



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

FOURTH SECTION

CASE OF ŠMÁL v. SLOVAKIA

(Application no. 69208/01)

JUDGMENT

STRASBOURG

7 November 2006

FINAL

07/02/2007

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 Šmál 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 17 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 69208/01) 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 Tibor Šmál (“the applicant”), on 23 October 2000.

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

3. On 6 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Příbovce.

5. On 10 December 1996 an investigator of the Martin District Office of Investigation accused the applicant of an offence of illegal acquisition and possession of arms. The applicant complained. Subsequently the case was transferred to the Regional Office of Investigation in Banská Bystrica.

6. On 18 December 1996 a public prosecutor of the Banská Bystrica Prosecution Office dismissed the applicant’s complaint.

7. On 20 December 1996 a new accusation of the same offence based on a modified factual background was made against the applicant by the Regional Office of Investigation. The applicant filed a complaint.

8. On 21 December 1996 a judge of the Banská Bystrica District Court remanded the applicant in custody as from 20 December 1996.

9. On 4 February 1997 the Žilina Prosecution Office dismissed the applicant's complaint against the decision of 20 December 1996.

10. On 25 April 1997 the applicant was released from custody.

11. On 29 May 1997 the Žilina Regional Prosecutor indicted the applicant before the Žilina Regional Court for having been an accomplice to the attempted offence of illegal acquisition and possession of arms.

12. On 11 June 1997 the case was assigned to a different judge as the judge to whom the case had been assigned was an acquaintance of one of the accused.

13. On 25 November 1997 and 1 December 1997 respectively the Regional Court judge requested that a previous judgment regarding one of the accused be submitted to him.

14. On 16 April 1999 the Regional Court remitted the case to the public prosecutor for further investigation. The public prosecutor appealed.

15. On 18 August 1999 the Supreme Court quashed the Regional Court's decision of 16 April 1999 and ordered the first-instance court to proceed with the case.

16. The Regional Court summoned all the accused persons, including the applicant, to a hearing scheduled for 12 January 2000. The counsel of one of the accused requested that the hearing be postponed.

17. The Regional Court held hearings on 17 February 2000, 10 March 2000, 16 June 2000, 27 July 2000, 13 September 2000, 26 October 2000 and 29 October 2000. Several hearings had to be adjourned due to the absence of witnesses and the illness of one of the accused. From 22 December 2000 until 2 May 2001 the court made requests to establish the whereabouts of a witness.

18. On 10 May 2001 the Žilina Regional Court convicted the applicant and sentenced him to 6 months' imprisonment, conditionally suspended for 18 months. Both the applicant and the public prosecutor appealed.

19. On 30 January 2002 the Supreme Court dismissed the appeals. The decision became final and binding on the same day.

20. On 17 February 2003 the applicant complained to the Constitutional Court about a violation of his right to have the case decided without undue delay.

21. In a letter of 6 March 2003 a Constitutional Court judge informed the applicant that his motion could not be dealt with as it clearly did not meet the necessary formal requirements. The judge also noted that the statutory two-month time-limit for lodging a complaint with the

Constitutional Court had already lapsed as the final decision in the criminal proceedings in issue had been given on 30 January 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. For a recapitulation of the relevant domestic law and practice see, for example, *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002 as well as *Žiačik v. Slovakia*, no. 43377/98, §§ 24-28, 7 January 2003).

THE LAW

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

23. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

24. The Government pointed out that the present case concerned the same criminal proceedings the length of which the Court had already assessed in the context of the case of *Žiačik v. Slovakia*. In that application the Government had admitted that there had been undue delays between 11 June 1997 and 16 April 1999.

25. The period to be taken into consideration began on 10 December 1996 and ended on 30 January 2002. It thus lasted 5 years, 1 month and 21 days for two levels of jurisdiction.

A. Admissibility

26. The Government objected that the applicant had not exhausted domestic remedies as he had not sought redress by means of a complaint under Article 127 of the Constitution, in force since 1 January 2002. With reference to the practice of the Constitutional Court, the Government argued that the applicant could have obtained redress before the Constitutional Court if he had filed a complaint within the statutory time-limit and in accordance with the formal requirements.

27. The applicant disagreed. He argued, in particular, that the above remedy had not been available when he had filed his application with the Court.

28. The application was introduced on 23 October 2000. At that time it was the Court's general practice to assess whether domestic remedies had been exhausted with reference to the date on which the application had been lodged with it. The Court decided to make an exception to this rule in respect of cases against Slovakia which, as the present one, had been lodged with it prior to 1 January 2002 (see the *Andrášik and Others v. Slovakia* decision referred to above). That decision was adopted on 22 October 2002, that is at a time when a final decision had already been given in the criminal proceedings against the applicant. By that time the statutory time-limit within which the applicant could have used the newly-introduced remedy under Article 127 of the Constitution had expired.

29. Given these circumstances, the Court considers that the applicant was not required to have recourse to the remedy in issue. The Government's objection relating to non-exhaustion of domestic remedies cannot therefore be upheld (see also *Vujčik v. Slovakia*, no. 67036/01, §§ 50-51, 13 December 2005).

30. 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

31. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

32. 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 *Pélissier and Sassi*, cited above).

33. The present application concerns criminal proceedings the length of which the Court examined in the context of the case of *Žiačik v. Slovakia* (referred to in paragraph 22 above). In that case, the Court found a violation of Article 6 (see paragraphs 43-46 of the *Žiačik* judgment). Having examined all the material submitted to it, the Court finds no 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.

34. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 300,000 Slovakian korunas, which is the equivalent of approximately 8,000 euros (EUR), in respect of non-pecuniary damage.

37. The Government contested the claim as being unsubstantiated and excessive.

38. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,500 under that head.

B. Costs and expenses

39. The applicant did not submit any claim in respect of costs and expenses.

C. Default interest

40. 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 3,500 (three thousand and five hundred euros) in respect of non-pecuniary damage, 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 amount 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 7 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President