



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

FOURTH SECTION

CASE OF SOLÁROVÁ AND OTHERS v. SLOVAKIA

(Application no. 77690/01)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Solárová and Others 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 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 77690/01) 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 two Slovakian nationals, Mrs Darina Solárová and Mr Juraj Solár and by Mrs E. Domiková, a Czech national, (“the applicants”), on 19 November 2001.

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

3. On 7 October 2005 the Court decided to give notice of 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**THE CIRCUMSTANCES OF THE CASE**

4. The first applicant, Mrs Darina Solárová, was born in 1952 and resides in Košice. She is the wife of the second applicant, Mr Juraj Solár, born in 1947 and resident at the same address in Košice. The third applicant, Mrs Eva Domiková, was born in 1956 and resides in Brno (the Czech Republic). The third applicant is the sister of the second applicant.

A. Proceedings concerning the action of 27 November 1998

5. On 17 August 1998 an aunt of the second and the third applicants died. In her last wills of 6 June 1996 and of 25 May 1998 respectively, she designated the applicants as her heirs in respect of her immovable property.

6. On 27 October 1998 a third person claimed that the testator had made a last will in her favour in 1993. The notary public referred her to a civil court with a view to having the issue determined.

7. On 27 November 1998 the person concerned filed an action with the Košice II District Court. She challenged the validity of the wills in favour of the applicants. The plaintiff alleged that, in 1993, the testator had made a last will in her favour devising the immovable property to her. She further stated that the last wills of 1996 and 1998 were null and void as at the time when they had been made the testator's mental faculties had been reduced.

8. On 9 December 1998 the District Court judge asked to withdraw from the case. The file was submitted to the Košice Regional Court on 14 January 1999. The Regional Court granted the judge's request on 27 January 1999. The file was returned to the District Court on 24 February 1999. The case was assigned to a different judge on 20 April 1999.

9. On 29 April 1999 the judge communicated the action to the applicants. The applicants submitted their observations on 14 and 24 May 1999.

10. A hearing scheduled for 8 September 1999 was adjourned at the request of the plaintiff. Further hearings were held on 5 October 1999 and 15 November 1999. The case was adjourned because of the plaintiff's absence.

11. Between 17 January 2000 and 13 March 2000 the District Court held three hearings at which several witnesses were examined. On 2 March 2001 the court appointed an expert in psychiatry with a view to establishing whether the testator had had testamentary capacity at the relevant time. The parties were ordered to pay an advance on the expert's costs. On 20 March 2001 the first applicant challenged the decision on the expert's costs.

12. On 8 December 2000 the applicants complained to the President of the District Court about delays in the proceedings. On 1 February 2001 the third applicant requested that a hearing be scheduled in the case.

13. On 7 July 2001 the first applicant challenged the District Court judge. On 6 September 2001 the Supreme Court excluded the Regional Court judge concerned from deciding on the first applicant's motion of 7 July 2001. The case was assigned to a different Regional Court judge. On 22 October 2001 the Regional Court upheld the District Court's decision concerning the applicants' obligation to pay an advance on the costs of the expert. It further decided that the District Court judge was not biased.

14. On 26 July 2002 the expert submitted his opinion. The first and the second applicants submitted their comments on 9 September 2002.

15. On 3 February and 3 March 2003 the District Court held hearings. The case had to be adjourned in view of the plaintiff's absence.

16. On 31 March 2003 the District Court granted the plaintiff's claim and declared the last wills of 1996 and of 1998 null and void. The reasoned judgment was finalised on 11 June 2003.

17. On 13 June 2003 the case was transferred to a different judge of the District Court.

18. On 30 June and 2 July 2003 the applicants appealed. On 12 September 2003 the first applicant paid the appeal fee.

19. The case was submitted to the Regional Court in Košice on 23 October 2003. As the presiding judge had been excluded, the case was transferred to a different chamber on 18 December 2003. On 18 February 2004 the applicants submitted further grounds for their appeal.

20. On 21 April 2004 the Regional Court quashed the first-instance judgment of 31 March 2003. The file was returned to the District Court on 28 May 2004.

21. On 16 June 2004 a police authority requested the case file. On 13 September 2004 the District Court submitted the file to the police authority. The file was returned to the District Court on 25 October 2004.

22. On 18 January 2005 the District Court scheduled a hearing for 27 April 2005. The plaintiff did not appear on the latter date. The court heard the applicants.

23. On 20 June 2005 the District Court dismissed the action holding that the plaintiff had failed to prove that the wills which she contested were null and void. It further ordered the plaintiff to reimburse the applicants' costs.

24. On 24 August 2005 the plaintiff appealed. She paid the court fees on 6 September 2005. On 19 September 2005 the file was transmitted to the court of appeal.

25. On 24 March 2006 the Regional Court in Košice upheld the first-instance judgment of 20 June 2005. On 3 May 2006 the first and the second applicants requested that errors in the reasons contained in the judgment of the court of appeal be rectified.

