



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

FOURTH SECTION

CASE OF TERÉNI v. SLOVAKIA

(Application no. 77720/01)

JUDGMENT

STRASBOURG

20 June 2006

FINAL

20/09/2006

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 Teréni v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

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 30 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 77720/01) 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 Viliam Teréni (“the applicant”), on 10 September 2001.

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

3. On 1 February 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 1936 and lives in Vráble.

1. First proceedings concerning the applicant's dismissal (Levice District Court file 6C 98/91)

5. On 23 April 1991 the applicant was dismissed from his job as a sports teacher at a secondary school.

6. On 13 September 1991 the Levice District Court found that the applicant's dismissal was void.

2. Second proceedings concerning the applicant's dismissal (Levice District Court file 9C 4/92)

7. On 22 November 1991 the applicant again received a notice of dismissal.

8. On 13 May 1992 the Levice District Court dismissed the applicant's action challenging the lawfulness of the dismissal.

9. On 15 March 1993 the Nitra branch of the Bratislava Regional Court declared the applicant's dismissal unlawful.

3. Proceedings concerning the applicant's claim for lost salary (Levice District Court file 6C 192/93)

10. In 1993 the applicant claimed payment of the salary which the employer owed him.

11. On 12 December 1994 the Levice District Court dismissed the action, but the Nitra branch of the Bratislava Regional Court quashed this decision on 29 November 1995.

12. On 23 August 1996 the Levice District Court ordered the defendant to pay the outstanding salary to the applicant.

13. On 23 April 1998 the Nitra Regional Court upheld this decision.

4. Third proceedings concerning the applicant's dismissal (Levice District Court file 7C 39/94)

14. On 19 July 1993 the applicant received a third notice of dismissal from his employer due to redundancy.

15. On 25 January 1994 he challenged the lawfulness of his dismissal before the Levice District Court. In the course of February 1994 the applicant supplemented his submission in accordance with the court's instruction.

16. On 12 March 1994 the court asked the applicant to pay the court fee. It also sent the action to the defendant for comments. The applicant paid the fee on 18 March 1994. The defendant's comments were submitted on 28 March 1994.

17. The first hearing was held on 1 June 1994. The case was adjourned due to the defendant's absence.

18. At the second hearing held on 17 August 1994 the court heard the parties.

19. Between August and November 1994 the District Court obtained further evidence.

20. On 16 January 1995 the Levice District Court dismissed the action. The judgment was served on 1 March 1995 and the applicant appealed on 7 March 1995.

21. On 5 April 1995 the applicant paid the fee and the file was submitted to the court of appeal on 20 April 1995.

22. On 17 April 1996 the Nitra Regional Court quashed the first instance judgment and returned the case to the District Court. In its decision the Regional Court explicitly stated which evidence needed to be taken with a view to establishing the relevant facts. The file was returned to the District Court on 10 July 1996.

23. In the course of August 1996 the District Court obtained further evidence. A hearing was scheduled for 2 October 1996.

24. In a submission of 1 October 1996 the applicant challenged the presiding judge. He reiterated his objection at the hearing on 2 October 1996. The request was submitted to the Regional Court which refused to exclude the judge on 31 October 1996. The file was returned to the District Court on 14 November 1996.

25. The District Court heard the parties on 6 December 1996. On 10 December 1996 it again dismissed the applicant's action. On 14 February 1997 the applicant appealed. The file was transmitted to the court of appeal on 13 March 1997.

26. On 8 July 1997 the court of appeal scheduled a hearing for 21 December 1998. It asked the defendant to submit further evidence at the hearing.

27. On 21 December 1998 the Nitra Regional Court quashed the first instance judgment of 10 December 1996. The court of appeal noted, in particular, that the District Court had disregarded the legally binding opinion set out in its decision of 17 April 1996 and had failed to take evidence with a view to establishing the relevant facts. The case file was returned to the District Court on 3 August 1999.

28. On 16 September 1999 the judge instructed the court's registry to serve the decision of the court of appeal. The parties were asked to submit further information. The parties submitted their replies on 4 and 9 November 1999.

29. On 4 January 2000 the District Court scheduled a hearing for 15 March 2000. It also asked a trade union for information concerning the applicant. The trade union replied on 7 February 2000.

