



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

FOURTH SECTION

CASE OF ELIÁŠ v. SLOVAKIA

(Application no. 21326/07)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

18/06/2008

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 Eliáš v. Slovakia,

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

Nicolas Bratza, *President*,
Giovanni Bonello,
Stanislav Pavlovski,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 21326/07) 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 Ladislav Eliáš (“the applicant”), on 16 May 2007.

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

3. On 23 May 2007 the President of the Fourth Section decided to give priority treatment to the application (Article 41 of the Convention).

4. On 13 June 2007 the President 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

5. The applicant was born in 1931 and lives in Bratislava.

1. The applicant’s action for restitution of real property

6. On 24 March 1992 the applicant claimed restitution of real property before the Považská Bystrica District Court. He relied on the Extra-Judicial Rehabilitations Act.

7. The District Court held a number of hearings and took extensive evidence. In a judgment of 11 August 1995 it ordered the defendant to restore the property to the applicant.

8. On 6 November 1996 the Regional Court in Banská Bystrica quashed the first-instance judgment.

9. After several hearings the District Court delivered its second judgment on 13 January 2000. It granted the applicant's claim. The defendant appealed. On 30 November 2001 the court of appeal quashed that judgment.

10. In a third judgment, delivered on 26 February 2004, the District Court ordered the defendant to restore the property to the applicant. The Regional Court quashed the judgment on 10 May 2005.

11. In a fourth judgment delivered on 21 November 2005 the District Court partly granted the applicant's claim. On 10 February 2006 one defendant appealed. The file was transferred to the court of appeal on 16 February 2006.

12. On 26 September 2006 the Regional Court in Trenčín upheld the relevant part of the first-instance judgment. The decision to grant the applicant's claim in part became final on 16 November 2006.

13. On 25 January 2007 the applicant petitioned an executions officer for execution of the District Court's judgment of 21 November 2005 in conjunction with the Regional Court's judgment of 26 September 2006.

14. On 17 May 2007 the District Court in Žilina authorised the officer to execute the judgments.

15. On 8 June 2007 the debtor objected to the notification of the execution as being unclear. The executions officer submitted the objection to the District Court in Žilina. The execution proceedings are pending.

2. Proceedings before the Constitutional Court

16. On 8 December 2005 the Constitutional Court found that the District Court in Považská Bystrica had violated the applicant's right to a hearing without unjustified delay. The Constitutional Court admitted that the case was complex from both a factual and legal point of view.

17. The applicant by his conduct had significantly contributed to the length of the proceedings. In particular, he had been asked three times to specify his claim and to submit relevant documents. Between 8 December 1994 and 19 April 1995 the parties had attempted to reach an agreement. The applicant had failed to appear before the court on 15 September 1992, 15 December 1997, 10 and 25 May 1999 and 10 January 2000. On 16 October 2002 the applicant had requested that a third party be allowed to join the proceedings; on 3 February 2003 he had extended his claim.

18. Finally, the Constitutional Court found that the District Court had not dealt with the case in an effective manner. The District Court had remained inactive between 17 December 1992 and 25 June 1993 as well as

from 11 August 1995 to 1 July 1996. It had delivered three judgments on the merits which the court of appeal had quashed on the ground that the District Court had not sufficiently established the relevant facts and had made procedural mistakes. The overall length of the proceedings was unacceptable in the circumstances.

19. The Constitutional Court granted SKK 80,000 (the equivalent of EUR 2,115 at that time) as just satisfaction to the applicant. It ordered the District Court in Považská Bystrica to proceed with the case without further delay and to reimburse the applicant's costs.

THE LAW

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

20. 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..."

21. The proceedings started on 24 March 1992. The execution proceedings, which form an integral part of the determination of the applicant's claim are still pending (see *Orel v. Slovakia*, no. 67035/01, § 77, 9 January 2007, with further references). The relevant period has therefore lasted 15 years and more than 11 months. During this period courts at two levels repeatedly ruled on the merits of the case and the execution of the final judgment was ordered by a different court.

