



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

FOURTH SECTION

CASE OF DOBÁL v. SLOVAKIA

(Application no. 65422/01)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

23/05/2007

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 Dobál 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 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 65422/01) 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 Hubert Dobál (“the applicant”), on 17 October 2000.

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

3. On 20 May 2005 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it was 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 1947 and lives in Košice. He is a self-employed entrepreneur. In that capacity he had dealings with a private company S. which included arranging insurance for its vehicles.

A. Action by S. and the applicant's counter claim

5. On 6 August 1993 S. brought a civil action against the applicant in the Košice II District Court (then *Obvodný súd*, at present *Okresný súd*) claiming a sum of money in connection with their previous business.

6. On 11 August 1993 the Košice II District Court found that the action fell within the jurisdiction of the Košice I District Court and decided to transmit the case to the latter.

7. On 10 December 1993 the Košice II District Court quashed its above decision of 11 August 1993 on the ground that, according to up-to-date information, the defendant's business was within its judicial district. The case thus remained with the Košice II District Court.

8. On 19 August and 24 October 1994 the District Court requested the defendant to pay court fees and to specify its claim for legal costs. The defendant replied on 30 September and 19 December 1994, respectively.

9. On 28 December 1994, in summary proceedings, the District Court issued a payment order (*platobný rozkaz*) against the applicant for the amount claimed.

10. On 19 January 1995 the applicant successfully appealed (*protest*). The order was *ex lege* vacated and the matter fell to be determined in ordinary proceedings.

11. On 16 June and 25 October 1995 the District Court requested the applicant to pay court fees for his appeal. The applicant replied that he could not pay as he had no money, but he eventually paid on 9 February 1996.

12. The District Court held hearings on 24 January and 30 May 1997. Both hearings were adjourned, the former due to the absence of the plaintiff's lawyer, the latter at the plaintiff's request since he wished to explore the possibility of settling the case out-of-court.

13. On 26 February 1998 the applicant counter-claimed that the defendant owed him money and sought an order for repayment.

14. Another hearing was scheduled for 17 March 1998 but did not take place because the judge was absent for health reasons.

15. On 9 June 1999 the Košice Regional Court (*Krajský súd*) declared the plaintiff company insolvent and appointed a receiver. As a result, by operation of Article 14 § 1 (d) of the Bankruptcy Code (Law no. 328/1991 Coll., as amended), all actions by and against the plaintiff were automatically stayed. However, under that provision, actions by the insolvent entity could resume if their defendants so required.

16. In a letter of 16 June 1999 the District Court informed the applicant that the proceedings had been stayed.

17. The proceedings are still stayed.

B. Insolvency proceedings

18. The insolvency order was issued on 9 June 1999 and, in the absence of an appeal, it became final on 1 July 1999.

19. On 2 August 1999 the Regional Court appointed a new receiver as the original one had resigned due to a conflict of interests.

20. The applicant registered his claim (see paragraph 13 above) in the insolvency proceedings.

21. On 9 May 2001 the Regional Court held a meeting of creditors (*schôdza veriteľov*). At the meeting the creditors approved a summary of the insolvency estate and the proposal for its sale. The Regional Court subsequently held a hearing (*prieskumné pojednávanie*) with a view to establishing the claims of the different creditors in the insolvency proceedings. At the hearing, which the applicant did not attend, the receiver rejected his claim. It was decided that the applicant and other creditors whose claims had been rejected and who had been absent would be informed in writing that they could seek judicial recognition of their claims by way of a separate action (*incidenčná žaloba*) under Article 23 § 2 of the Bankruptcy Code.

22. In a letter of 27 February 2002 the Regional Court informed the applicant of the above possibility. The applicant then brought proceedings for recognition of his claim. They are described in detail below.

23. The receiver subsequently held 21 rounds of sales of items belonging to the estate. The sales were supervised by the Regional Court.

24. On 9 March 2005 the receiver filed a report with the Regional Court on the progress of the proceedings. He stated *inter alia* that it had not been possible to conclude the proceedings thus far because the estate was involved in 9 other court proceedings which were all still pending.

25. The insolvency proceedings are still pending.

C. Action for recognition of the applicant's claim

26. On 12 March 2002 the applicant responded to the Regional Court's above letter of 27 February 2002. From the contents of his letter it can be understood that he insisted on his claim and disagreed with its rejection.

27. In a letter of 18 April 2002 the Regional Court informed the applicant that his submission did not meet the formal requirements for an action for recognition of a claim in insolvency and advised him in detail of the relevant requirements.

28. On 23 April 2002 the applicant resubmitted the action.

29. On 17 July 2003 the Regional Court discontinued the proceedings observing that the applicant had withdrawn the action.

30. On 31 March 2004 the Supreme Court (*Najvyšší súd*) upheld the decision on the applicant's appeal.

D. Constitutional complaint

31. On 2 October 2002 the applicant filed a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*) about the length of the above proceedings before the Košice II District Court.

32. On 19 February 2003 the Constitutional Court declared the complaint inadmissible. In line with its established practice it held that, as the proceedings had been lawfully stayed for a legitimate reason (the insolvency), no unjustified delays could be imputed to the Košice II District Court at that time. The part of the proceedings before the District Court before they had been stayed could not be reviewed because they had been stayed outside the statutory two-month time-limit for lodging a constitutional complaint. It was noted that the applicant had not complained of delays in the insolvency proceedings which were pending before the Regional Court.

