



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

FOURTH SECTION

CASE OF MATIA v. SLOVAKIA

(Application no. 33827/03)

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 Matia v. Slovakia,

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. 33827/03) 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 Ivan Matia (“the applicant”), on 15 October 2003.

2. The applicant was represented by Mr R. Žikla, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. On 30 August 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 Kosice.

5. The applicant is a sports journalist. On 18 November 1997 a local daily newspaper published an article containing negative remarks about the applicant's professionalism, ethics and education.

6. On 26 January 1998 the applicant brought a libel action in the Košice II District Court (*Okresný súd*) against the chief editor of the daily and “his office”. He sought a judicial order that the defendants publish a correction of the libellous information. In the course of the action there

have been several corporate and personal changes on the side of the defendants causing ambiguity as to their standing to be sued in the case.

7. On 25 March and 18 May 1998, respectively, the District Court invited the applicant to submit further information and to pay the court fee. The applicant complied on 2 April and 26 May 1998, respectively.

8. On 21 December 1998 the applicant amended the action and submitted a further specification of who the defendants were.

9. On 22 March 1999 the District Court ruled that the modification of the scope of the action was impermissible. On 30 December 1999 the Košice Regional Court (*Krajský súd*) overturned this decision on the applicant's appeal and approved the modification.

10. Between 1 October 1998 and 2 October 2001 the District Court held 3 hearings that were adjourned due to the absence of the defendant. Another 2 hearings were scheduled but did not take place because the judge was absent for health reasons.

11. On 21 August 2002 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). He contended that the length of the proceedings in his action was excessive and claimed 935,000 Slovakian korunas¹ (SKK) in damages.

12. On 16 April 2003 the Constitutional Court found that there had been a violation of the applicant's right to a hearing "without undue delay" (Article 48 § 2 of the Constitution) and within a "reasonable time" (Article 6 § 1 of the Convention) in his action. The Constitutional Court ordered that the District Court proceed with the matter promptly; pay the applicant SKK 40,000² by way of compensation in respect of non-pecuniary damage; and reimburse the applicant's legal costs. The subject-matter of the proceedings was neither legally nor factually complex. The applicant had caused no delays and what was at stake for him called for special diligence. However, for almost 3 years, the District Court had proceeded with the case inefficiently.

13. Between 12 December 2002 and 1 February 2005 the District Court took several decisions ascertaining who the defendants in the action were and correcting clerical errors in those decisions. The applicant challenged these decisions by way of appeals (*odvolanie*) and appeals on points of law (*dovolanie*). The latter were declared inadmissible on 25 August and 21 October 2005 as, in the circumstances, no such remedy was available.

In this period, the District Court sought information from the Registry of Inhabitants concerning the address of one of the defendants and requested that court mail be served on him by the police.

14. According to the applicant, in the meantime the newspaper in question ceased to exist.

¹ SKK 935,000 at the relevant time was equivalent to approximately 24,600 euros (EUR).

² SKK 40,000 at the relevant time was equivalent to approximately EUR 1,050.

15. On 23 January 2006 the District Court requested the applicant to identify the defendants of his action in accordance with the applicable procedural requirements and the current state of affairs. He responded on 2 February 2006. The District Court then made further inquiries into who was to be sued in the case.

16. On 15 June 2006 the District Court held a hearing. It was adjourned and the applicant was again requested to specify who the defendants were. The proceedings are still pending.

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 argued that, as a result of the Constitutional Court's judgment of 16 April 2003, the applicant could no longer claim to be a victim, for the purposes of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time as regards the period that had already been examined by the Constitutional Court. They pointed out that the Constitutional Court had expressly acknowledged the infringement of the applicant's right and had provided him with preventive and compensatory redress. This redress was adequate and sufficient and it was compatible with the principles and practice of both the Constitutional Court and the Court. The Government emphasised the accessibility of the procedure before the Constitutional Court to the applicant and the promptness with which the Constitutional Court had dealt with his complaint and with which the just satisfaction had been paid to him.