30. The Levice District Court held hearings on 3 March 2000 and on 12 April 2000. It also obtained further evidence during that period.

31. In its third judgment in the case given on 14 April 2000 the District Court dismissed the applicant's action. It held, with reference to the evidence taken, that the school where the applicant had been employed had been restructured as a result of which the staff had to be reduced. The employer had had no possibility of offering a different job to the applicant. The court also examined the applicant's objection that under the relevant law his dismissal should have been subject to approval by the trade union. It found that the trade union established within the school had given such consent on 28 June 1993.

32. The judgment was served on the applicant on 5 October 2000. He appealed on 19 October 2000. The applicant argued that the judgment was arbitrary in that, in particular, the District Court had overlooked the fact that the employer could have offered a different job to him. He also argued that he was a member and president of a different trade union which had existed at the school and that that organisation had not been duly consulted prior to his dismissal.

33. On 7 December 2000 the President of the Levice District Court admitted that there had been undue delays in serving the judgment of 14 April 2000 on the applicant and informed the latter that the judge dealing with the case had been disciplined.

34. On 24 January 2001 the Nitra Regional Court upheld the District Court's judgment of 14 April 2000. It concurred with the first instance court that the statutory requirements for dismissing the applicant had been met in that a causal link existed between the restructuring of the school and the applicant's redundancy, and the evidence available showed that the employer had not been in a position to offer a different job to the applicant.

35. As to the applicant's allegation that his trade union had not been consulted, the appellate court held that the defendant had not been notified that such trade union existed within the school and that the statutes of that trade union did not foresee consultations with employers in similar cases. In addition, the defendant had consulted the trade union which had been established within the school and the existence of which had been officially known to everybody.

36. On 18 April 2001 the applicant filed an appeal on points of law. He argued that the courts had disregarded the fact that he had been dismissed after he had become inconvenient because of his criticism of the management of the school and that they had failed to hear the other persons who had also been dismissed for similar reasons at that time.

37. The Supreme Court dismissed the appeal on points of law by a decision given on 30 July 2001. It noted, in particular, that there were no apparent shortcomings in the proceedings at the lower instances which would render an appeal on points of law admissible under the relevant provisions of the Code of Civil Procedure. The decision was served on the applicant on 24 August 2001.

THE LAW

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

38. The applicant complained that the length of the proceedings concerning his above actions was excessive and that the dismissal of his action of 25 January 2004 had been arbitrary. He relied on Article 6 § 1 of the Convention, which in its relevant part 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. As regards the complaint about the length of the proceedings

a) The third proceedings concerning the applicant’s dismissal

39. The Government contested the applicant’s argument that the length of the proceedings registered with the District Court in Levice under file number 7 C 39/94 was excessive.

40. The period to be taken into consideration began on 25 January 1994 and ended on 30 July 2001. It thus lasted 7 years, 6 months and 5 days for three levels of jurisdiction.

41. 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) The other sets of proceedings

42. The Court notes that the final decisions in the other sets of proceedings of which the applicant complains were given in 1991, in 1993 and in 1998 respectively. Since the Convention entered into force in respect of the former Czech and Slovak Federal Republic, of which the Slovak Republic is one of the successor States, on 18 March 1992, and since the application was introduced on 10 September 2001, the complaints about those proceedings fall outside the Court’s temporal jurisdiction or were submitted after the expiry of the six months time-limit laid down in Article 35 § 1 of the Convention.

43. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. As regards the alleged unfairness of the proceedings

44. The applicant complained that, as regards his third dismissal, the courts had disregarded or had failed to establish correctly the relevant facts and that their decisions were arbitrary.

45. The Court's role is to ascertain whether the proceedings considered as a whole were fair as required by Article 6 § 1. In this context, importance is to be attached to the appearance of the fair administration of justice. However, it is not the Court's 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. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, for example, *Komanický v. Slovakia*, no. 32106/96, § 47, 4 June 2002, with further references).

46. The District Court and the Regional Court dealt with the applicant's claim three times. They took extensive evidence and gave detailed reasons for their decisions of 14 April 2000 and 24 January 2001 by which they ultimately dismissed the action. Subsequently the Supreme Court found no particular shortcomings in the proceedings at lower instance.

47. Having regard to the documents before it, the Court finds no indication that the decisions complained of by the applicant were arbitrary or that the proceedings leading to their delivery were unfair or otherwise contrary to the requirements of Article 6 § 1 of the Convention.

