



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

FOURTH SECTION

CASE OF WEISS v. SLOVAKIA

(Application no. 28652/03)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

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 Weiss 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 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 28652/03) 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 Vladimir Weiss (“the applicant”), on 25 August 2003.

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

3. On 3 July 2006 the President of the Fourth Section of the Court decided to give notice of the application 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 1957 and lives in Lemešany.

A. Action

5. On 10 November 1995 eleven individuals brought a civil action against the applicant in the Prešov District Court (*Okresný súd*). They

claimed that he was using their plot without a title and that he was causing damage to it. They sought an order for vacation of the plot and damages.

6. Between 16 April 1996 and 29 April 1997 the District Court held 3 hearings, obtained documentary evidence from third parties and inspected the land in question.

7. On 14 March 1997 the plaintiffs modified the action in that they also sought restoration of the plot in the *status quo ante* or, alternatively, damages in a higher amount.

8. Between 10 July 1997 and 15 November 1999 the District Court appointed three construction experts in succession to draw up a report analysing the possibility of restoring the plot. The first expert was discharged shortly after his appointment at his own request as he was on friendly terms with one of the plaintiffs. The second expert was discharged after almost 2 years and 2 months after he was fined for having failed to produce the report despite repeated reminders. The third expert eventually submitted the report on 19 December 2000.

9. In the meantime, on 18 September 1997, the applicant was ordered to pay an advance on the costs of the expert report. The order was upheld on the applicant's appeal on 28 November 1997.

10. On 21 December 2000 the District Court ruled on the expert's fees and, on 3 May 2001, the ruling was upheld following the applicant's appeal.

11. Between 23 April 2002 and 19 February 2003 the District Court held 4 hearings and took various procedural steps.

12. On 7 August 2002 the applicant lodged a counterclaim in which he maintained that he had acquired the title to the plot at issue by way of prescription. He later modified the counterclaim by contending that he had in fact improved the plot and sought compensation for the improvement.

13. On 10 July 2003 the District Court requested the applicant to provide further and better particulars of his counterclaim, which the applicant did on 31 July 2003.

14. On 8 September 2003 the District Court ruled that the applicant would not be exempted from the obligation to pay the court fee for lodging his counterclaim. Without further substantiation, the District Court based the ruling on the observation that the applicant had been awarded just satisfaction by the Constitutional Court (see below). On 16 August 2004 the ruling was upheld on the applicant's appeal, albeit on different grounds.

15. On 14 December 2004 the plaintiffs' lawyer informed the court that one of the plaintiffs had died and that his heir wished to continue the action in his stead.

16. In February 2005 the District Court requested the current plaintiffs to amend their claim so as to reflect the fact that one of the original plaintiffs had died and to indicate the questions which they wished to be put to a hygiene expert. They responded on 1 March 2005.

17. In March 2005 the matter was assigned to a new judge.

18. On 18 April 2005 the District Court held a hearing which was adjourned at the parties' request as they wished to settle the case.

19. On 26 September 2005 the District Court held a hearing following which, on the same day, it dismissed both the 1995 action and the applicant's counterclaim of 2002. It was found that the plot in question belonged to the plaintiffs and that the applicant was using it *bona fide*. The plaintiffs had failed to show that the applicant had caused them any damage and the applicant had failed to show that the owners had obtained any unjustified advantage at his expense.

20. In November 2005 both the plaintiffs and the applicant appealed. In June 2006 the plaintiffs paid the court fee for their appeal and the applicant requested an exemption from the obligation to pay the court fee for his appeal.

21. The appeal proceedings are still pending, a hearing being scheduled for 28 August 2007.

B. Constitutional complaint

22. On 22 August 2002 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). He contested the length of the proceedings and claimed 200,000¹ Slovakian korunas (SKK) in compensation for non-pecuniary damage.

23. On 12 March and 4 June 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" (Article 48 § 2 of the Constitution) and "within a reasonable time" (Article 6 § 1 of the Convention). Together with the latter ruling, the Constitutional Court also ordered the District Court to deal with the case promptly; to pay the applicant SKK 20,000² by way of just satisfaction in respect of non-pecuniary damage; and to reimburse his legal costs.

The Constitutional Court found that the subject-matter of the proceeding was not particularly complex and that no unjustified delays could be imputed to the applicant. However, the Constitutional Court found that there had been 18 months of unjustified delays caused by complete inactivity or by lack of efficiency on the part of the District Court.

