 years and 3 months for two levels of jurisdiction.

26. It is however noted that the applicant substantially extended his action by claiming also compensation in respect of lost wages at a relatively advanced stage of the proceedings, on 2 December 2002. This extension in fact constituted a new subject-matter of the proceedings which is now being formally determined in a separate set of proceedings. In the meantime, the dispute concerning the termination of the applicant's employment had already been resolved by a final decision of 22 October 2003.

27. As the validity of the termination of the applicant's employment and the lost wages are closely interconnected, the Court finds that their judicial determination is to be considered as one matter for the purposes of Article 6 § 1 of the Convention. The factors mentioned in paragraph 26 above will be taken into consideration in the context of merits of the complaint and Article 41 of the Convention.

¹ SKK 20,000 is equivalent to approximately EUR 520.

A. Admissibility

1. *Exhaustion of domestic remedies*

28. The Government argued that the applicant failed to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention in that he had failed to assert his complaint of the length of the proceedings, in so far as it concerned the period after the Constitutional Court's judgment (*nález*) of 15 October 2002, by way of a repeated complaint under Article 127 of the Constitution.

29. In his observations of 16 August 2005, in reply to those by the Government, the applicant informed the Court that he had in fact availed himself repeatedly of the said remedy (see paragraphs 21 and 23 above).

30. It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

2. *Victim status*

31. The Government argued that the applicant could no longer claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time as regards the period that had already been examined by the Constitutional Court. They pointed out that the Constitutional Court had expressly acknowledged the infringement of the applicant's right of which he complained before the Court and had provided the applicant with preventive and compensatory redress. The Government considered this redress adequate and sufficient and maintained that it was compatible with the relevant principles and practice of both the Constitutional Court and the Court.

32. The applicant considered the amount of the just satisfaction obtained at the domestic level inadequate in view of the circumstances.

33. The Court observes that that in the present case the applicant's status as a victim in the Convention meaning depends on whether the redress afforded to him at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case law (see, most recently, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

34. The Court notes that the Constitutional Court awarded the applicant on 15 October 2002 the equivalent of approximately 380 euros (EUR) and on 5 October 2005 the equivalent of approximately EUR 520 in respect of his non-pecuniary damage. These amounts together are less than 20 % of what the Court generally awards in similar Slovakian cases. This factor in itself leads to a result that the amount is manifestly unreasonable having regard to the Court's case-law. The redress obtained by the applicant at the

domestic level was thus insufficient (see *Scordino (no. 1)*, cited above, §§ 214-5). The applicant can accordingly still claim to be a “victim” of a breach of the “reasonable time” requirement.

3. *Other aspects of admissibility*

35. 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

36. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

37. 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).

38. Having examined all the material submitted to it including the fact that the overall length of the proceedings was to certain extent affected by the applicant’s late submission of his claim for lost wages, the Court considers that the Government have not put forward any fact or argument 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed SKK 100,000 in respect of non-pecuniary damage.

41. The Government contested the claim.

42. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to the Court's case-law on the subject (see the recapitulation of the relevant principles and, *mutatis mutandis*, their application in *Scordino (no. 1)*, cited above, §§ 267-272), the specific circumstances of the present case (see paragraph 26 above) and the fact that the applicant had already obtained some just satisfaction under the Constitutional Court's judgments of 15 October 2002 and 5 October 2005, the Court awards him EUR 1,800 under that head.

B. Costs and expenses

43. The applicant also claimed SKK 2,000 for the costs and expenses incurred before the Court.

44. The Government had no objections in respect of the claim.

45. 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 that the sum claimed should be awarded in full, being equivalent to EUR 50.

C. Default interest

46. 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 1,800 (one thousand eight

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 13 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President