



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

FOURTH SECTION

CASE OF ŠNEGOŇ v. SLOVAKIA

(Application no. 23865/02)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

12/03/2007

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 Šnegoň 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. 23865/02) 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 Peter Šnegoň (“the applicant”), on 5 June 2002.

2. The applicant was represented by Mr M. Bachynec, a lawyer practising in Podbiel. The Slovakian Government (“the Government”) were represented by Mrs A. Poláčková, their Agent.

3. On 15 June 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 1965 and lives in Kysucké Nové Mesto. He is a self-employed food products wholesaler.

5. In May 1993 an article was published in several papers about a salmonella epidemic suggesting that it had had its origin in dried milk which had been produced by the applicant.

6. On 4 August 1993 the applicant brought an action in the Čadca District Court (*Okresný súd*) for protection of personal integrity against four publishers, the Slovakian Press Agency, two of his business partners and a research institute. He claimed that the published information was untrue in so far as it concerned him and that it caused damage to his business interests. He sought compensation in the amount of 180,000¹ Slovakian korunas (SKK).

7. On 9 August 1993 the District Court held a hearing following which, on the same day, it decided to transfer the case to the Banská Bystrica Regional Court (*Krajský súd*) for reasons of jurisdiction.

8. On 20 October 1993 the applicant submitted correct addresses for two of the defendants. The decision to transfer the case was then served on these defendants and became final on 24 February 1994.

9. On 9 March 1994 the Regional Court requested that the applicant pay court fees which he did on 5 April 1994.

10. The Regional Court subsequently sought the defendants' observations in reply and, on 9 May 1994, the applicant withdrew his claim in respect of one of them.

11. On 27 June 1994 the Regional Court held a hearing which was adjourned with a view to obtaining further information including a case file with the Považská Bystrica District Court in a criminal case.

12. On 21 September 1994 the applicant extended the action in that he requested that an apology be published and that he be paid SKK 1 million in damages.

13. On 29 September 1994 the Regional Court requested the applicant to pay court fees for his extended claim, which he did on 4 October 1994.

14. On 6 October 1994 the Považská Bystrica District Court requested that the above-mentioned criminal file be returned to it because it was needed in connection with a different criminal case. The Regional Court returned the case file on 10 November 1994 but requested that it be given back as soon as possible since it was still needed in connection with the applicant's case. The Regional Court reiterated the request on 8 February 1995 and, in response, it was informed that the case file in question was in fact with the criminal division of the Regional Court on appeal in the second of the criminal cases mentioned above.

15. Between 2 June 1995 and 5 June 1996 the Regional Court held 4 hearings 3 of which were adjourned in order to obtain further evidence. On each occasion 3 or more of the defendants had been absent.

16. In the meantime, on 14 December 1995 the Regional Court decided to return a part of the court fees to the applicant on the ground that he had reduced the scope of his claim for damages to SKK 500,000.

¹ SKK 180,000 is equivalent to approximately 4,750 euros (EUR).

17. On 7 June 1996 the Regional Court delivered a judgment ordering one of the defendants to pay the applicant SKK 90,000, dismissing the action in respect of four defendants and discontinuing the proceedings in respect of the remaining two defendants.

18. Both the applicant and the defendant who had been ordered to pay damages appealed on the ground that the operative part of the written judgment did not correspond to the judgment which the court had given orally.

19. On 14 November 1996 the Regional Court ordered the applicant to pay the court fees for his appeal and, on 10 February 1998, it delivered two separate decisions by which it corrected errors in the costs order and in the judgment of 7 June 1996.

20. On 23 December 1998 the Supreme Court quashed the judgment of 7 June 1996 as being incomprehensible and lacking adequate reasons, which made it impossible to review it. The Supreme Court observed that the rectification decision of 10 February 1998 had changed the substance of the contested judgment, which was procedurally impermissible. The case was remitted to the Regional Court for re-examination.

21. The applicant then withdrew the action in so far as it concerned 5 of the defendants and maintained it in respect of 2 defendants.

22. On 20 September 1999 the Regional Court held a hearing following which, on the same day, it ordered each of the remaining defendants to pay the applicant SKK 50,000 in damages and dismissed the remainder of his claim. The applicant and one of the defendants appealed.

23. On 3 May 2000 the Regional Court dismissed the applicant's petition for an exemption from the obligation to pay court fees for his appeal.

24. On 19 December 2000 the Supreme Court quashed both the judgment of 20 September 1999 and the decision of 3 May 2000 on court fees. It held that the Regional Court had failed to give comprehensible reasons for the amount of damages to be paid to the applicant and that it had failed to establish adequately the facts relevant for the decision on court fees.

25. On 28 September 2001 and 14 January 2002 the Regional Court held hearings. Following the latter hearing, on the same day it exempted the applicant from the obligation to pay court fees, ordered one of the defendants to pay the applicant SKK 10,000 in damages and dismissed the remainder of the claim. The parties waived their right of appeal and the judgment became final and binding on 6 February 2002.

26. On 12 February 2003 the applicant complained of the length of the proceedings to the Constitutional Court (*Ústavný súd*) under Article 127 of the Constitution.

27. On 26 February 2003 the Constitutional Court rejected the complaint as having been lodged after the expiry of the two-month time-limit laid down in the Constitutional Court Act.

