



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

FOURTH SECTION

CASE OF SIKA v. SLOVAKIA (No. 4)

(Application no. 44508/04)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Sika v. Slovakia (No. 4),

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 44508/04) 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, Mr Vladimír Sika (“the applicant”), on 27 November 2004.

2. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. On 18 January 2007 the Court decided to communicate the complaint concerning the length of the proceedings 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 1938 and lives in Trnava.

A. Civil action

5. On 31 March 2000 the applicant brought an action against the Western Slovakia Electricity Company in the Trenčín District Court (*Okresný súd*). He submitted that he had sustained damage as a result of

a fire caused by the meters for measuring electricity consumption which belonged to the defendant. The applicant claimed that the defendant was responsible for this damage and sought compensation.

6. On 18 June 2001 the District Court requested that the applicant provide further and better particulars, especially a specification of the amount of damages claimed. The applicant responded on 9 July 2001.

7. On 10 July 2001 the District Court asked the applicant to pay court fees. The applicant responded by demanding an exemption from the obligation to pay court fees on account of his financial situation.

8. On 31 January 2002 the District Court exempted the applicant from the obligation to pay court fees.

9. On 26 March 2002 the District Court requested the defendant's observations in reply.

10. The District Court listed hearings for 3 March and 28 April 2004. The former was cancelled on request of the defendant who was unable to appear and the second was adjourned until 16 June 2004 in order to enable the applicant to identify the defendant in accordance with the applicable formal requirements. The hearing of 16 June 2004 was adjourned with a view to obtaining expert evidence.

11. In the meantime, on 14 May 2004, the District Court authorised a change in defendants.

12. On 11 February 2005 the District Court appointed an energy expert to draw up a report on the case. On 29 March 2005 the expert informed the court that he was not licensed to provide an opinion on the matter. The District Court requested clarification of this from the Ministry of Justice which maintains the register of sworn translators and experts.

13. In a letter of 25 March 2005 the Ministry informed the District Court that the expert had a valid licence. The District Court subsequently requested the expert to produce the report and warned that he could be sanctioned if he failed to do so. On 7 July 2005 the expert submitted a decree of 9 May 2002 showing that his licence had been withdrawn.

14. On 20 July 2005 the District Court appointed a new expert who filed a report on 5 October 2005.

15. On 20 December 2005 and 19 January 2006, respectively, the District Court ordered the defendant to pay an advance on the expert's fees and requested the parties' observations on his report. The parties submitted the observations in February 2006.

16. On 17 March and 20 June 2006, respectively, the District Court ruled on the expert's fees and requested the parties to state whether they wished to call the expert as witness. They replied on 21 July 2006.

17. On 24 June 2006 the applicant requested leave to extend the scope of the action. The District Court dismissed the request on 3 August 2006.

18. On 13 December 2006 the District Court held a hearing at which the applicant submitted that he wished to modify his statement of claim and that

he would do so in writing within 10 days. The defendant requested that the court demand a report from the manufacturer of the metering installations in question. The hearing was adjourned until 21 February 2007.

19. On 15 and 27 December 2006, respectively, the applicant submitted his modified statement of claim and the defendant put forward the questions to be put to the manufacturer. The District Court subsequently sought further and better particulars of the applicant's modified statement of claim and requested the manufacturer to answer the questions asked.

20. On 21 February 2007 the District Court held a hearing following which, on the same day, it discontinued the proceedings in respect of a part of the claim and dismissed its remainder. The applicant appealed.

21. On 23 August 2007 the Trenčín Regional Court (*Krajský súd*) upheld the judgment of 21 February 2007.

B. Constitutional complaints

22. On 1 April 2004 the applicant complained of the length of the proceedings under Article 127 of the Constitution and claimed 300,000¹ Slovakian korunas (SKK) in damages and reimbursement of his legal costs.

