



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

FOURTH SECTION

CASE OF ŠPANÍŘ v. SLOVAKIA

(Application no. 39139/05)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

07/07/2008

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 Španír 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. 39139/05) 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 Milan Španír (“the applicant”), on 17 October 2005.

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

3. On 13 February and 12 March 2007, respectively, the President of the Fourth Section of the Court decided to grant priority to the application under Rule 41 of the Rules of Court and 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 1947 and lives in Palarikovo.

A. Employer and employment

5. The applicant was employed in a private joint-stock company, R. The employer published a daily newspaper ND. The applicant was assigned to the post of head of the newspaper's secretariat.

6. On 29 November 2000 R. abolished the applicant's post and on 8 January 2001 it sent him a notice terminating his employment.

7. R. subsequently sent the applicant another notice terminating his employment with immediate effect. The applicant was required to leave his job and has not worked for R. ever since.

8. The termination of the applicant's employment with immediate effect was declared null and void in a separate set of proceedings which are not the subject-matter of the present application.

9. In 2004 R. ceased publishing ND, started to discontinue other activities and relocated. R now exists on paper only.

B. Action and enforcement

10. On 11 June 2001 the applicant brought an action against R. in the Bratislava I District Court (*Okresný súd*) to have the termination of his contract of employment in January 2000 declared null and void. He later submitted a claim for damages.

11. In the course of the proceedings the applicant supplemented his statement of claim and submitted new evidence on numerous occasions.

12. On 11 January 2002 the District Court requested the defendant's observations in reply. The defendant submitted them on 28 August 2002.

13. On 5 November and 10 December 2002 the District Court held hearings. Following the latter hearing, on the same day, it ruled that the termination of the applicant's employment was null and void. The defendant appealed to the Bratislava Regional Court (*Krajský súd*).

14. On 30 December 2002 the applicant requested that the defendant be ordered to pay him a part of his claim for damages by way of an interim measure. The request was dismissed on 30 January 2003 and the applicant appealed.

15. On 25 June 2003 the Regional Court held a hearing following which, on the same day, it quashed the judgment of 10 December 2002 and upheld the decision of 30 January 2003 concerning the refusal of an interim measure.

16. Between 11 November 2003 and 28 May 2004 the District Court held 4 hearings. During this period the applicant on two occasions requested interim measures ordering the defendant to pay a part of his claim for damages. His request of 18 November 2003 was dismissed on 11 December 2003 and the proceedings in respect of his request of 24 March 2004 were discontinued on 31 March 2004.

17. On 18 November 2003 the applicant challenged the District Court for bias. The challenge was dismissed by the Regional Court on 2 December 2003.

18. On 28 May 2004 the District Court again declared the applicant's dismissal null and void. The defendant appealed.

19. On 26 July 2004 the applicant requested an interim measure to freeze the defendant's assets pending the outcome of the proceedings. He argued that the defendant had ceased publishing the newspaper ND and had started dissipating its assets in order to avoid criminal prosecution (see below) and to prevent enforcement of the final judgment in the present proceedings. The applicant lodged another request for an interim measure on 18 August 2004.

20. On 8 September 2004 the District Court dismissed the request as unsubstantiated.

21. A hearing of the defendant's appeal against the judgment of 28 May 2004 was scheduled for 14 April 2005 but had to be adjourned due to the absence of the president of the Regional Court's chamber for health reasons.

22. On 28 April 2005 the Regional Court held a hearing following which, on the same day, it upheld the judgment of 28 May 2004. At the same time, the Regional Court ruled that its judgment could be appealed on points of law (*dovolanie*) as the matter concerned a legal issue of particular importance within the meaning of Article 238 § 3 (a) of the Code of Civil Procedure.

23. On 8 June 2005 R. lodged an appeal on points of law. The proceedings were discontinued by the District Court on 18 July 2005 on the ground that R. had failed to pay court fees. The decision was upheld on appeal on 31 October 2005.

24. On 22 June 2005 the applicant commissioned a judicial enforcement officer (*súdny exekútor*) to enforce the judgment of 28 May 2004.

25. The enforcement proceedings formally commenced but, in a letter of 4 August 2005, the enforcement officer informed the applicant that it had proved impossible to trace R., its representatives and its assets. He proposed that the applicant withdraw his enforcement petition.

26. On 4 July 2006 the District Court dismissed a motion by the enforcement officer that the proceedings be discontinued *ex officio*. It was observed that the applicant disagreed with the discontinuation and that he had identified executable assets belonging to the defendant.

The enforcement is still pending.

C. Constitutional complaint

27. On 3 January 2005 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*).

He complained of the length of the proceedings in the action brought on 11 June 2001 before both the District Court and the Regional Court and claimed 1,000,000 Slovakian korunas¹ (SKK) in damages.

28. On 16 March and 17 August 2005, respectively, the Constitutional Court declared the complaint admissible and held a public hearing.

29. On 12 October 2005 the Constitutional Court found that the District Court had violated the applicant's rights to a hearing "without undue delay" (Article 48 § 2 of the Constitution) and "within a reasonable time" (Article 6 § 1 of the Convention). The Constitutional Court ordered the District Court to pay the applicant SKK 20,000² by way of just satisfaction in respect of his non-pecuniary damage and to reimburse his legal costs. The remainder of the applicant's constitutional complaint was dismissed.

The Constitutional Court found that the subject-matter of the proceedings was not of any particular legal or factual complexity. No substantial delays could be imputed to the applicant. Although the Constitutional Court found no specific instances of significant inactivity on the part of the District Court, it held that the way in which the District Court had conducted the proceedings had been, in general, inefficient. The Constitutional Court found no violation of the applicant's right to a speedy trial in the proceedings before the Regional Court. It determined the amount of just satisfaction "on an equitable basis" and made a reference to Article 41 of the Convention.

