



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

FOURTH SECTION

CASE OF BÁŇAS v. SLOVAKIA

(Application no. 42774/04)

JUDGMENT

STRASBOURG

12 February 2008

FINAL

12/05/2008

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 Báňas v. Slovakia,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Kristaq Traja,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 42774/04) 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 František Báňas (“the applicant”), on 22 October 2004.

2. The applicant was represented by Ms Pechová Rašlová, a lawyer practising in Bratislava. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 24 November 2005 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.

4. On 20 December 2005 the applicant’s son, Mr Stanislav Báňas, informed the Court that the applicant had died on 17 November 2005. The letter stated that, as the applicant’s heir, Mr Stanislav Báňas would pursue the civil proceedings initiated by his father. The applicant’s son further expressed the wish to pursue the application introduced by his father under Article 34 of the Convention.

THE FACTS

5. The applicant, a Slovak citizen born in 1921, lived in Košice.

A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings concerning the applicant's action of 1991

7. On 10 December 1991 the applicant filed an action with the District Court in Prešov. He claimed the transfer of ownership of real property under the Land Ownership Act 1991.

8. In the course of 1992 the District Court scheduled three hearings and ordered an expert opinion. In 1993 two hearings were held. The District Court obtained an expert opinion. After an inspection of the site, it asked the expert for additional information. The parties submitted their comments on the expert opinions.

9. On 21 January 1994 the District Court found that the applicant was the owner of the property in issue. On 15 November 1994 the Regional Court in Košice quashed that judgment.

10. In the first half of 1995 the District Court obtained further evidence. It held hearings on 31 July and 16 October 1995. On 19 October 1995 it dismissed the applicant's action. On 10 June 1996 the Regional Court in Košice quashed that decision as being erroneous.

11. After having obtained additional evidence and having scheduled two hearings, the District Court delivered a new judgment on 28 May 1997. It found that the applicant was the owner of the property and decided to determine separately the remaining claim, namely that the defendants should vacate the property.

12. On 28 July 1997 the defendants appealed. The file was submitted to the court of appeal on 1 October 1997. On 16 April 1998 the applicant claimed that the first-instance judgment of 28 May 1997 should be rectified.

13. On 21 April 1998 the Regional Court in Prešov ordered the District Court to determine, within twenty days, the applicant's ownership claim in respect of a house which the first-instance judgment did not cover. The District Court determined that issue in the applicant's favour in a judgment given on 20 May 1998. The defendants appealed. On 27 August 1998 the Regional Court in Prešov confirmed the first-instance decision in respect of the house. It dismissed the applicant's claim in respect of the remaining real property.

14. On 10 November 1998 and 1 December 1998 respectively the applicant and the defendants appealed on points of law. On 30 March 1999 the Supreme Court quashed the Regional Court's above decision dismissing a part of the applicant's claim.

15. One of the defendants died on 1 August 1999. On 20 September 1999 the Regional Court in Prešov held a hearing. On 20 December 1999 it upheld the first-instance decisions of 28 May 1997 and 20 May 1998 by

which the ownership right in respect of the real property in issue was transferred to the applicant. On 6 March 2000 one of the defendants filed an appeal on points of law.

16. On 6 June 2000 the file was submitted to the Supreme Court. On 15 May 2001 the case was returned to the District Court as the defendants alleged that their names were incorrectly mentioned in the judgments of 20 May 1998 and 20 October 1999. After it had obtained relevant documentary evidence, the District Court concluded that rectification of its judgment was not required. It returned the case to the Supreme Court on 8 July 2002.

17. On 28 November 2002 the Supreme Court quashed the judgment of the Regional Court of 20 December 1999 to the extent that it concerned the transfer of ownership of a part of the real property. The Supreme Court noted, in particular, that the Regional Court had disregarded, contrary to the relevant provisions of the Code of Civil Procedure, the legally binding view expressed in the Supreme Court's judgment of 30 March 1999. On 21 May 2003 the Regional Court in Prešov quashed the corresponding part of the first-instance judgment.

18. The file was returned to the District Court on 20 June 2003. It heard four witnesses on 24 November 2003. The parties failed to appear on 12 February 2004. On 5 May 2004 the case was adjourned as the file was with the Constitutional Court. The District Court held three hearings between 14 June 2004 and 15 November 2004.

