



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

FOURTH SECTION

CASE OF BÍRO v. SLOVAKIA (No. 2)

(Application no. 57678/00)

JUDGMENT

STRASBOURG

27 June 2006

FINAL

27/09/2006

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 Bíro v. Slovakia (no. 2),

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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 57678/00) 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 Dušan Bíro (“the applicant”), on 13 April 2000.

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

3. On 10 May 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints under Article 6 § 1 taken both alone and in conjunction with Article 13 of the Convention concerning the length of the proceedings in respect of the applicant's criminal complaints against A. and B., to which he joined his claims for damages, and concerning the lack of remedies in that respect. 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 applicant was born in 1951 and lives in Bratislava.

A. Facts underlying the case

5. The applicant was employed with a private commercial company. The company was associated with Mr A. and his son, Mr B., who both held shares in it and were also involved in its management. The company took credits from a bank.

6. The applicant provided security for the repayment of the bank credits by pledging in favour of the bank his savings which he had in an account at the bank. In order to secure his potential claims against the company and to provide for his compensation, the applicant and the company concluded two contracts in January and February 1998, respectively.

7. Mr A. then sold his share in the company to a third individual. The company subsequently failed to meet its payment obligations towards the bank and became insolvent. The bank consequently seized the corresponding amounts from the applicant's account. The applicant has received no indemnification from the company.

B. Criminal and other complaints

8. On 22 February 1999 the applicant filed a criminal complaint with the public prosecution service accusing A. and B. of having committed criminal offences of fraud, fraudulent insolvency and usury in connection with the above transaction. At the same time, he requested that his claim for damages be secured under Article 47 of the Code of Criminal Procedure.

9. In a letter of 11 March 1999 the Trnava District Prosecutor informed the applicant *inter alia* that the possibility of securing an aggrieved party's claim for damages only existed at the stage of proceedings after a criminal charge had been raised. As by that time no charges had been raised in the present case, the applicant's claim could not be secured.

10. The applicant's criminal complaint was examined by the Trnava District Office of Investigation which dismissed it, on 25 June 1999, finding that there was no case to answer. The decision indicated in its reasoning that the applicant had been interviewed and that, in the course of the interview, he had specified the amount of the damage which he had sustained when standing as surety for the above bank credits. The applicant challenged this decision by a complaint (*sťažnosť*) which was determined by the District Prosecutor on 17 August 1999. The prosecutor's decision contained information about the specific amount of the damage which the applicant had allegedly sustained. The prosecutor quashed the challenged decision as being premature.

11. The applicant's criminal complaint was dismissed again on 19 September 1999 and, on his further complaints, on 9 March 2000 and 25 March 2002. All these decisions refer *inter alia* to the applicant's criminal complaint of 22 February 1999.

12. The applicant challenged the decision of 25 March 2002 by numerous further complaints addressed to all levels of the public prosecution service. He alleged in particular that if no charges were brought promptly, there was the risk that the prosecution would become statute-barred.

13. On 6 February 2003 the Prosecutor General transmitted the complaints that had been submitted to him to the Trnava Regional Prosecutor who, in turn, transmitted the respective complaints to the District Prosecutor. The latter was instructed to ensure the commencement of criminal proceedings in the matter because the previous examination of the factual and legal side of the case had not been adequate.

14. On 3 March 2003 the District Prosecutor issued an instruction to the investigator under Article 174 § 2 (a) of the Code of Criminal Procedure directing him to commence a criminal prosecution on the basis of a suspicion that a criminal offence of infringing creditors' rights within the meaning of Article 256 § 1 (a) and § 3 of the Criminal Code had been committed. The instruction referred to the applicant's criminal complaints and also indicated that criminal proceedings should be commenced in connection with certain other creditors.

15. On 20 March 2003 the District Office of Investigation formally commenced a criminal prosecution under Article 160 § 1 of the Code of Criminal Procedure against one or more unknown persons alleging that they had infringed the applicant's rights as a creditor.

