



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

FOURTH SECTION

CASE OF POBIJAKOVÁ v. SLOVAKIA

(Application no. 45148/06)

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 Pobjaková 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. 45148/06) 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, Mrs Mária Pobjaková (“the applicant”), on 30 October 2006.

2. The applicant was represented by Mr A. Žitník, a lawyer practising in Považská Bystrica. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 10 July 2007 the President of the Fourth Section decided to give priority treatment to the application in accordance with Article 41 of the Convention.

4. On 19 July 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 1932 and lives in Bytča.

1. Action for ownership

6. On 22 April 1992 the applicant and another individual brought an action against twenty-four other individuals in the Žilina District Court.

They sought a ruling declaring them to be the owners of agricultural land in Štiavnik.

7. On 25 May and 19 August 1992 the District Court requested the plaintiffs to provide further information, which they did on 9 June and 27 August 1992, respectively.

8. On 29 September 1992 the plaintiffs withdrew the action in respect of five defendants.

9. On 2 February 1993 the District Court held a hearing.

10. In March 1993 the plaintiffs appointed a new lawyer who withdrew the action in respect of three further defendants and identified one new defendant.

11. On 12 August 1993 the District Court approved the withdrawal of the action against several defendants and the extension of the action to include a new defendant.

12. On 8 November 1993 the District Court held a hearing at which twelve of the defendants failed to appear. The plaintiffs modified their statement of claim and extended the action to include another individual. The hearing was adjourned with a view to hearing the absent defendants and obtaining further information.

13. In November 1993 and March 1994 the plaintiffs submitted further information.

14. On 1 and 11 March 1994 three defendants were heard through the intermediary of a court in the judicial district where they lived.

15. In June, October and November 1994 the District Court requested an advance on the costs of the inspection of the property and further information.

16. On 8 December 1994 the plaintiffs' lawyer informed the court that she was unable to obtain a document that it had requested.

17. In October 1995 the District Court requested that another defendant be heard through the intermediary of the court in the judicial district where she lived. The minutes of the hearing were filed on 15 January 1996.

18. On 15 May 1996 the District Court held a hearing at which it was learnt that one of the defendants had died.

19. In May, June and November 1996 the District Court requested the plaintiffs on three occasions to clarify who the actual defendants were. Their lawyer applied twice for an extension of the time-limit for replying.

20. On 21 January 1997 the District Court discontinued the proceedings on the ground that the plaintiffs had failed to respond to the court's requests for information. On 12 March 1997 the plaintiffs appealed. They were subsequently requested on two occasions to submit the reasons for their appeal.

21. On 5 September 1997 the plaintiffs' lawyer informed the court that the applicant's co-plaintiff had died.

22. On 16 October 1997 the plaintiffs submitted the reasons for the appeal.

23. On 21 November 1997 the District Court sought the defendants' observations in reply to the appeal.

24. In February and May 1998 the District Court requested the death certificate of the applicant's co-plaintiff and invited the son of the deceased co-plaintiff to indicate whether he wished to continue the action in her stead. He responded in the affirmative.

25. In September 1998 the plaintiffs informed the court that the identification of the land in dispute had changed following the change in the real property referencing system.

26. On 22 August 2000 the District Court quashed its own decision to discontinue the proceedings and resumed them.

27. On 3 October 2000 the District Court held a hearing.

28. On 22 November 2000 and 24 April 2001 the District Court requested the plaintiffs, respectively, to identify the defendants in view of the new identification of the land and to submit, within three months, a fresh surveyor's plan concerning the land.

29. The plaintiffs changed legal representation. On 28 August 2001 their newly appointed lawyer asked for a new time-limit for submitting the surveyor's plan.

30. In the subsequent period the plaintiffs encountered difficulties in finding a surveyor willing to draw up a plan of the property and they were asked to clarify misgivings as to their legal representation.

31. On 16 October 2002 the applicant's lawyer submitted the surveyor's plan.

32. On 13 May 2004 the applicant reformulated the action in that she sought a ruling declaring her to be the sole owner of the land.

33. In October 2004 the case was assigned to a new judge.

34. In August and September 2005 the file was examined in the context of proceedings before the Constitutional Court.

35. On 30 September 2005 the District Court re-submitted the file to the Regional Court in Žilina for a decision on the applicant's appeal against the decision to discontinue the proceedings delivered on 21 January 1997.

36. On 30 May 2006 the President of the Regional Court reminded the presiding judge of the need to proceed with the case speedily in accordance with the Constitutional Court's order (see below).

37. On 2 June 2006 the Regional Court returned the file to the District Court after it had established that the latter had itself quashed the decision in issue on 22 August 2000.

38. Between January and April 2007 the District Court established relevant facts and made inquiries concerning the parties and their representatives. On 29 May 2007 it issued a decision concerning the representation of two defendants.