19. On 8 March 2005 the District Court decided to obtain an expert opinion. The expert submitted his opinion on 2 September 2005. On 23 September 2005 the District Court decided on the expert's fees. On 10 October 2005 the applicant requested that a second expert opinion be obtained. On 11 October 2005 he appealed against the decision on the fees of the expert. The Prešov Regional Court decided on the appeal on 22 May 2006. The decision on the expert's fees became final on 21 August 2006.

20. The case was assigned to a different judge of the District Court on 3 July 2006 and 1 August 2007.

21. The proceedings are pending.

2. Constitutional proceedings

a) Complaint of 8 February 2002

22. On 8 February 2000 the applicant complained under Article 127 of the Constitution that there had been excessive delays in the above proceedings before the Prešov District Court, the Prešov Regional Court and the Supreme Court.

23. On 23 April 2002 the Constitutional Court dismissed the complaint. As a different constitutional remedy had been available to the applicant at

the time when the first-instance and appeal court's decisions had been given, the Constitutional Court could not, under Article 127 of the Constitution enacted with effect from 1 January 2002, examine the alleged delays in the proceedings before the District Court and the Regional Court which had ended in 1999.

24. The Constitutional Court further found that in his submissions the applicant complained of the conduct of the Supreme Court in the proceedings leading to its decision of 30 March 1999. As the proceedings complained of had ended, that part of the application was also manifestly ill-founded.

b) Complaint of 5 May 2002

25. On 5 May 2002 the applicant filed a new complaint alleging that there had been unjustified delays in the proceedings before the Supreme Court concerning the appeal on points of law against the Prešov Regional Court's judgment of 20 December 1999. The applicant claimed the equivalent of approximately 2,350 euros (EUR) as just satisfaction.

26. On 25 September 2002 the Constitutional Court found that the Supreme Court had violated the applicant's constitutional right to a hearing without unjustified delay. It ordered the Supreme Court to proceed with the case without further delay and to pay 10,000 Slovakian korunas¹ to the applicant as just satisfaction. When awarding the above sum to the applicant the Constitutional Court had regard to the applicant's argument that the proceedings concerning his action had lasted more than ten years.

c) Complaint of 30 January 2004

27. On 30 January 2004 the applicant complained to the Constitutional Court about the overall length of the proceedings concerning his action of 1991. He identified the Prešov District Court, the Košice Regional Court, the Prešov Regional Court and the Supreme Court as the authorities responsible for a violation of his rights under Article 48 (2) of the Constitution and under Article 6 § 1 of the Convention. The applicant also requested that the District Court, before which the case was pending, should proceed with it without further delay.

28. The Constitutional Court rejected the complaint on 10 June 2004. It held that it could not repeatedly examine those parts of the proceedings which were covered by its earlier decisions.

29. The Constitutional Court examined the proceedings before the District Court after 30 April 2002 (the date when its decision of 23 April 2002 had become final) and also the proceedings before the Supreme Court after 26 October 2002 (the date on which its decision of 25 September 2002

¹ The equivalent of approximately 235 euros.

had become final). It found no unjustified delays in the relevant parts of the proceedings.

B. Relevant domestic law and practice

30. The relevant domestic law and practice concerning alleged delays in judicial proceedings are set out, for example, in *L'R. v. Slovakia*, no. 52443/99, §§ 36-39, 29 November 2005.

THE LAW

I. THE STANDING OF THE APPLICANT'S SON

31. Mr Stanislav Báňas, the applicant's son, expressed the wish to continue the proceedings in the present case after the applicant's death.

32. The Court sees no reason for departing from its practice in similar cases (see, e.g., *Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005) and finds that the applicant's son has standing to continue the proceedings before the Court in his late father's stead.

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

33. 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..."

34. The Government contested that argument.

35. The period to be taken into consideration began only on 18 March 1992, when the recognition by the Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted 15 years and more than 10 months for three levels of jurisdiction.

A. Admissibility

36. Firstly, the Government objected that the application had been filed outside the six month time-limit laid down in Article 35 § 1 of the

Convention. In their view, that time-limit had started running on 30 April 2002 when the applicant had been notified of the Constitutional Court's decision of 23 April 2002.