A. Admissibility

22. The Government referred to the Constitutional Court's judgment of 8 December 2005 and objected that the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time as regards the period covered by that judgment. As to the subsequent period, the applicant had not exhausted domestic remedies as he had not sought redress by means of a fresh complaint to the Constitutional Court.

23. The applicant disagreed.

24. The Court notes that at the time when the Constitutional Court's judgment was given the proceedings had been pending for 13 years, 8 months and 18 days. The just satisfaction awarded by the Constitutional Court corresponds to approximately 18% of the Court's likely award under Article 41 of the Convention in respect of the same period, due account

being taken of the complexity of the case and the Constitutional Court's conclusion as to the applicant's conduct. It therefore cannot be regarded as adequate in the circumstances of the case (see the principles established under the Court's case-law in *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-... or *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...). In these circumstances, in respect of the period covered by the Constitutional Court's finding the applicant has not lost his status as a victim within the meaning of Article 41 of the Convention.

25. As to the period subsequent to the Constitutional Court's judgment, the case was dealt with by the court of appeal from 16 February to 26 September 2006. Since 25 January 2007 the case has been pending, in the context of the execution proceedings, before the District Court in Žilina. Since the Constitutional Court's order for the proceedings was addressed, in accordance with the applicant's request, exclusively to the District Court in Považská Bystrica, the Court concurs with the Government that in respect of any further delays in the proceedings after 8 December 2005 the applicant should have sought redress by means of a fresh complaint to the Constitutional Court (see also *Becová v. Slovakia* (dec.), no. 3788/06, 18 September 2007). This fact has to be taken into account when determining the merits of this part of the application and, if appropriate, the applicant's claims for just satisfaction under Article 41 of the Convention (see, e.g., *Judt v. Slovakia*, no. 70985/01, § 61, 9 October 2007, with further reference).

26. The Court notes that the applicant's complaint about the length of the proceedings 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

27. 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).

28. 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).

29. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court concurs with the Constitutional Court's conclusion that the overall length of the proceedings was unacceptable in the circumstances of the case (see paragraph 18 above).

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

30. The applicant further complained that the length of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions. He relied on Article 1 of Protocol No. 1 which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

31. The Government contended that the applicant had not exhausted domestic remedies as he had failed to raise this complaint before the Constitutional Court and as he had not claimed compensation for pecuniary damage resulting from the alleged violation of Article 1 of Protocol No. 1 in proceedings under the State Liability Act 1969 or, after its entry into force on 1 July 2004, Act No. 514/2003 Coll. on Liability for Damage Caused in the Course of Exercise of Public Authority.

32. The Court observes that in his action the applicant claimed restitution of real property under the Extra-Judicial Rehabilitations Act. Prior to 16 November 2006 when the judicial decision to grant his claim in part became final, the applicant had been in the position of a mere claimant. The Court has held that similar claims did not amount to “possessions” attracting the guarantees of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 58-60, ECHR 2004-IX...).

33. To the extent that the applicant’s complaint relates to the proceedings concerning the execution of the judgment given in his favour, the Court concurs with the Government that it was open to him to seek redress by means of the remedies mentioned in paragraph 31 above.

34. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention, partly as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and partly for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed SKK 1,173,440 in respect of pecuniary damage. That sum concerned damage to the real property in issue, the costs of its re-cultivation as well as lost benefits of the applicant.

He further claimed SKK 1 million in respect of non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

As regards the claim in respect of non-pecuniary damage, the Court notes that the applicant obtained partial reparation at domestic level and that it was open to him to seek redress before the Constitutional Court as regards alleged delays in the execution proceedings (paragraphs 24 and 25 above). In these circumstances, the Court considers it appropriate to award the applicant EUR 3,300 under this head.

B. Costs and expenses

39. The applicant also claimed SKK 17,050 for the costs and expenses incurred before the Court. That sum had been determined on the basis of the applicable regulations on advocates' fees.

40. The Government argued that the applicant had not supported his claim by any evidence. They left the matter to the Court's discretion.

41. The Court considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 500 which corresponds approximately to the sum claimed under this head.

C. Default interest

42. 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 3,300 (three thousand three hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, to be converted into Slovakian korunas 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 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President