23. On 3 June 2004 the Constitutional Court declared the complaint admissible.

24. On 28 June 2004 the President of the District Court filed observations in reply to the complaint. She submitted, *inter alia*, that there was an objective reason why it had been impossible to proceed with the applicant's action in the period between 26 March and 4 October 2002. The initial four-year mandate of the District Court judge in charge of the case had expired. Under newly adopted legislation the validation of judges' mandates for life had been entrusted to the Judicial Council (*Súdna rada*). This was a professional body of the judiciary, the creation of which had been envisaged under the said legislation. However, in the specified period this body had not yet been created. It had not been practical to reassign the case to another judge because 6 out of 8 civil judges of the District Court had been in the same situation. The President further submitted that since the reorganisation of the judiciary in 1996 her court had been chronically understaffed and overburdened to such an extent that it had been impossible to take any measures to prevent delays.

25. On 21 July 2004 the Constitutional Court found a violation of the applicant's right to a hearing "without unjustified delay" (Article 48 § 2 of the Convention) and "within a reasonable time" (Article 6 § 1 of the Convention) and ordered the District Court to proceed with the case expeditiously. At the same time the Constitutional Court dismissed the applicant's claim for damages and reimbursement of his legal costs.

¹ SKK 300,000 is equivalent to approximately 8,500 euros (EUR).

The Constitutional Court discerned no complexity in the subject-matter of the proceedings. As for the conduct of the applicant, it was noted that his initial submissions had been unclear and that following their clarification the applicant's contribution to the proceedings had been active. The Constitutional Court further held that "it [was] not possible to accept completely the assertion of the President of the District Court that the applicant's conduct [had] constituted a substantial obstacle for the District Court to deal with the case in a systematic and efficient fashion". Another part of the Constitutional Court's reasoning however contains a conclusion that "it [was] obvious that the applicant [had] had a substantial share in the length of the proceedings thus far".

As for the conduct of the proceedings by the District Court, the Constitutional Court found periods of unjustified inactivity between 27 March 2000 and 18 June 2001 and between 4 October 2002 and 7 April 2003. The Constitutional Court considered that the finding of a violation of the applicant's rights was sufficient just satisfaction for him and that an award in respect of damages and costs and expects was not appropriate "in view of the specific circumstances and nature of the matter". It offered no further reasons.

26. On 30 August 2005 the applicant lodged a fresh constitutional complaint arguing that there were recurring delays in the proceedings and claiming SKK 300,000 by way of compensation for his non-pecuniary damage.

27. On 7 November 2005 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. It held that the period prior to its judgment (*nález*) of 21 July 2004 was *res iudicata* and examined only the period subsequent to that judgment. Although in that period there had been delays in connection with the confusion regarding the status of the energy expert, these were of an objective character and could not be imputed to the District Court. No unjustified delays had been established.

THE LAW

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

28. 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..."

29. The Government argued that in view of the Constitutional Court's judgment of 21 July 2004 the applicant had lost his status as a "victim" within the meaning of Article 34 of the Convention of a violation of his right to a hearing within a reasonable time. They pointed out that the Constitutional Court had expressly acknowledged the violation of the applicant's right, that it had ordered acceleration of the proceedings and that this order had been effectively implemented. Furthermore, they considered that the reasons relied on by the Constitutional Court in its ruling dismissing the applicant's claim for just satisfaction and compensation in respect of costs and expenses were sufficient.

In support of the above contentions, the Government argued that, as concluded by the Constitutional Court in its decision of 7 November 2005, the District Court could not be held accountable for the delay resulting from the confusion regarding the status of the energy expert. They pointed out that in the period after the Constitutional Court's judgment the applicant had sought modification of his statement of claim on two occasions.

As for the Constitutional Court's ruling dismissing the applicant's claim for just satisfaction, the Government emphasised that the length of the proceedings had been protracted substantially by the applicant himself and invoked the similarity of the present situation with that examined by the Court in its judgment of 19 December 2006 in the case of *Šedý v. Slovakia* (no. 72237/01) in the action against the Ministry of Finance of 10 July 2000.

As regards the substance of the complaint, the Government admitted, with reference to the Constitutional Court's finding of 21 July 2004, that the applicant's right to a hearing within a reasonable time had been violated.