As regards any delays in the proceedings which might have occurred prior to the decision of 16 June 1999 to stay the proceedings in the Košice II District Court, the applicant had filed his constitutional complaint after the expiry of the statutory two-month time-limit.

THE LAW

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

33. The applicant complained that the length of the proceedings in the 1993 action had been incompatible with the “reasonable time” requirement and that the proceedings in his action for recognition of his claim had been incompatible with the requirement of a “fair hearing”. He relied on Article 6 § 1 of the Convention, the relevant part of which 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. Fairness of the proceedings in the action for recognition of the applicant's claim

34. It is to be noted that the proceedings ended with the decision of the Supreme Court of 31 March 2004 to uphold the discontinuation of the proceedings. The applicant could have sought protection of his right to a fair

hearing in those proceedings by way of a complaint under Article 127 of the Constitution to the Constitutional Court (see, for example, *Poláčik v. Slovakia*, no. 58707/00, § 48, 15 November 2005). He has not done so.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Length of the proceedings in the 1993 action

35. The Government considered that the complaint was manifestly ill-founded.

36. The applicant disagreed.

37. The Court observes that the length of the proceedings was examined at the domestic level by the Constitutional Court on the applicant's constitutional complaint (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX). The Constitutional Court rejected the complaint on the ground that it was prevented from examining the part of the proceedings before they had been stayed and because there had been no unjustified delays after they had been stayed.

38. The period to be taken into consideration began on 6 August 1993 and, strictly speaking, has not yet ended. It has thus lasted more than 13 years and 3 months for a single level of jurisdiction.

39. However, it must be noted that since June 1999 when the proceedings were stayed pending the outcome of the insolvency proceedings the applicant has taken no steps to resume them (see paragraph 15 above). It must further be noted that, although he registered his claim in the insolvency proceedings, he did not pursue it convincingly (see paragraphs 27 and 29 above) and he has taken no steps with a view to accelerating the insolvency proceedings.

40. Nevertheless, 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

41. The Government submitted that the length of the proceedings had been mainly due to the conduct of the parties. As for the applicant, he had belatedly paid the court fees for his appeal and counterclaim only upon request. Except for some delays in the period from February 1996 to January 1997, no significant delays could be imputed to the District Court.

42. The applicant disagreed and reiterated his complaint.

43. 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).

44. 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).

45. 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. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

46. The applicant also complained of discrimination in the proceedings that had started in 1993 in that he had received a less favourable treatment than his adversary, which caused him pecuniary damage. He invoked Article 14 of the Convention which provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

47. To the extent this complaint has been substantiated, the Court has found no indication that the applicant was treated either differently than others in an analogous situation or similarly to others in a different situation (see, among many other authorities, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. Lastly, the applicant complained that he had had no effective remedies at his disposal in respect of his other Convention complaints. He relied on Article 13 of the Convention which reads 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.”

A. Admissibility

1. *Effective remedy in respect of alleged unfairness of the proceedings in the action for recognition of the applicant's claim and the alleged discrimination*

49. The Court observes that as regards the complaint of the alleged unfairness of the proceedings, the applicant had an effective remedy at his disposal. He could have sought redress by way of a complaint under Article 127 of the Constitution (see paragraph 34 above).

50. The Court has found that the complaint of alleged discrimination was manifestly ill-founded (see paragraph 47 above). For similar reasons the applicant did not have an “arguable claim” in that respect and Article 13 is therefore inapplicable to that complaint (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

51. It follows that this part of the Article 13 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *Effective remedy in respect of the length of the proceedings*

52. The Court notes that this complaint is linked to that of the length of the proceedings which was examined above. It must therefore likewise be declared admissible.

B. Merits

53. The Government admitted that the applicant had not had at his disposal an effective remedy in respect of the length of the impugned proceedings as a whole. However, in view of their arguments in respect of the length of the proceedings, the Government argued that no separate issue arose under Article 13.

54. The applicant reiterated his complaint.

55. 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).

56. Under the Court's case-law, a complaint under Article 127 of the Constitution, as in force since 1 January 2002, is, in principle, an effective remedy in respect of complaints about unreasonable length of proceedings (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX).

57. In the present case, however, the Constitutional Court rejected the applicant's complaint under Article 127 of the Constitution (see paragraph

32 above) in accordance with its practice holding that no unjustified delays could exist in proceedings while they were lawfully stayed (see also *Kopecká v. Slovakia*, no. 69012/01, § 32, 31 May 2005) and that the part of the proceedings before they had been stayed could not be reviewed because they had been stayed outside the statutory two-month time-limit for lodging a constitutional complaint.

58. In these circumstances, the Court considers that there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 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 applicant claimed 1,185,000¹ Slovakian korunas (SKK) in respect of pecuniary damage and SKK 8 million² in respect of non-pecuniary damage.

61. The Government contested these claims.

62. 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, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 7,000 under that head.

B. Costs and expenses

63. The applicant also claimed SKK 2,583.50³ for translation costs incurred before the Court.

64. The Government did not express an opinion on the matter.

65. 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

¹ SKK 1,185,000 is equivalent to approximately 31,200 euros (EUR).

² SKK 8 million is equivalent to approximately EUR 210,000.

³ SKK 2,583.50 equivalent to approximately EUR 70.

as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full. It therefore awards the applicant EUR 70 under this head.

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 complaints concerning the excessive length of the proceedings that started in 1993 and lack of effective remedies in that respect 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* 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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 70 (seventy 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President