16. On 28 April 2003 the investigator interviewed the applicant. In response to his enquiry the applicant stated expressly that he wished his claim for damages to be joined to the criminal proceedings pursuant to Article 43 of the Code of Criminal Procedure.

17. Between April and November 2003 the investigator interviewed 8 witnesses. Between September 2003 and January 2004 the investigator summoned A. and B. several times for an interview. As they ignored the summons, the investigator had B. brought to the interview by the police (*predvedenie*) and asked that a nationwide search (*pátranie*) be carried out for A. who eventually came of his own accord.

18. On 3 June 2004 A. and B. were charged with the offences of infringing the right of the applicant as a creditor pursuant to the above decision of 20 March 2003. They both appealed against this decision and their appeals were dismissed by the Regional Prosecutor on 20 August 2004.

19. In September 2004 the investigator invited the Land Registry and all banks in Slovakia to disclose information concerning the real property and bank accounts of A. and B. A search in the registry of motor vehicles was subsequently carried out.

20. During the proceedings, the applicant submitted, on numerous occasions, new evidence and made other written submissions and suggestions as regards the course of the investigation. He further complained several times about the way in which the proceedings were being conducted and filed unsuccessful complaints and criminal complaints against the investigators, prosecutor and other persons involved in the case.

21. The criminal proceedings are still pending.

C. Constitutional complaints

22. In February 2005 the applicant who was represented by a lawyer lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). He asserted a violation of his right to a hearing “without unjustified delay” under Article 48 § 2 of the Constitution and his right to a hearing “within a reasonable time” under Article 6 § 1 of the Convention in the proceedings before the District Office of Investigation in respect of his criminal complaint of 22 February 1999. He claimed 1,500,000¹ Slovakian korunas (SKK) by way of compensation in respect of non-pecuniary damage.

23. On 31 March 2005 the Constitutional Court declared the complaint inadmissible. It observed that the primary aim of criminal proceedings is to detect criminal offences and to punish the perpetrators and not to determine the aggrieved parties' claims for damages. Aggrieved parties' claims for damages were of a private law nature and were predominantly claims to be asserted in civil courts. The possibility of claiming damages in criminal proceedings was a privilege which did not make the determination of such claims the central issue of the proceedings and was limited by the above main aim of the proceedings. The Constitutional Court concluded that aggrieved parties in criminal proceedings did not enjoy the right to have their claims for damages determined without unjustified delay (Article 48 § 2 of the Constitution). In making this conclusion, the Constitutional Court relied on its previous decisions in cases file nos. IV. ÚS 4/02, IV. ÚS 166/03 and IV. ÚS 92/04. It later upheld this line of reasoning in the decision in the case file no. IV. ÚS 52/04.

24. In October 2005 the applicant turned to the Constitutional Court again. He argued that the Constitutional Court's decision of 31 March 2005 was erroneous and reiterated his complaint concerning the length of the proceedings in respect of his criminal complaint of 22 February 1999.

25. On 23 November 2005 the Constitutional Court declared the complaint inadmissible. It held that its decision of 31 March 2005 was final and subject to no appeal. The matter at hand thus had to be considered *res iudicata* and could not be reviewed again.

¹ SKK 1,500,000 is the equivalent of approximately 40,000 euros (EUR)

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution and the Constitutional Court's practice

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

B. Code of Criminal Procedure (Law no. 141/1961 Coll., as amended, in force until 31 December 2005)

27. Standing as an aggrieved party (*poškodený*) in criminal proceedings is governed by the seventh Section (*Oddiel*) of the second Chapter (*Hlava*).

28. Article 43 §§ 1 and 2 provides, *inter alia*, that a person who has suffered pecuniary or non-pecuniary damage as a result of a criminal offence, may claim compensation from the accused and request the court, when convicting the accused, to order him or her to pay compensation for the damage. The aggrieved party further has the right to adduce evidence and to comment on it, to inspect the court file, to take part in the hearing and to make submissions.