48. 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. Merits

49. The Government argued that, in view of the particular circumstances of the case, the reasonable time requirement had not been exceeded in the third set of proceedings concerning the applicant's dismissal from a job. In particular, the case was complex from both factual and procedural points of view. The applicant had contributed to the length of the proceedings in that he had requested the exclusion of a judge and had submitted new facts requiring the taking of further evidence. In the Government's view, it was for that reason that the court of appeal had to quash the first-instance judgment twice.

As to the conduct of the domestic courts, the Government admitted that a certain delay had occurred in preparing and serving the judgment which the District Court had orally delivered on 14 April 2000.

50. The applicant disagreed. He contended that there had been lengthy intervals between hearings in the case. The court of appeal had to quash the

first-instance judgments as the District Court had refused to admit the relevant evidence.

51. 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). Special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

52. The proceedings were of a certain complexity as it was necessary to establish the relevant facts underlying the applicant's dismissal from a job.

53. As to the conduct of the domestic courts, the Court notes that the Regional Court in Nitra held a hearing in the case on 17 April 1996, that is nearly one year after the file had been submitted to it on 20 April 1995. On 13 March 1997, it received the file again for a decision on the second appeal of the applicant, and it scheduled a hearing for 21 December 1998, that is a lapse of more than 9 months. While this period is not excessive as such, the Court notes that the file was returned to the District Court on 3 August 1999, that is more than 7 months after the Regional Court's decision of 21 December 1998 had been given. The District Court's judgment of 14 April 2000 was served on the applicant more than 5 months after its delivery, on 5 October 2000.

Finally, on 21 December 1998 the Nitra Regional Court quashed the first-instance judgment of 10 December 1996 expressly noting that the District Court had disregarded the legally binding opinion set out in its decision of 17 April 1996 and had failed to take evidence with a view to establishing the relevant facts. Further processing of the case by the District Court and the Regional Court lasted until 24 January 2001.

As a result of the above facts, the duration of the proceedings was substantially prolonged.

54. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings in issue 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 11 OF THE CONVENTION

55. The applicant complained that the courts had disregarded the fact that the trade union of which he was a member should have been consulted prior to his dismissal. He relied on Article 11 of the Convention which provides:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

56. The District Court examined the applicant’s objection that under the relevant law his dismissal should have been subject to approval by the trade union. It found that the trade union established within the school had given its consent on 28 June 1993. The court of appeal held that the defendant had not been notified that the trade union referred to by the applicant existed within the school employing the applicant and that the statutes of that trade union did not foresee consultations with employers in similar cases. In addition, the defendant had consulted the trade union which had been established within the school and the existence of which had been officially known to all concerned.

57. To the extent that this complaint has been substantiated and that it falls within its competence, the Court finds that it discloses no appearance of a violation of the applicant’s rights under Article 11 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 6 million Slovak korunas (SKK) in respect of both pecuniary and non-pecuniary damage. He alleged that his living conditions had considerably worsened as a result of his dismissal and that he had suffered distress and mental suffering due to the way in which the courts had dealt with his cases.

61. The Government contested the claim.

62. 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 2,800 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed SKK 12,715 (the equivalent of approximately 340 euros) for the costs and expenses incurred both before the domestic authorities and before the Court. That sum comprised travelling costs, expenses for photocopying and postal services, costs of the domestic proceedings and also the expenses in respect of a course in ethics which the applicant had attended with a view to obtaining a new qualification as a teacher.

64. The Government contested these claims, arguing that the applicant had incurred no additional costs or expenses before the national authorities because of the length of the proceedings complained of.

65. 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, the Court found a violation of the applicant's right to a hearing within a reasonable time in the third proceedings concerning his dismissal from a job and it declared inadmissible the remainder of the application. As to the costs of the domestic proceedings, the Court finds no causal connection between the violation of the Convention found and the costs and expenses claimed by the applicant. As to the costs of the proceedings before the Court, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer at any stage of the proceedings before it, the sum of EUR 100 for postage and other out-of-pocket expenses which he incurred in the context of filing and pursuing his application.

C. Default interest

66. 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 third set of proceedings concerning the applicant's dismissal 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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, the above amounts to be converted into the currency of the respondent State 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 20 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President