Secondly, the Government argued that the applicant had lost the status of a victim, within the meaning of Article 34 of the Convention, to the extent that the Constitutional Court had found a violation of his right to a hearing within a reasonable time in the judgment of 25 September 2002.

37. The applicant contested the Government's arguments.

38. The Court has held that complaints about the length of proceedings relate to a continuing situation in respect of which the period of six months set out in Article 35 § 1 of the Convention starts running only after such a situation has ended (see, e.g., *Antonenkov and Others v. Ukraine*, no. 14183/02, § 32, 22 November 2005; *Novinskiy v. Russia* (dec.), no. 11982/02, December 2007).

In the present case the proceedings complained of are still pending. The application cannot, therefore, be rejected for the applicant's failure to comply with the six-month rule laid down in Article 35 § 1 of the Convention.

39. As to the argument that the applicant can no longer claim to be a victim in view of the Constitutional Court's judgment of 25 September 2002, the Court notes that that judgment relates exclusively to the proceedings before the Supreme Court concerning the appeal on points of law against the Regional Court's judgment of 20 December 1999. However, it has been the Court's practice to examine the overall length of the proceedings complained of. The Constitutional Court declared inadmissible two other complaints filed by the applicant which concerned a substantial part of the proceedings in issue. Even assuming that the reference to the overall length of the proceedings in the Constitutional Court's judgment of 25 September 2002 (see paragraph 26 above) implies that the just satisfaction awarded to the applicant bears on the proceedings complained of as a whole, the Court finds that the amount granted is too low for the applicant to lose his standing as a victim (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 3788/06, 18 September 2007).

Accordingly, the applicant can still claim to be a victim, within the meaning of Article 35 § 1 of the Convention, as regards his complaint about the overall length of proceedings.

40. 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

41. The applicant contended that there was no justification for the length of the proceedings concerning his action.

42. The Government argued that the case was complex and that the parties by their conduct had contributed to the length of the proceedings. Leaving aside the period covered by the Constitutional Court's judgment of 25 September 2002, there had been no delays imputable to the domestic courts involved.

43. 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).

44. 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).

45. 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. In particular, the Court notes that the relevant period has exceeded 15 years and 10 months. Such a long period cannot be justified by the complexity of the case or the parties' conduct. On 28 November 2002 the Supreme Court quashed the judgment of the Regional Court of 20 December 1999 on the ground that the latter had disregarded, contrary to the relevant provisions of the Code of Civil Procedure, the legally binding view expressed in the Supreme Court's judgment of 30 March 1999. The failure by the Regional Court to comply with the Supreme Court's judgment undeniably prolonged the proceedings. Furthermore, there has been no apparent progress on the merits of the case after 10 October 2005 when the applicant requested a second expert opinion.

46. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant initially claimed 350,000 Slovak korunas (SKK) in respect of damage which he had suffered. On 24 August 2007, after the expiry of the time-limit set for submission of the claims under Article 41, the applicant claimed EUR 2,000 in addition to the above sum.

49. The Government contested the applicant’s claim.

50. The Court will take into account only the claim which the applicant submitted within the time-limit set for that purpose (see, *mutatis mutandis*, *Smirnov v. Russia*, no. 71362/01, § 70, 7 June 2007, ECHR 2007; *Timofeyev v. Russia*, no. 58263/00, § 52, 23 October 2003). Noting that the applicant obtained partial redress in the proceedings before the Constitutional Court (see paragraph 26 above), it awards him EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant also claimed SKK 27,400 for the costs and expenses incurred before the domestic courts and SKK 15,000 for those incurred before the Court. On 24 August 2007, after the expiry of the time-limit set for submission of the claims under Article 41, the applicant stated that he claimed EUR 1,500 for the costs incurred in the proceedings before the Court.

52. The Government contested these claims.

53. Only the claim which the applicant submitted within the time-limit set for that purpose can be taken into account (see paragraph 50 above). 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 represented by a lawyer, the sum of EUR 1,200 under this head.

C. Default interest

54. 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's son, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 1,200 (one thousand two 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 12 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President