D. Other facts invoked by the applicant

30. On 30 June 2005, in response to the applicant's inquiry, the Ministry of Justice affirmed that the average length of labour disputes which had been resolved in the previous year was 17 ½ months.

31. In September 2005 the applicant lodged two actions against R. with the Trnava District Court to require the defendant to assign him work under his employment contract and to pay him wages for the period subsequent to the period covered by the judgment of 28 May 2004. These actions were later transmitted to the Galanta District Court which was competent to entertain them. The actions are still pending before that court.

32. In December 2005 the applicant filed a personal bankruptcy petition with the Nové Zámky District Court. The petition was then transmitted to the Nitra District Court on the ground that the latter court was competent to examine it. It is still pending before that court. The applicant is also facing the forcible sale of his house in order to meet his debts.

¹ SKK 1,000,000 is equivalent to approximately 28,500 euros (EUR).

² SKK 20,000 is equivalent to approximately EUR 570.

33. The non-payment of the applicant's wages was investigated in the context of his criminal complaint. This has produced no material result as it was found that R. and its representatives could not be traced.

34. The applicant was granted premature retirement benefits. The amount of his benefits was reduced by approximately 50% on the ground that in the preceding period he had *de facto* received neither a salary nor compensation for loss of salary, this being a relevant criterion.

35. As a result of the litigation the applicant has been under severe psychological stress and in 2007 suffered 2 heart attacks.

THE LAW

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

36. 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

37. 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 and was not manifestly inadequate or insufficient in view of all the circumstances. In support of this contention, the Government relied on the Court's findings in the cases of *Šedý v. Slovakia* (no. 72237/01, §§ 74-75, 19 December 2006) and *Gergouil v. France* (no. 40111/98, 21 March 2000). They argued further that the proceedings before the Constitutional Court had been easily accessible to the applicant, speedy and conducted in the applicant's language.

38. As for the enforcement proceedings, the Government argued that the applicant could have raised the issue of possible delays 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.

39. The applicant submitted that he had exhausted all remedies which had been available to him for the purposes of Article 35 § 1 of the Convention. However, his employment dispute was still pending and the excessive length of his proceedings had rendered the enforcement of the final judgment practically impossible. In his view, the amount of just satisfaction awarded by the Constitutional Court was unacceptably low and he should not be required to seek anew protection of his right to a hearing within a reasonable time before the Constitutional Court.

40. The Court observes that, in view of the Constitutional Court's judgment of 12 October 2005, 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.

41. The Court further 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 in 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-...).

42. The length of the proceedings covered by the Constitutional Court's examination was more than 3 years and 10 months for 2 levels of jurisdiction. The Constitutional Court awarded the applicant the equivalent of approximately 570 euros (EUR) in respect of non-pecuniary damage.

It should be noted that the action concerned the applicant's dismissal and means of subsistence. In view of the special diligence which is necessary in such disputes (see, for example, *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17), the Court finds that this amount is below 20% of what it would generally award in a similar case against Slovakia.

43. As for the Government's comparative argument concerning the case of *Šedý*, the Court observes that, in contrast to the present case, the proceedings referred to in *Šedý* concerned a property dispute and their relevant part lasted no more than about 2 years and 5 months (see *Šedý*, cited above, § 73). As for the proceedings in the case of *Gergouil*, although they concerned an employment matter and their length was comparable to that in the instant case, delays of at least one year and two months could be imputed to the applicant (see *Gergouil*, cited above, § 18) and there was no indication that they continued in the form of enforcement following the final decision. The Government's argument therefore cannot be sustained.

44. After the Constitutional Court's judgment, the proceedings have thus far continued for 2 years in the form of enforcement proceedings, which should also be taken into account (see, for example, *Zappia v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1411-1412, § 20, *Macková v. Slovakia*, no. 51543/99/98, § 55,

29 March 2005 and *Mužević v. Croatia*, no. 39299/02, § 69, 16 November 2006). Although, formally speaking, the proceedings on the applicant's actions brought in 2005 are not the subject-matter of the instant application, they form a continuation of the applicant's employment dispute and, as such, should also be taken into consideration as part of the general background of the case.

45. In view of the above considerations, 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.

46. 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.

47. From the conclusion in paragraph 45 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. The applicant was therefore 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 *Šidlová*, cited above, §§ 49 and 50 and *Tomláková*, cited above, § 35). The application, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

48. The period to be taken into consideration began on 11 June 2001 and has not yet ended (see paragraph 43 above). It has thus lasted more than 6 years for 3 levels of jurisdiction and enforcement proceedings.

49. 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

50. 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). The special diligence required in employment disputes has already been noted above (see paragraph 42 above).

51. 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).

52. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed SKK 3,007,750¹ by way of compensation in respect of lost wages, late-payment interest and reduced retirement benefits and also made a claim for compensation in respect of “indirect losses” in relation to his personal situation, career, health and family’s property. He left the amount of the award to the Court’s discretion.

55. The Government contested the claims made.

¹ SKK 3,007,750 is equivalent to approximately EUR 86,000.

56. In so far as the claim has been substantiated, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It interprets the applicant's claim in respect of "indirect losses" as relating to non-pecuniary damage and considers that he must have sustained some moral damage. 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 judgment of 12 October 2005, it awards him EUR 1,000 under that head.

B. Costs and expenses

57. The applicant did not submit a claim for costs and expenses.

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 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 1,000 (one thousand euros) in respect of non-pecuniary damage, 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 amount 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