The Constitutional Court determined the amount of the just satisfaction to be awarded to the applicant on an "equitable basis" and with reference to Article 41 of the Convention.

¹ SKK 200,000 at the relevant time was equivalent to approximately 5,250 euros (EUR).

² SKK 20,000 at the relevant time was equivalent to approximately EUR 525.

THE LAW

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

24. 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

25. The Government objected that, to the extent the proceedings had been reviewed and the applicant granted compensation by the Constitutional Court, he 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 constitutional complaint thoroughly and that the amount of just satisfaction awarded complied fully with the Constitutional Court's practice on the point. Moreover, the proceedings before it had been easily accessible to the applicant, they had been speedy and had been conducted in the applicant's language and the compensation had been paid to him without any delay.

26. They 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 (*nález*) 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.

27. As for the substance of the complaint, the Government admitted, with reference to the Constitutional Court's finding of 4 June 2003, that the applicant's right to a hearing within a reasonable time had been violated.

28. The applicant argued that the amount of just satisfaction awarded by the Constitutional Court was unacceptably low, that the injunction for an acceleration of the proceedings had been ineffective and that he was not required to complain to the Constitutional Court again.

29. The Court observes that, in view of the Constitutional Court's judgment of 4 June 2003, a question arises as to 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.

30. The Court observes that in the present case the applicant's status as a “victim” depends on whether the redress afforded to him 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-...).

31. At the time of the Constitutional Court's judgment, the length of the proceedings was more than 7 years for a single level of jurisdiction. The Constitutional Court awarded the applicant the equivalent of approximately 525 euros (EUR) in respect of non-pecuniary damage. This amount is far below 20% of what the Court would generally award in a similar case against Slovakia. After the Constitutional Court's judgment, the proceedings continued for 2 years and more than 3 months before a single instance and are still pending on appeal. In these circumstances, the 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.

32. As for the argument of the respondent Government concerning the repeated recourse to the remedy under Article 127 of the Constitution, the Court reiterates that an applicant is not required to resort repeatedly to a remedy in respect of the length of proceedings where the effects produced by the decision of the competent authority in response to that applicant's first use of that remedy do not satisfy the criteria applied by the Court. Such is the case, for example, where the domestic authority, unlike the Court, concluded that the length of the proceedings in issue was not excessive; or where a low amount of just satisfaction was granted, due consideration being given in this connection, if appropriate, to whether or not the proceedings were subsequently accelerated in accordance with the domestic authority's order; or where the remedy in issue was incapable of providing redress in respect of the overall length of the proceedings complained of (see *Sukobljević v. Croatia*, no. 5129/03, § 52, 2 November 2006; *Sika v. Slovakia*, no. 2132/02, § 31, 13 June 2006; *Šidlová v. Slovakia*, no. 50224/99, §§ 49 and 50, 26 September 2006, *Tomláková v. Slovakia*, no. 17709/04, §§ 34-35, 5 December 2006 and *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). This above list is not exhaustive.

33. From the conclusion in paragraph 31 above it follows that, unlike in the case of *Becová* (cited above), in the case at hand the Constitutional Court's decision cannot be considered to be compatible with Convention principles (see *Sukobljević*, cited above, § 45). The present case also differs from *Becová* in that the present application was introduced without substantial delay after the Constitutional Court's judgment.

In view of the above considerations the Court finds 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.

The complaint, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

34. The period to be taken into consideration began on 10 November 1995 and has not yet ended. It has thus lasted 12 years for 2 levels of jurisdiction.

35. 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

36. 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).

37. 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).

38. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed SKK 180,000¹ in respect of non-pecuniary damage.

¹ SKK 180,000 is equivalent to approximately EUR 5,150.

41. The Government contested the claim and invited the Court to determine the amount of the award in accordance with the “subject value”.

42. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, and 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 that the applicant has already obtained some just satisfaction under the Constitutional Court's judgment of 4 June 2003, it awards him EUR 4,350 under that head.

B. Costs and expenses

43. The applicant also claimed SKK 2,000¹ for the costs and expenses incurred before the domestic courts and the Court.

44. The Government had no objections in respect of this claim.

45. 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 claim in full to cover costs under all heads. It therefore awards the applicant EUR 60.

C. Default interest

46. 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 4,350 (four thousand three hundred and fifty euros) in respect of non-pecuniary damage and

¹ SKK 2,000 is equivalent to approximately EUR 60.

EUR 60 (sixty 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;

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

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President