26. On 1 June 2006 the plaintiff filed an appeal on points of law. The cassation proceedings are pending.

B. Constitutional proceedings

1. Complaint of the third applicant

27. On 4 June 2003 the third applicant lodged a complaint under Article 127 of the Constitution about the unfairness and excessive length of the proceedings before the Košice II District Court. She claimed that the District Court's judgment of 31 March 2003 should be quashed.

28. On 5 May 2004 the Constitutional Court declared admissible the complaint concerning the excessive length of the proceedings. It rejected the remainder of the third applicant's submissions as being manifestly ill-founded.

29. On 9 June 2004 the Constitutional Court found that the Košice II District Court had violated the third applicant's constitutional right to have the case decided without undue delays. The decision stated that the District Court had been inactive without any justification from 17 March 2000 until 2 March 2001 and also from 9 August 2002 until 15 January 2003. The District Court had failed to proceed with the case in an effective manner as a result of which the case had not been determined within a reasonable time.

30. The Constitutional Court ordered the District Court to proceed with the case without delay. It awarded the third applicant 15,000 Slovakian korunas¹ (SKK), payable within two months, as just satisfaction in respect of non-pecuniary damage. The District Court was also ordered to reimburse the third applicant the costs of the constitutional proceedings within one month.

2. Complaint of the first and the second applicants

31. On 16 February 2005 the first and the second applicants complained to the Constitutional Court about the length of the proceedings before the Košice II District Court.

32. On 22 June 2005 the Constitutional Court found that the Košice II District Court had violated their constitutional right in issue. It pointed to the periods of inactivity of the District Court as mentioned in its above finding of 9 June 2004. It also held that the District Court had proceeded with the case in an ineffective manner.

33. The Constitutional Court ordered that the District Court should (i) proceed with the case without delay, (ii) pay the first and the second applicants SKK 15,000² each, within two months, as just satisfaction in respect of non-pecuniary damage, and (iii) reimburse the applicants the costs of the constitutional proceedings within one month.

¹ SKK15,000 was the equivalent of approximately 375 euros at that time.

² SKK 15,000 was the equivalent of approximately 390 euros at that time.

THE LAW

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

34. The applicants complained that the above proceedings had been unfair and that one of the District Court judges involved had been biased. They also complained about the length of the proceedings. The applicants 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 alleged unfairness of the proceedings and lack of independence of a judge

35. At present the proceedings in issue are pending before the Supreme Court. The complaints about a violation of the applicants' right to a fair hearing by an impartial tribunal in those proceedings are therefore premature.

36. It follows that this part of the application must be rejected under Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

2. As regards the length of the proceedings

37. The Government, with reference to the Constitutional Court's judgments of 9 June 2004 and 22 June 2005, argued that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention. They maintained that the just satisfaction awarded by the Constitutional Court was not disproportionately low in the particular circumstances. In addition, the Constitutional Court had ordered the District Court to proceed with the cases without any further delay and the District Court had complied with that order.

38. The applicants contended that the just satisfaction awarded to them by the Constitutional Court was unreasonably low.

39. The question whether the applicants can still claim to be victims, within the meaning of Article 34 of the Convention, of a violation of their right to a hearing within a reasonable time falls to be determined in the light of the principles recently established under the Court's case-law (*Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-... and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...).

40. The Constitutional Court, after having analysed the proceedings complained of in the light of the criteria which the Court also applies, awarded the third applicant the equivalent of approximately 375 euros on 9 June 2004. That amount corresponds approximately to 11 per cent of what the Court would be likely to award the third applicant, at that time and in accordance with its practice, as regards the period considered by the Constitutional Court.

In its judgment given on 22 June 2005 the Constitutional Court awarded the first and the second applicants, who are spouses, sums corresponding in total to approximately 780 euros. That amount represents 18.6 per cent of what the Court would be likely to award them in respect of the period considered by the Constitutional Court.

41. The low amounts of just satisfaction awarded to the applicants by the Constitutional Court, as compared with the amounts usually granted by the Court, alone leads to the conclusion that the redress provided to them at domestic level was insufficient. In these circumstances, the argument that the applicants have lost their status as “victims” cannot be upheld.

42. The Court further notes that it was open to the applicants to seek redress by means of the remedy under Article 127 of the Constitution to the extent that they may be understood as complaining also about delays in the proceedings before the Regional Court and the Supreme Court. The applicants have not done so, and this fact has to be taken into account when determining the merits of this part of the application and, if appropriate, the applicants’ claims for just satisfaction under Article 41 of the Convention.

43. The period to be taken into consideration began on 27 November 1998 and has not yet ended. It has thus lasted 7 years and more than 11 months for three levels of jurisdiction.

44. 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. Merits

45. The Government referred to the above judgments of the Constitutional Court and admitted that the applicants’ right to a hearing within a reasonable time had been violated.