THE LAW

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

28. The applicant complained that the proceedings had been unfair in that the courts had decided arbitrarily to his disadvantage and that the length of the proceedings had been incompatible with the “reasonable time” requirement. 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*

29. It is to be noted that the applicant waived his right of appeal against the judgment of 14 January 2002.

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

2. *Length of the proceedings*

30. The Government submitted that the applicant had failed to exhaust domestic remedies in that he had not complained of the length of the proceedings under Article 127 of the Constitution (*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) in accordance with the applicable requirements. They pointed out that the proceedings had ended with a decision that had become final on 6 February 2002 when the said remedy had already existed and the applicant had had an unchallenged possibility to use it.

31. The applicant contested that argument and maintained that in the circumstances of his case he was not required under Article 35 § 1 of the Convention to use the remedy advanced by the Government.

32. The Court has previously found that where applications had been introduced prior to 1 January 2002 and where the proceedings in question had ended with a final decision prior to 22 October 2002, applicants were not required under Article 35 § 1 of the Convention to raise the complaint about their length with the Constitutional Court (see, for example, *Malejčík v. Slovakia*, no. 62187/00, §§ 46 and 47, 31 January 2006, *Vujčík v. Slovakia*, no. 67036/01, § 50, 13 December 2005 and *Mikolaj and Mikolajová v. Slovakia*, no. 68561/01, §§ 41-42, 29 November 2005). The present case falls within this category and the Court has found no reasons for reaching a different conclusion.

It follows that the complaint of the length of the proceedings cannot be rejected for non-exhaustion of domestic remedies.

33. The period to be taken into consideration began on 4 August 1993 and ended on 14 January 2002. It thus lasted more than 8 years and 5 months. During this period the case was examined three times by the Regional Court and twice by the Supreme Court.

34. 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

35. The Government argued that the subject matter of the proceedings had been factually and procedurally complex, that it had not called for special diligence within the meaning of Article 6 § 1 of the Convention, that there had been delays attributable to the applicant and other parties to the proceedings and that no substantial delays could be imputed to the courts.

36. The applicant submitted that the main reason why the proceedings had lasted so long was that the courts had proceeded with the case erroneously, which had led to a confused decision that had to be quashed on appeal. The applicant considered that the subject matter of the proceedings was of a vital importance for the survival of his business. Notwithstanding the above, he accepted that he had caused a delay in the initial phase of the proceedings by filing the action in the wrong court.

37. 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).

38. 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).

39. 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

40. The applicant also alleged that the courts had discriminated against him in violation of Article 14 of the Convention which provides that:

“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.”

1. Discrimination in connection with the alleged unfairness of the proceedings

41. In so far as the applicant’s complaint under Article 14 of the Convention may be understood as being linked to his complaint under Article 6 § 1 of the Convention of the unfairness of the proceedings, it is to be noted these two complaints have the same factual and legal background. The Court has found that the complaint of the unfairness of the proceedings was inadmissible for non-exhaustion of domestic remedies (see paragraph 29 above) and considers that the same conclusion applies to the complaint of discrimination in that respect.

It follows that the complaint of discrimination in respect of the alleged unfairness of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Discrimination in connection with the length of the proceedings

42. To the extent the applicant’s complaint under Article 14 of the Convention may be understood as being linked to his complaint of the length of the proceedings, 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

43. Lastly, the applicant complained that he had had no effective remedies at his disposal in respect of his complaints under Article 6 § 1 and Article 14 of the Convention. 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 and discriminatory treatment in the proceedings

44. The Court observes that as to the complaint under Article 6 § 1 of the Convention of the alleged unfairness of the proceedings and the complaint under Article 14 of the Convention of alleged discrimination in that respect, the applicant had remedies at his disposal in that he could have appealed against the judgment of 14 January 2002 and, ultimately, he could also have brought a complaint under Article 127 of the Constitution (see, for example, *Poláček v. Slovakia*, no. 58707/00, § 48, 15 November 2005).

It follows that the relevant 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 alleged discrimination in connection with the length of the proceedings

45. The Court has found that the complaint of alleged discrimination in respect of the length of the proceedings was manifestly ill-founded (see paragraph 41 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).

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. Effective remedy in respect of the length of the proceedings

46. Referring to their argument regarding the exhaustion of domestic remedies in respect of the length of the proceedings, the Government submitted that the applicant had had an effective remedy for his complaint.

47. The applicant contested that argument and reiterated his complaint.

48. 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

49. The Court has held before that 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, for example, *Andrášik and Others*, cited above). In the present case it has found that the applicant was not required to use that remedy because his proceedings ended with a decision that became final prior to the Court's decision in the case of *Andrášik and Others* concluding that applicants who had introduced their applications prior to 1 January 2002 should also use that remedy provided that the proceedings complained of were still pending.

50. In view of the above facts and having regard to its conclusion under Article 6 § 1, the Court finds that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention (see, for example, *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003 and *Malejčík*, cited above, § 59).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 76,793 euros (EUR) in compensation for his damage.

53. The Government contested the claim.

54. In so far as the applicant may be understood as claiming compensation for any damage of a pecuniary nature, the Court does not discern any pecuniary damage due to the violation found. 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, and having regard to his contribution to some of the delay (see paragraph 36 above), it awards him EUR 5,000 under that head.

B. Costs and expenses

55. The applicant also claimed EUR 3,687 for the costs of his legal representation before the domestic courts and the Court.

56. The Government invited the Court to determine the amount of the award in accordance with its case-law and the “subject value”.

57. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 700 covering costs under all heads.

C. Default interest

58. 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 under Article 6 § 1 of the Convention concerning the excessive length of the proceedings and the complaint under Article 13 of the Convention of the lack of an effective remedy 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 it is not necessary to examine separately the complaint under 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 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 700 (seven 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;

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