19. The Government further submitted that the applicant could have raised the issue of any possible recurring delays in the proceedings in the period after the Constitutional Court's judgment by way of a fresh complaint under Article 127 of the Constitution. As he had not done so, he had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

20. Nevertheless, as to the substance of the complaint, the Government admitted, with reference to the Constitutional Court's findings, that the applicant's right to a hearing within a reasonable time had been violated.

21. The applicant reiterated his complaint and argued that the redress which he had obtained from the Constitutional Court had not been appropriate. In particular, he argued that the amount of just satisfaction awarded to him by the Constitutional Court was unacceptably low and that delays in the proceedings had continued even after and despite the Constitutional Court's judgment. As a consequence of the excessive length of the proceedings and the way in which his action had been handled, the protection of his personal integrity had been rendered practically nugatory.

22. The Court observes that, in view of the Constitutional Court's judgment of 16 April 2003, the 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 his right to a hearing within a reasonable time.

23. An applicant's status as a victim within the meaning of Article 34 of the Convention depends on 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-...).

24. In the present case the Constitutional Court expressly found that the District Court had violated the applicant's right to a hearing within a reasonable time, ordered that the proceedings be accelerated and awarded the applicant the equivalent of approximately EUR 1,050 in just satisfaction.

25. Whether the redress afforded to the applicant was adequate and sufficient having regard to Article 41 of the Convention 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-...). These include, most notably, the amount of the compensation awarded to the applicant and the effectiveness of the preventive measure applied (see *Sika v. Slovakia* (no. 3), no. 26840/02, § 54, 23 October 2007).

26. At the time of the Constitutional Court's examination of the length of the proceedings they had lasted five years and almost three months without a single decision on the merits. The amount awarded to the applicant by the Constitutional Court by way of just satisfaction is around 25% of what the Court would generally award in a similar situation in a Slovakian case.

Although this amount of just satisfaction is relatively low, this does not of itself necessarily mean that it is incompatible with the Convention principles.

27. After the Constitutional Court's judgment, the proceedings have continued for more than another four years without a single decision on the merits and they are still pending today. This raises doubts as to what preventive effect, if any, the Constitutional Court's injunction actually had in accelerating the proceedings.

28. In view of the relatively low amount of just satisfaction awarded by the Constitutional Court in combination with the ineffectiveness of its injunction in accelerating the proceedings, the Court finds that the redress obtained by the applicant at the national level cannot be considered adequate and sufficient (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.

29. The Court considers that the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to resort to the remedy under Article 127 of the Constitution anew, as suggested by the respondent Government (see *Tomláková v. Slovakia*, no. 17709/04, § 35, 5 December 2006; *Šidlová v. Slovakia*, no. 50224/99, §§ 49 and 50, 26 September 2006; and, *a contrario*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). The complaint, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

30. The period to be taken into consideration began on 26 January 1998 and has not yet ended. It has thus lasted more than nine years and nine months in which period the merits of the case have only been pending at one level of jurisdiction.

31. 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

32. 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).

33. The Court has frequently found a violation of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

34. 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. OTHER ALLEGED VIOLATIONS

35. In his observations in reply to those by the Government on the admissibility and merits of the application the applicant also alleged, with reference to the facts of the case, a violation of his rights under Articles 13, 14 and 17 of the Convention.

36. To the extent that these complaints have been substantiated, the Court finds no appearance of a violation of the applicant's rights protected under the Articles relied on.

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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 29,235 euros (EUR) plus interest in respect of non-pecuniary damage.

39. The Government contested the claim.

40. Ruling on an equitable basis, having regard to its case-law on the subject (see the recapitulation of the relevant principles and, *mutatis mutandis*, their application in *Scordino (no. 1)*, cited above, §§ 267-272), and taking into account the fact that the applicant has already obtained a measure of just satisfaction under the Constitutional Court's judgments of 16 April 2003, the Court awards him EUR 6,000 for non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed EUR 1,674 for the costs and expenses.

42. The Government proposed that the Court determine this claim in accordance with its case-law.

43. 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 300 covering costs under all heads.

C. Default interest

44. 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 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 300 (three 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