29. Article 47 et seq. provide for the possibility of securing the claim of an aggrieved party for damages by impounding the charged person's property in situations when there is a well-founded suspicion that the payment of the claim would be hindered or frustrated.

C. Code of Criminal Procedure (Law no. 301/2005, in force from 1 January 2006)

30. Standing as an aggrieved party is governed by the eighth Section of the second Chapter.

31. Persons who have suffered health, property, moral, or other damage; or whose legally protected rights or freedoms have been violated or jeopardized as a result of a criminal offence are considered aggrieved parties. They have *inter alia* the right to claim compensation in respect of their damage; to adduce evidence and to comment on it; to inspect the court file; to take part in the hearing; to make submissions etc. (Article 46 § 1).

32. An aggrieved party, who has a lawful claim against the accused person (*obvinený*) for compensation in respect of a damage resulting from a criminal offence, has the right to propose that a guilty verdict should include an order for compensation. The proposal must be made at latest by the closure of the investigation and must indicate the ground and scope of the claim (Article 46 § 3).

33. Article 50 et seq. provide for the possibility of securing the claim of an aggrieved party for damages in situations when there is a well-founded suspicion that the payment of the claim would be hindered or frustrated.

D. Code of Civil Procedure (Law no. 99/1963 Coll., as amended) and Relevant Practice

34. Under Article 83 if proceedings commence in relation to a specific matter, the same matter cannot be made the subject of other judicial proceedings. If a claim for damages is duly lodged in criminal proceedings, it is considered a *lis pendens* from the point of view of Article 83 of the Code of Civil Procedure (Collection of Judicial Decisions and Standpoints (*Zbierka súdnych rozhodnutí a stanovísk*), No. 22/1979).

E. Civil Code

35. Under Article 112 if creditors make and duly pursue a claim in respect of their rights before a court or another authority, the statute of limitations is stayed from the day the claim is made. This includes the making of a civil-party claim for damages in criminal proceedings including in their pre-trial stage (see, for example, Collection of Judicial Decisions and Standpoints Nos. III/1967, 131/1974 and 29/1985 and Selection of Decisions and Standpoints (*Výber rozhodnutí a stanovísk*) No. 27/1984).

THE LAW

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

36. The applicant, who joined his claim for damages to his criminal complaints against A. and B., complained that the length of the proceedings in respect of these complaints 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

37. The Court observes that the applicant's claim for damages which he joined to the proceedings in respect of his criminal complaint of

22 February 1999 is compatible *ratione materiae* with the guarantees of Article 6 § 1 of the Convention (see *Perez v. France* [GC], no. 47287/99, §§ 67-70, ECHR 2004-I, *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, §§ 39-41, 5 July 2005 and *Pfleger v. the Czech Republic*, no. 58116/00, §§ 37-41, 27 July 2004).

38. The Government argued that the applicant had 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 by way of a complaint under Article 127 of the Constitution.

39. In his observations of 15 August 2005, in reply to those by the Government, the applicant informed the Court that he had in fact availed himself of the said remedy (see paragraphs 22 and 23 above).

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

41. As for the period to be taken into consideration, the Government contended that it only began on 28 April 2003 when the applicant stated before the investigator that he wished his claim for damages to be joined to the criminal proceedings in accordance with the relevant legal provisions. They concluded that, since then, the length of the proceedings had not been unreasonable and proposed that the relevant part of the application be declared inadmissible as being manifestly ill-founded.

42. In the applicant's view, his claim for damages was an inherent part of his criminal complaint of 22 February 1999. All the proceedings initiated as a result of it or opened further to it, were to be considered as one matter and constituted one set of proceedings. The initial dismissals of his criminal complaint were wrong, as evidenced by the fact that a criminal prosecution was eventually started and charges against A. and B. were brought. In the applicant's view, the proceedings were disjointed, slow and ineffective throughout.

43. The Court notes that the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 § 1 restrictively (see *Perez*, cited above, § 64).

