



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

FOURTH SECTION

CASE OF ŠTEFÁNIKOVÁ v. SLOVAKIA

(Application no. 23846/02)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

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 Štefániková v. Slovakia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 23846/02) 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 Slovak national, Ms Tatiana Štefániková (“the applicant”), on 31 May 2002.

2. The Slovak Government (“the Government”) were represented by their Agent, Ms their Agent, Ms A. Poláčková, who was subsequently succeeded in that function by Ms M. Pirošíková.

3. On 7 July 2006 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 applicant was born in 1956 and lives in Žilina.

A Action

5. On 13 May 1996 the applicant brought a civil action in the Žilina District Court (*Okresný súd*). In her capacity as a self-employed entrepreneur, she submitted that she had bought a cash register from another

entrepreneur, that the cash register was faulty and that, therefore, she had repudiated the contract. She sought an order for payment of 24,750 Slovakian korunas¹ (SKK) by way of restitution of the purchase price.

6. On 7 June 1996, in summary proceedings, the District Court issued a payment order (*platobný rozkaz*) for the amount claimed.

7. The defendant then challenged the order by way of a protest (*odpor*), as a result of which the order was *ex lege* vacated.

8. On 23 March 1999 the District Court appointed an expert to draw up a report concerning the alleged defects in the cash register. On 1 March 2000 the District Court appointed a second expert since it had turned out that the first expert was not licensed to carry out the type of analysis needed.

9. On 19 April 2000 the expert report was drawn up and the District Court then sought the parties' observations on it.

10. In 2001 and 2002 the District Court sought further information from the parties and repeatedly requested them to make the cash register available for testing.

11. Between 16 September 1996 and 5 March 2003 the District Court held 4 hearings.

12. Following the last-mentioned hearing, on the same day, the action was dismissed. The District Court found it established that the cash register did not function correctly and that this was caused by the applicant connecting it to an electrical outlet different from the one specified in the operating instructions. In other words, the applicant had failed to establish that the malfunction was due to defects in the cash register.

13. On 24 March 2003 the applicant lodged an appeal contesting both the factual findings as well as the legal conclusions of the District Court.

14. On 13 November 2003 the Žilina Regional Court (*Krajský súd*) heard the appeal following which, on the same day, it overturned the judgment of 5 March 2003. Disapproving the District Court's factual findings, the Regional Court granted the action in full. It was true that the cash register had not been connected exactly in accordance with the operating instructions. However, as concluded by the expert, the connection complied with all applicable technical norms and it was not the cause of the malfunction. The burden of proving the cause of the failure and establishing who was responsible for it rested with the defendant. The defendant had the cash register in his possession, had failed to deliver it to the court and had put up no other relevant defence to the action. Having been served on the parties, the judgment became final on 29 January 2004.

¹ SKK 24,750 is equivalent to approximately 700 euros (EUR).

B. Constitutional complaint

15. On 22 January 2003 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). She directed the complaint against the District Court, contesting the length of the proceedings before it and claiming SKK 145,000¹ in compensation for non-pecuniary damage.

16. On 19 February and 2 July 2003, respectively, the Constitutional Court declared the complaint admissible and found that the District Court had violated the applicant's right to a hearing “without unjustified delay” under Article 48 § 2 of the Constitution. The applicant was awarded SKK 20,000² by way of just satisfaction in respect of non-pecuniary damage and the reimbursement of her legal costs.

In view of the scope of the complaint, as formulated by the applicant, the period under the Constitutional Court's review was more than 6 years and 9 months. No justification for the length of this period could be found either in the nature of the case or in the applicant's procedural conduct. On the other hand, the District Court had been completely inactive for more than 2 years and 4 months between September 1996 and February 1999. The District Court's understaffing and its excessive workload could not be accepted as excuses in this respect.

THE LAW

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

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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

18. The Government objected that, as a result of the Constitutional Court's judgment of 2 July 2003, the applicant could no longer be considered a “victim” within the meaning of Article 34 of the Convention. They maintained that the Constitutional Court had examined the applicant's

¹ SKK 145,000 is equivalent to approximately EUR 4,150.

² SKK 20,000 is equivalent to approximately EUR 575.

constitutional complaint thoroughly and that the amount of just satisfaction awarded complied fully with the Constitutional Court's practice and was reasonable in the circumstances of the case. Moreover, the proceedings before the Constitutional Court had been easily accessible to the applicant, had been speedy and had been conducted in the applicant's language and the compensation had been paid to her without any delay.

19. As for the substance of the application, the Government admitted, with reference to the Constitutional Court's finding of 2 July 2003, that the applicant's right to a hearing within a reasonable time had been violated.

20. The applicant disagreed and submitted that she had caused no delays in the proceedings, that their excessive length had been entirely caused by the authorities and that the redress she had obtained from the Constitutional Court could not be considered adequate.

21. The Court observes that, in view of the Constitutional Court's judgment of 2 July 2003, a question arises whether the applicant can still claim to be a "victim", within the meaning of Article 34 of the Convention, of a violation of her right to a hearing within a reasonable time.

22. The Court observes that in the present case the applicant's status as a "victim" depends on whether the redress afforded to her at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case law (see, most recently, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

23. Before the Constitutional Court, the applicant complained of the length of the proceedings before the first-instance court. Their length was more than 6 years and 9 months. The Constitutional Court awarded the applicant the equivalent of approximately 575 euros (EUR) in respect of non-pecuniary damage. This amount is below 20% of what the Court would generally award in a similar situation in a Slovakian case. Such redress obtained by the applicant at the domestic level must be considered insufficient (see *Scordino* (no. 1), cited above, §§ 205-06 and 214-15). The applicant can accordingly still claim to be a "victim" of a breach of the "reasonable time" requirement.

24. The proceedings commenced on 13 May 1996 and ended with the decision of 13 November 2003. They thus lasted 7 years and some 6 months. In this period the action was examined at 2 levels of jurisdiction. Although, before the Constitutional Court, the applicant did not complain of the phase of the proceedings on her appeal, it cannot be dissociated completely from the proceedings before the District Court and should be taken into consideration (see, *mutatis mutandis*, *Pavlik v. Slovakia*, no. 74827/01, § 107, 30 January 2007).

25. 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

26. 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).

27. 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).

28. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the admission by the Government (see paragraph 19 above), 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed SKK 26,000¹ in respect of pecuniary damage and SKK 14,000² in respect of non-pecuniary damage. The former amount represented the price of a new cash register.

31. The Government contested the claim concerning the alleged pecuniary damage. As for the alleged non-pecuniary damage, the Government pointed out that the applicant had already received compensation at the domestic level.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-

¹ SKK 26,000 is equivalent to approximately EUR 750.

² SKK 14,000 is equivalent to approximately EUR 400.

pecuniary damage and that the claim should be awarded in full. It accordingly awards the applicant EUR 400 under that head.

B. Costs and expenses

33. The applicant also claimed SKK 10,000¹ for the costs and expenses.

34. The Government contested the claim.

35. 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 that the applicant incurred expenses such as postage and out-of-pocket expenses and considers that the sum claimed should be awarded in full. It accordingly awards her EUR 285.

C. Default interest

36. 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 400 (four hundred euros) in respect of non-pecuniary damage and EUR 285 (two hundred and eighty five euros) in respect of costs and expenses, to be converted into the national 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;

¹ SKK 10,000 is equivalent to approximately EUR 285.

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President