30. The applicant disagreed and contested, in particular, the conclusions of the Constitutional Court and the arguments of the Government to the effect that he had contributed to the length of the proceedings in any way.

31. The Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, among many other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-...).

32. There is a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. However, in some cases, the non-pecuniary damage may be only minimal or none at all (see *Nardone v. Italy*, no. 34368/98, 25 November 2004). The domestic courts will then have to justify their decision by giving sufficient reasons (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 204, ECHR 2006-...).

33. In the present case the Constitutional Court expressly found, in its judgment of 21 July 2004, that the District Court had violated the applicant's

right to a hearing “without unjustified delay” and ordered that the District Court proceed with the matter expeditiously. However, apart from those rulings, it granted the applicant no just satisfaction.

The Constitutional Court supported the dismissal of the applicant's claim for just satisfaction by a mere reference to “specific circumstances and nature of the matter”. Another part of the Constitutional Court's reasoning, which concerns the applicant's conduct in the proceedings, contains an observation that although the applicant's initial submissions had been unclear, following their clarification he had been active and it was not possible to accept that the applicant's conduct had constituted a substantial obstacle for the District Court to deal with his case in an efficient manner. Nevertheless, a further part of the Constitutional Court's reasoning contains a conclusion that the applicant had had a substantial share in the length of the proceedings (see paragraph 25 above). The Court considers that the reasons relied on by the Constitutional Court cannot be considered sufficient according to the Convention principles, quoted above. In that regard the Court considers that the present case has to be distinguished on the facts from that of *Šedý* in that the contribution of Mr Šedý to the length of the proceedings was more significant (see *Šedý*, cited above, §§ 45 – 58 and 91).

34. The Court further observes that after the Constitutional Court's judgment and injunction to proceed with the case expeditiously, the action was pending before the District Court for more than 2 years and 7 months. In that period an inconsistency in the official record of sworn experts was discovered and resulted in further delays. The Court finds that these delays are imputable to the respondent State.

35. For the sake of completeness, the Court also observes that after its judgment of 21 July 2004, the Constitutional Court examined the length of the proceedings anew on the applicant's fresh constitutional complaint.

In connection with this examination, the Court would reiterate that, although the specific technical approach to the examination of individual complaints at the domestic level as such is not of crucial importance under the Convention, to meet the Convention standards the protection afforded to applicants at the national level must overall be compatible with the protection due under the Convention (see, *mutatis mutandis*, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

On the applicant's repeated constitutional complaint, the Constitutional Court examined solely the part of the proceedings subsequent to its judgment of 21 July 2004. As a result, the overall length of the proceedings, which is a continuing and continuously worsening situation, has remained untested (see, *a contrario*, *Bako*, cited above).

36. In conclusion, the redress afforded to the applicant in the present case at the domestic level cannot be considered adequate and sufficient.

Accordingly, the applicant can still claim to be a “victim” of a breach of the “reasonable time” requirement.

37. The period to be taken into consideration began on 31 March 2000 and ended on 21 February 2007. It thus lasted more than 6 years and 10 months for 2 levels of jurisdiction.

A. Admissibility

38. 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

39. 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).

40. 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).

41. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the above mentioned admission by the Government, 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 DISCRIMINATION

42. In connection with the facts of the case the applicant also alleged discrimination contrary to Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention.

43. In so far as the complaint has been substantiated, the Court finds no appearance of a violation of the applicant's rights protected under Article 14 of the Convention (see, among many other authorities, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). The complaint under Article 1 of Protocol No. 12 to the Convention is incompatible *ratione personae* with the provisions of the Convention (see *Sika v. Slovakia* (dec.), no. 2132/02, 10 May 2005).

It follows that the remainder of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 6,889 euros (EUR) in respect of pecuniary damage and EUR 15,000 in respect of non-pecuniary damage.

46. The Government contested these claims.

47. 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-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

48. The applicant also claimed EUR 1,366 for the costs and expenses.

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

50. 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 applicant, who was not represented by a lawyer, the sum of EUR 400 covering costs under all heads.

C. Default interest

51. 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 400 (four hundred 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President