44. The Court further notes that neither Slovakian legal order nor the Convention confer any right to have criminal prosecution instituted against another individual (see, among many other authorities, *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 14, § 29). However, once a criminal complaint is lodged, the law enforcement authorities in Slovakia are under a duty to follow it through. The making of a civil-party claim for damages in criminal proceedings constitutes an obstacle to the lodging of the same claim in the civil courts and has further legal consequences, for example, in respect of statute of limitations. Therefore, the determination of a criminal complaint to which a civil-party claim for damages was joined has direct consequences on the claim for damages (see,

for example, *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2507, § 34). In view of the above, the Court finds that, as a matter of principle, civil-party claims for damages made in Slovakia jointly with or subsequently to the lodging of a criminal complaint enjoy the guarantees of Article 6 § 1 of the Convention from the moment they are made (see, for example, *mutatis mutandis*, *Torri v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1179, § 23).

45. Turning to the circumstances of the present case, the Court observes that, in his criminal complaint of 22 February 1999, the applicant implied that he had sustained financial damage resulting from the actions of A. and B. of which he had been complaining. At the same time, with reference to the relevant legal provisions, he made a specific request that his claim for damages be secured. The Court further observes that, as transpires from the investigator's decision of 25 June 1999 and from the prosecutor's decision of 17 August 1999, the applicant had been interviewed and had provided a further specification of the damage that he had sustained.

46. The Court also observes that the decision of 20 March 2003 to commence a criminal prosecution as well as the previous decisions not to do so had been initiated by the applicant's criminal complaint of 22 February 1999.

47. In these circumstances, the Court finds that the period to be taken into consideration for the purposes of Article 6 § 1 of the Convention began on 22 February 1999. It has not yet ended. It has thus lasted more than 7 years and 3 months. In this period the matter was examined by the investigator and at three levels of the public prosecution service and it is still pending at the pre-trial stage of the proceedings.

48. The Court finds 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

49. 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).

50. The Court considers that, in cases such as the present one, regard must also be had to the fact that a civil-party claim for damages is not the only or central issue of the proceedings but it is secondary to the issue of criminal liability which must be determined in the same set of proceedings.

51. The Court notes that the criminal complaint of 22 February 1999 had been dismissed four times before it eventually led to the commencement of a criminal prosecution on 20 March 2003 and to the bringing of charges against specific persons on 3 June 2004. The latter two decisions may in fact be seen as overturning the previous four as being erroneous and based on insufficiently established facts.

52. The above considerations, in view of the overall length of the criminal proceedings in the context of which the applicant's claim for damages is to be determined and the stage at which they are still pending are sufficient for the Court to conclude that their length 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 13 OF THE CONVENTION

53. The applicant further complained of the fact that in Slovakia there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

54. In the light of their arguments in respect of the complaint of the length of the proceedings the Government considered that the complaint under Article 13 of the Convention was manifestly ill-founded and that it raised no issue under that provision.

55. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

56. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

57. On 31 March 2005 the Constitutional Court declared inadmissible the applicant's constitutional complaint of the length of the present proceedings on the ground that, being an aggrieved party in criminal proceedings, he did not enjoy any right to have his claim for damages determined expeditiously. In view of this finding the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law for a violation of his right to a hearing within a reasonable time, as provided by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed the equivalent of approximately 400,000 euros (EUR) in respect of pecuniary damage and the equivalent of approximately EUR 265,000 in respect of non-pecuniary damage.

60. The Government contested these claims.

61. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,800 under that head.

B. Costs and expenses

62. The applicant also claimed the equivalent of approximately EUR 270 for the costs and expenses incurred before the domestic courts and the equivalent of approximately EUR 80 for those incurred before the Court.

63. The Government accepted the claim concerning the proceedings before the Court but contested the remaining claim.

64. 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, in so far as the relevant part of the application has been substantiated and in view of the above criteria, the Court considers it reasonable to award the sum of EUR 150 covering costs under all heads.

C. Default interest

65. 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* that there has been a violation of Article 13 of the Convention;
4. *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 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage and EUR 150 (hundred 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President