



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

FOURTH SECTION

CASE OF VIČANOVÁ v. SLOVAKIA

(Application no. 3305/04)

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 Vičanová 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. 3305/04) 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, Ms Vlasta Vičanová (“the applicant”), on 16 January 2004.

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

3. On 13 April 2007 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 1958 and lives in Prievidza.

A. Action

5. On 14 September 1995 the applicant brought an action against her former husband in the Trnava District Court (*Okresný súd*) seeking the division and distribution of their matrimonial property. She submitted that

following their divorce in 1993 the defendant had taken possession of all their property and that she had been forced to leave their household and was living in a sub-leased flat.

6. Between 1996 and 2002 the District Court held 7 hearings. The action was assigned, in turn, to 4 different judges.

7. On 30 October 2002 the District Court appointed an expert to draw up a report on the property to be divided.

8. On 20 December 2002 the applicant raised objections as to the expert's qualifications. The District Court dismissed them and ruled on the expert's fees on 5 and 17 February 2003, respectively. The decision of 5 February 2003 was upheld on the applicant's appeal on 31 July 2003.

9. On 4 January 2004 the District Court sent a reminder to the expert who finally filed the report on 14 January 2004. The applicant subsequently filed her comments and objected that not all items in the matrimonial regime had been included in the expert's report. On 26 April 2004 the District Court asked the applicant to complete her comments and the defendant and the expert responded to them on 12 and 13 May 2004, respectively.

10. On 19 August 2004 the District Court again ruled on the expert's fees. In this period it also took steps with a view to establishing the applicant's material situation.

11. On 25 November 2004 the applicant informed the District Court that the defendant had died on 29 October 2004 in a traffic accident.

12. On 10 January 2005 the District Court held a hearing which was adjourned in order to obtain information about the proceedings on the settlement of the defendant's estate.

13. On 24 January 2005 the notary who was conducting the inheritance proceedings as an official of the court informed the District Court of the state of the inheritance proceedings.

14. On 1 April 2005 the District Court stayed the proceedings in the applicant's action pending the outcome of the inheritance proceedings.

15. On 26 August 2005 the notary issued an inheritance decree (*osvedčenie o dedičstve*) dividing and distributing the estate among the late defendant's three children. It became final on the same day.

16. On 8 December 2005 the District Court requested the defendant's heirs to submit their observations in reply to the action. On 15 February 2006 the District Court ordered that the request be served on two of the heirs by the police. The requests were returned on 10 March 2006 as undeliverable.

17. In April and July 2006 the District Court made inquiries with a view to establishing the address of the two heirs and ensuring the service of court correspondence on them.

18. In May and September 2006, respectively, the District Court appointed official representatives (*opatrovník*) to act on behalf of the missing heirs and to receive official correspondence in the proceedings.

19. On 9 October 2006 the District Court held a hearing at which the applicant submitted that the defendants to the action were her late husband's three children and two siblings with whom she had no contact.

20. In October and November 2006 and April 2007 the District Court made further inquiries with a view to establishing the addresses of some of the defendants. In January 2007 it appointed an official representative to act on behalf of one of them.

21. The proceedings are still pending.

B. Constitutional complaint

22. On 18 February 2002 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*) in respect of the length of the proceedings in her action.

23. On 28 October 2002 the applicant provided further and better particulars of her complaint through a lawyer who had been officially appointed for her. She claimed 90,000 Slovakian korunas¹ (SKK) in just satisfaction for non pecuniary damage.

24. In his observations in reply to the complaint, the President of the District Court submitted, *inter alia*, that the essential problem in relation to the processing of cases in general was the insufficient number of judges.

25. On 11 December 2002 the Constitutional Court found that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay; ordered the District Court to proceed with the matter promptly and awarded the applicant SKK 50,000² by way of compensation in respect of non-pecuniary damage.

The Constitutional Court discerned no factual or legal complexity in the subject-matter of the proceedings. No significant delays could be imputed to the applicant.

However, there was nothing to justify the fact that the proceedings were still pending at first instance without a single decision on the merits having been taken and without obtaining the necessary expert evidence after more than 7 years. The District Court's conduct of the entire proceedings had been marked by inactivity or inefficient activity over a period of almost 5 years (from 1997 to 3 June 2002). The amount of just satisfaction was determined on an equitable basis.

¹ SKK 90,000 was at the relevant time equivalent to approximately 2,350 euros (EUR).

² SKK 50,000 was at the relevant time equivalent to approximately EUR 1,300.