39. On 10 August 2007 the District Court asked the applicant to submit further information in respect of her earlier requests for modification of her action. It also asked several defendants for comments on the applicant's proposal to withdraw the action.

40. The proceedings are pending.

2. Constitutional proceedings

a) Complaint of 2002

41. On 6 December 2002 the applicant, who was represented by a lawyer, filed a complaint under Article 127 of the Constitution with the Constitutional Court. She asserted that there had been a violation of her right to a hearing without unjustified delay (Article 48 § 2 of the Constitution) and claimed 100,000 Slovakian korunas (SKK) in damages.

42. On 2 April 2003 the Constitutional Court found that the District Court in Žilina had violated the applicant's right to a hearing without unjustified delay, ordered acceleration of the proceedings and awarded the applicant SKK 20,000¹ by way of compensation in respect of non-pecuniary damage and reimbursement of her legal costs. It found that the subject-matter of the proceedings was complex owing to the number of defendants, which moreover had changed in the course of the proceedings, and the change in the land referencing system. The applicant had caused some delay by failing to identify clearly the defendants and the land. The District Court had been inactive without justification for some 27 months between 13 May 1998 and 22 August 2000.

b) Complaint of 2005

43. On 16 June 2005 the applicant filed a fresh constitutional complaint based on the recurring unjustified delays in the proceedings. She claimed SKK 600,000 in compensation for non-pecuniary damage.

44. On 30 November 2005 the Constitutional Court found that, in the period after its judgment of 2 April 2003, there had been a further violation by the District Court in Žilina of the applicant's right to a hearing without unjustified delay. It ordered acceleration of the proceedings and awarded the applicant SKK 50,000² by way of just satisfaction in respect of non-pecuniary damage and reimbursement of her legal costs.

45. The Constitutional Court found that in the relevant period the subject-matter of the proceedings was of no particular legal complexity. Even assuming that the case was to some extent complex on its facts, this provided no justification for the length of the proceedings. No delays could be imputed to the applicant. As for the conduct of the proceedings, the

¹ SKK 20,000 was equivalent to EUR 485 at that time.

² SKK 50,000 was equivalent to EUR 1,320 at that time.

District Court had acted inefficiently throughout the relevant period. Reference was made also to the overall length of the proceedings which had exceeded 13 years.

THE LAW

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

46. 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...”

47. The proceedings started on 22 April 1992 and, according to the information available, they are still pending. Their length has therefore exceeded 15 years and 10 months. During this period the first-instance court has not yet determined the merits of the applicant’s action.

48. With reference to the Constitutional Court’s judgment the Government admitted that the proceedings had lasted an excessively long time. They objected, however, that the application was inadmissible for the reasons set out below.

A. Admissibility

49. The Government argued that the applicant had obtained appropriate redress in the proceedings before the Constitutional Court. She therefore could no longer 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.

50. In her application of 30 October 2006 the applicant argued, *inter alia*, that the just satisfaction awarded to her by the Constitutional Court was insufficient and that the proceedings had not been accelerated despite the orders of the Constitutional Court. She submitted no comments on the subsequent observations of the respondent Government.

51. The Court notes that the proceedings had been pending for 13 years and more than 6 months when the Constitutional Court delivered its second judgment on 30 November 2005. After having analysed the proceedings complained of on two occasions in the light of the criteria which the Court also applies, it awarded the applicant the equivalent of approximately EUR 1,800 in all. That amount corresponds to 14 per cent of what the Court would be likely to award the applicant in accordance with its practice at that time.

52. The low amount of just satisfaction awarded by the Constitutional Court, as compared with the amounts usually granted by the Court, alone leads to the conclusion that the redress provided to the applicant at domestic level was insufficient (*Judt v. Slovakia*, no. 70985/01, §§ 62-63, 9 October 2007 with further reference).

53. It is further to be observed that the order of the Constitutional Court to accelerate the proceedings (see paragraph 42 above) did not produce the desired effect (see paragraph 44 above).

54. In these circumstances, the argument that the applicant has lost her status as “a victim” cannot be upheld.

55. The Court notes that this complaint 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

56. 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).

57. 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).

58. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court concurs with the conclusions reached by the Constitutional Court 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant further complained that she had no effective remedy at her disposal in respect of her complaint of the excessive length of proceedings. She relied on Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

60. The Government contested that argument.

61. The Court reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *e.g.*, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). In the light of this principle the Court finds that the fact that the redress obtained by the applicant from the Constitutional Court was not sufficient for Convention purposes does not render the remedy under Article 127 of the Constitution in the circumstances of the present case incompatible with Article 13 of the Convention (see also *Solárová and Others v. Slovakia*, no. 77690/01, § 56, 5 December 2006, with further reference).

62. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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.”

64. On 13 November 2007 the applicant was invited to submit her claim for just satisfaction by 21 January 2008. She has submitted no such claim. Accordingly, the Court considers that there is no call to award her any sum on that account.

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.

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