46. The applicants stressed that the length of the proceedings had been excessive.

47. 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 applicants and the relevant authorities and what was at stake

for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

48. 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).

49. 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 concurs with the Constitutional Court that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

50. The Court has also examined whether further delays occurred after the delivery of the Constitutional Court’s judgments.

As regards the judgment given on the third applicant’s complaint on 9 June 2004, nearly 12 months passed before the District Court delivered its second judgment in the case on 20 June 2005. Prior to that the District Court had held a single hearing, on 27 April 2005, and the file had been submitted to a police authority and remained with the latter for 1 month and 11 days. Taking into account the above facts, the Court considers that, despite the Constitutional Court’s order, the District Court did not display the required diligence between 9 June 2004 and the delivery of its second judgment on 20 June 2005.

As regards the first and the second applicants, the Constitutional Court gave its judgment on 22 June 2005. Subsequently, no delays imputable to the District Court occurred.

51. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 in respect of the length of the proceedings in issue.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

52. The applicants complained that they had been prevented from enjoying the inherited property as a result of the protracted length of the proceedings. They relied on Article 1 of Protocol No. 1 which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

53. The question whether or not the applicants are entitled to acquire their relative's estate is to be determined in judicial proceedings which are pending before the court of cassation. It is not for the Court to prejudge the outcome of those proceedings. At present the estate cannot, therefore, be considered as their "possession" attracting the guarantees of Article 1 of Protocol No. 1.

54. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

55. Finally, the applicants complained that they had no effective remedy at their disposal in respect of their above complaints. They invoked Article 13 of the Convention which provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

56. To the extent that the applicants alleged that they had no effective remedy as regards their complaint about the length of the proceedings, the Court notes that, as from 1 January 2002, it has been open to them to seek redress by means of a complaint under Article 127 of the Constitution. The applicants had recourse to that remedy and the Constitutional Court found that their right to a hearing within a reasonable time had been violated. They thus had an effective remedy at her disposal as required by Article 13. The fact that the just satisfaction awarded by the Constitutional Court does not coincide with the awards of the Court in comparable cases cannot affect the position (see also *Rišková v. Slovakia*, no. 58174/00, § 100, 22 August 2006).

57. For the reasons set out above, the Court declared the remaining complaints of the applicants inadmissible. In this respect they did not have an "arguable claim" and Article 13 is therefore inapplicable (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

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

IV. 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 applicants claimed SKK 500,000 each in respect of non-pecuniary damage.

61. The Government contested the claim arguing that the applicants had obtained redress at domestic level.

62. The Court recalls that, where an applicant can still claim to be a “victim” after exhausting the domestic remedy available, he or she must be awarded the difference between the amount obtained in domestic proceedings and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court if it had been awarded by the competent domestic authority. Applicants should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the competent domestic authority (see the *Cocchiarella v. Italy* [GC] judgment referred to above, §§ 139-141).

63. On the basis of the circumstances of the present case, the Court would have awarded, in the absence of domestic remedies and at the time when the respective Constitutional Court’s decisions were given, 3,400 euros (EUR) to the third applicant and the global sum of EUR 4,200 to the first and the second applicants who are spouses.

64. Having regard to the characteristics of the constitutional remedy chosen in Slovakia and the fact that, notwithstanding this national remedy, the Court has found a violation, it considers, ruling on an equitable basis, that the third applicant should be awarded EUR 1,200 and the first and the second applicants together the sum of EUR 1,100 in respect of the period covered by the respective Constitutional Court’s judgments.

The Court also awards the third applicant EUR 700 for the further delay in the proceedings before the District Court following the delivery of the Constitutional Court’s judgment of 9 June 2004 (see paragraph 50 above).

65. Accordingly, the first and the second applicants together are entitled to compensation for non-pecuniary damage in the sum of EUR 1,100. The third applicant is entitled to EUR 1,900 under the same head.

B. Costs and expenses

66. The applicants also claimed SKK 134,828 for the costs and expenses incurred before both the domestic courts and the Court.

67. The Government contested the claim.

68. 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 are reasonable as to quantum.

69. In the present case, the Court notes that in its judgments the Constitutional Court ordered the District Court to reimburse the costs of the constitutional proceedings to the applicants. Regard being had to the information in its possession, the above criteria, as well as to the fact that the applicants were only partially successful in the proceedings before it, the Court considers it reasonable to award them the global sum of EUR 500 under this head.

C. Default interest

70. 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 proceedings 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the following sums to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,100 (one thousand one hundred euros) to the first and the second applicants jointly in respect of non-pecuniary damage;
 - (ii) EUR 1,900 (one thousand nine hundred euros) to the third applicant in respect of non-pecuniary damage;

- (iii) EUR 500 (five hundred euros) to all three applicants jointly in respect of costs and expenses;
- (iv) any tax that may be chargeable on the above amounts;
- (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President