THE LAW

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

26. 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

27. The Government objected that, to the extent the proceedings had been reviewed and the applicant granted compensation by the Constitutional Court, she 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.

28. The Government considered that the present case could be compared to *Dubjaková* which the Court had declared inadmissible (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004), having concluded that the amount of compensation obtained by the applicant in that case at the national level for the length of her proceedings had not been unreasonable and that, consequently, she had lost her status of a “victim” in the Convention sense. The Government pointed out that in the Court’s assessment of the “victim” status of that applicant no specific consideration had been given to the preventive aspect of the redress obtained by her at the national level.

29. 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 (*nález*) by way of a fresh complaint under Article 127 of the Constitution. They argued that repeated examination by the Constitutional Court of the length of proceedings before the ordinary courts had been accepted by the Court as leading to the deprivation of the “victim” status of Ms *Dubjaková* (cited above) as well as Ms *Končerková* (see *Končerková v. Slovakia* (dec.), no. 63946/00, 9 May 2006). As the applicant had not done so, she had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

30. Nevertheless, as for the substance of the application, the Government admitted, with reference to the Constitutional Court’s finding of 11 December 2002, that it was not manifestly ill-founded.

31. The applicant disagreed and submitted that she had exhausted all remedies available to her at the national level.

32. The Court observes that, in view of the Constitutional Court's judgment of 11 December 2002, 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 her right to a hearing within a reasonable time.

33. 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-...). 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).

34. 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 without a single decision on the merits having been taken. The Constitutional Court found that the conduct of the entire proceedings had been marked by inactivity or inefficient judicial activity which amounted to almost 5 years and awarded the applicant the equivalent of approximately 1,300 euros (EUR) in respect of non-pecuniary damage. This amount is approximately 20% of what the Court would generally award in a similar situation in a Slovakian case. Although this amount of just satisfaction is relatively low, it does not of itself necessarily mean that it is incompatible with the Convention principles.

35. In its judgment, the Constitutional Court ordered the acceleration of the proceedings. However, after its judgment, the proceedings continued for more than 4 years and 10 months without a single decision on the merits having been taken. The proceedings are still pending before the first-instance court. This raises doubts as to what preventive effect, if any, the Constitutional Court's injunctions actually had in accelerating the proceedings.

36. In view of the low amount of just satisfaction awarded by the Constitutional Court in combination with the ineffectiveness of its injunction to speed up 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).

37. As for the Government's comparative argument concerning the case of *Dubjaková*, the Court observes that, in contrast to the present case, the proceedings referred to in *Dubjaková* had taken place before courts at two

levels of jurisdiction, three decisions on the merits had been taken prior to the Constitutional Court's second judgement and the latter of these decisions had produced a final resolution of the case (see *Dubjaková*, cited above). The Government's argument therefore cannot be sustained.

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

39. 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 normally 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.

40. From the conclusions in paragraphs 36 and 38 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).

41. As for the Government's reliance on the cases of *Dubjaková* and *Končeková*, the Court would observe that the Constitutional Court's first examination of the length of the proceedings in the cases of Ms *Dubjaková* (cited above) and Ms *Končeková* (cited above) had taken place prior to 1 January 2002, that is to say in the context of a different legal regime (see, for example, *Bánosová v. Slovakia* (dec.), no. 38798/97, 27 April 2000) than the second examination (see, for example, *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002 IX). The Court recalls in this connection that constitutional remedies available for length of proceedings complaints in Slovakia prior to 1 January 2002 were not considered effective in the Convention sense (see *Eštók v. Slovakia* (dec.), no. 63994/00, 28 September 2004). The Government's argument therefore cannot be sustained.

42. 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 application, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

43. The period to be taken into consideration began on 14 September 1995 and has not yet ended. It has thus lasted more than 12 years and 1 month for a single level of jurisdiction.

44. 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

45. 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).

46. 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).

47. 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

48. 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

49. The applicant claimed compensation in respect of non-pecuniary damage in an amount between SKK 500,000¹ and 750,000². She submitted no claim in respect of pecuniary damage.

50. The Government contested the claim made.

51. The Court considers that the applicant must have sustained non-pecuniary 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 11 December 2002, it awards her EUR 5,500 under that head.

B. Costs and expenses

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

C. Default interest

53. 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 5,500 (five thousand five

¹ SKK 500,000 is equivalent to approximately EUR 14,300.

² SKK 750,000 is equivalent to approximately EUR 21,500.

hundred euros) in respect of non-pecuniary damage, the above amount 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 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