



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

FOURTH SECTION

CASE OF SIKA v. SLOVAKIA

(Application no. 2132/02)

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 Sika 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 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. 2132/02) 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 Vladimír Sika (“the applicant”), on 27 December 2001.

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

3. On 10 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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 Trnava.

A. Civil action

5. On 30 June 1993 the applicant brought a civil action against his neighbour, Mr P., in the Trenčín District Court (*Okresný súd*). He

maintained that in 1991 P., with his truck, had damaged the applicant's fence. He sought damages and an order that P. repair the fence and refrain from using the road adjacent to it.

6. As his submissions were unclear, the applicant was summoned four times for an informative interview; invited to state his claims in accordance with the applicable procedural requirements; and requested to pay the court fee. In response, the applicant twice restated his action and paid the court fee on 25 August, 25 October and 16 November 1993, respectively.

7. The hearing held on 16 December 1993 was adjourned with a view to obtaining an expert report concerning the damage. The report was filed on 18 April 1994.

8. Another hearing was called for 13 May 1994 but it had to be adjourned as the applicant did not appear.

9. On 30 May 1994 the applicant and P. reached a friendly settlement of the case before the District Court in which P. agreed to repair the fence.

10. On 30 May 1994, by a separate decision, the District Court ruled on the fee to be paid to the expert for his report. On 15 December 1994 the Bratislava Regional Court (*Krajský súd*) upheld this decision on the applicant's appeal.

B. Enforcement proceedings

11. On 12 January 1995 the applicant lodged a petition with the District Court for the judicial enforcement of the settlement, arguing that the way in which P. had repaired the fence did not comply with the settlement.

12. On 10 August 2000 the District Court dismissed the petition, finding that P. had repaired the fence properly.

13. On 30 November 2001, on the applicant's appeal, the Trenčín Regional Court quashed the decision of 10 August 2000 and remitted the matter to the District Court for re-examination. It found that the District Court had failed to establish the relevant facts adequately and that the evidence before it was not sufficient to justify the conclusion it had drawn.

14. On 9 December 2003 the District Court appointed a construction expert to inspect the site and assess whether or not there had been compliance with the settlement. The expert filed his report on 27 January 2004.

15. On 29 January 2004, by three separate decisions, the District Court again dismissed the applicant's petition for judicial enforcement of the settlement; ruled that the applicant did not qualify for an exemption from the obligation to pay the court fee; and determined the amount of the fee to be paid by the State to the expert for his report. As to the merits, on the basis of the expert report the District Court concluded that P. had fulfilled his undertakings and that there was no cause for enforcement.

16. On 19 February 2004 the applicant challenged the above mentioned decisions of 29 January 2004 by three separate appeals. As to the merits, he argued that the netting used by P. was not the same as the original, and that P. had failed to paint it.

17. On 30 June 2004 the Regional Court upheld all three decisions of 29 January 2004 fully endorsing the factual findings and conclusions of the District Court.

C. Constitutional complaint

18. The applicant challenged the length of the proceedings in the above matter by a complaint under Article 127 of the Constitution to the Constitutional Court (*Ústavný súd*). In the text of the complaint, the applicant impugned the whole length of the proceedings. However, in the object of the complaint, as expressed in a standardised and prescribed form, the applicant formally challenged the enforcement phase of the proceedings only and claimed 200,000 Slovakian korunas¹ (SKK) in compensation for his non-pecuniary damage.

19. On 14 January 2004 the Constitutional Court declared the complaint admissible and granted the applicant free legal aid.

20. On 29 April 2004 the Constitutional Court found that, in the enforcement proceedings, the District Court had violated the applicant's 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 further awarded the applicant SKK 15,000² by way of just satisfaction in respect of his non-pecuniary damage and ordered the reimbursement of his legal costs.

The Constitutional Court found no justification for the total length of the proceedings in the complexity of the case or the conduct of the parties. Moreover, it found that the District Court had been inactive without any justification from 12 January 1996 to 25 June 1997, from 20 August 1997 to 24 September 1999, and from 18 March 2002 to 9 December 2003, a total of 5 years and 2 months.

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

² SKK 15,000 is equivalent to approximately EUR 400.

THE LAW

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

21. 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...”

A. Admissibility

1. Period to be taken into consideration

22. The Government contended that the period to be taken into consideration began no earlier than 12 January 1995 when the applicant lodged his petition for enforcement. They considered that the enforcement stage of the proceedings was an autonomous procedure which had to be viewed separately and without a reference to the procedure that had preceded it. They maintained that neither at the domestic level nor before the Court did the applicant actually challenge the length of the court proceedings, as opposed to the enforcement proceedings.

23. The applicant emphasised that the problem with his neighbour concerning the fence had started in 1991 and argued that, since then, the authorities had treated it inefficiently and there had been unjustified delays in the procedure.

24. The Court observes that the applicant initiated the “determination” of his “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention by his civil action of 30 June 1993. This action eventually led to a friendly settlement of 30 May 1994. He then, on 12 January 1995, initiated proceedings for judicial enforcement of that settlement which ended with a final decision of the Regional Court of 30 June 2004.

25. The Court reiterates that execution of a judgment given by any court is to be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention (see, for example, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40). This principle has been found applicable in cases concerning the length of proceedings (see, for example, the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20, respectively).

26. The Court observes that neither in his complaint to the Constitutional Court nor in his submissions to the Court has the applicant raised any specific complaints in respect of the length of the proceedings in his action. His objections appear to concern the enforcement stage of the proceedings. The applicant has nevertheless made a clear reference to his action both in his constitutional complaint and before the Court. In these circumstances, the Court finds that the enforcement proceedings cannot be dissociated from the action and that the proceedings are to be examined in their entirety.

27. The period to be taken into consideration thus began on 30 June 1993 and ran until 30 May 1994. It then recommenced on 12 January 1995 and ended on 30 June 2004. It thus lasted more than 11 years and 4 months. In this time the action was examined at one level of jurisdiction and the petition for enforcement was examined twice at two levels of jurisdiction.

2. *Victim status*

28. The Government argued that in view of the Constitutional Court's judgment (*nález*) of 29 April 2004 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. They pointed out that the Constitutional Court had expressly acknowledged the infringement of the applicant's right of which he complained before the Court. The Constitutional Court further provided the applicant 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.

29. The applicant did not express an opinion on this point.

30. 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-...).

31. The Court notes that the Constitutional Court awarded the applicant on 29 April 2004 the equivalent of approximately 380 euros (EUR) in respect of his non-pecuniary damage. This amount is less than 10 % 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*

32. The Court notes that the remainder of 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

33. 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).

34. 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).

35. Having examined all the material submitted to it, 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

36. 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

37. The applicant claimed EUR 10,000 in respect of pecuniary and non-pecuniary damage.

38. The Government contested the claim.

39. 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 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) and to the fact that the applicant had already obtained some just satisfaction in this respect under the Constitutional Court's judgment of 29 April 2004, the Court awards him EUR 2,320 under that head.

B. Costs and expenses

40. The applicant also claimed the equivalent of approximately EUR 235 for the costs and expenses incurred before the domestic courts and the Court.

41. The Government contested the claim.

42. 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 sum of EUR 150 covering costs under all heads.

C. Default interest

43. 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 remainder of 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 2,320 (two thousand three hundred and twenty euros) in respect of non-pecuniary damage and EUR 150 (one hundred and 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