



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

FOURTH SECTION

CASE OF Z. v. SLOVAKIA

(Application no. 5868/02)

JUDGMENT

STRASBOURG

13 May 2008

FINAL

13/08/2008

This judgment may be subject to editorial revision.

In the case of Z. v. Slovakia,

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

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

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 5868/02) 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 R.Z. (“the applicant”), on 19 November 2001. On 12 March 2008 the President of the Chamber granted the applicant’s request for anonymity (Rule 47 § 3 of the Rules of Court).

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

3. On 26 March 2006 the President of the Chamber 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 1972. He is serving a prison sentence in the Košice-Šaca prison.

5. On 23 July 1996 the applicant’s father, a former police officer, attacked the applicant’s sister with a knife. She suffered moderate injuries to her left arm. When the applicant began to defend his sister, the father turned to attack him. The applicant suffered several injuries to his arms. During the struggle the applicant seized a machete from his father and inflicted a

number of blows on him. The applicant's father died of a haemorrhage shortly thereafter.

6. On 24 July 1996 criminal proceedings were brought against the applicant. A lawyer was appointed to defend him. Between August and November 1996 several expert opinions were obtained and a number of witnesses were heard.

7. On 27 November 1996 the investigator transmitted the case to the Košice Regional Prosecutor's Office, with the proposal that the applicant be indicted for murder.

8. On 13 December 1996 the Košice Regional Prosecutor's Office discontinued the proceedings, concluding that the applicant had acted in self-defence. This decision became final on 24 December 1996.

9. On 5 March 1997 the General Prosecutor filed a complaint in the interest of the law against the above decision. On 16 April 1997 the Supreme Court upheld the complaint and quashed the decision of 13 December 1996. The Supreme Court sent detailed instructions to the Regional Prosecutor's Office on the action to be taken with a view to establishing the relevant facts. The case was returned to the police investigator.

10. Between 24 June 1997 and 11 November 1997 the investigator took action at regular intervals with a view to establishing the facts of the case. This included questioning of a number of witnesses and obtaining expert opinions and documentary evidence. The applicant's counsel was notified of and had the option of attending the questioning of witnesses.

11. In the meantime, on 18 August 1997 and 9 September 1997 the applicant requested that a different lawyer be appointed to defend him, as he had lost confidence in the lawyer who had been appointed on 24 July 1996. On 8 September 1997 the applicant asked the police investigator to notify him of all steps taken in the criminal proceedings, so that he could attend and defend his rights in person. On 11 September 1997 the investigator replied to the applicant that the law did not require his presence during the interrogation of witnesses. The applicant would be summoned whenever his presence was required under the relevant provision of the Code of Criminal Procedure. On 16 September 1997 different counsel was appointed to assist the applicant.

12. On 25 September 1997 the applicant consulted the file. On 1 October 1997, in the presence of his counsel, he submitted his comments on several witness statements.

13. On 12 December 1997, after the applicant had perused the file, the Regional Prosecutor indicted the applicant before the Regional Court in Košice.

14. On 18 December 1997 the Regional Court judge asked for permission to withdraw, as he had known the victim. On 19 December 1997 the case was transferred to a different judge.

15. On 3 March 1998 the Regional Court returned the case to the Regional Prosecutor. The decision stated that the prosecuting authority had failed to comply in full with the instructions set out in the Supreme Court's decision of 16 April 1997.

16. On 14 April 1998 the Regional Prosecutor lodged a complaint, submitting reasons. On 21 May 1998 the Supreme Court dismissed the prosecutor's complaint. The decision was delivered to the Regional Court on 22 June 1998.

17. On 20 July 1998 the investigator requested information about the applicant's criminal record. In August 1998 the investigator examined and cross-examined witnesses and the applicant. Further investigative measures were also carried out. Documentary evidence was obtained and an expert was heard in September 1998. Three witnesses were examined in October 1998. On 30 October 1998 the investigator submitted the file to the Regional Prosecutor's Office.

18. On 5 November 1998 the prosecutor filed a new indictment against the applicant with the Regional Court.

19. On 23 and 26 March 1999 the Regional Court heard an expert in forensic medicine. On 30 March 1999 it again returned the case to the prosecuting authorities, noting that several of the Supreme Court's instructions relating to the establishment of the facts of the case had not yet been complied with. The applicant and the public prosecutor challenged this decision. The public prosecutor later withdrew his complaint.

20. On 7 July 1999 the Supreme Court dismissed the applicant's complaint. The decision stated that the public prosecutor had complied with the Supreme Court's earlier instructions taken as a whole. However, there had been substantial procedural shortcomings in the examination of the applicant and several witnesses. Those shortcomings needed to be rectified.

21. On 30 August 1999 and on 4 and 24 September 1999 the applicant and several witnesses were cross-examined.

22. On 4 October 1999 the Regional Prosecutor again indicted the applicant on a murder charge before the Regional Court in Košice.

23. At a preliminary hearing on 1 December 1999 the public prosecutor withdrew the indictment. The case was returned to the police investigator as a result.

24. On 11 January 2000 the applicant, his mother and sister refused to make statements.

25. On 10 February 2000 the public prosecutor lodged an indictment against the applicant. As the Regional Court judge involved considered himself biased, the case was transferred to a different judge on 22 February 2000.

26. On 22 May 2000 the Regional Court adjourned the main hearing as the applicant's counsel was unable to attend for serious family reasons.

27. On 12 June 2000 the applicant refused to make a statement before the Regional Court. His statements made in the course of the pre-trial proceedings were read out and the applicant confirmed them. The Regional Court heard a witness. It decided that the hearings should be held in the applicant's presence. The case was adjourned with a view to hearing other witnesses.

28. On 19 June 2000 the Regional Court heard witnesses. The case was adjourned as the expert in forensic medicine was ill. The court later established that she would be on sick leave until 14 September 2000.

29. On 27 September 2000 and 18 October 2000 the Regional Court heard several witnesses and experts. On 28 November 2000 it took further evidence.

30. On 6 December 2000, after both the applicant and the public prosecutor had stated that they had no further proposals for evidence to be taken, the Regional Court in Košice convicted the applicant of murder and sentenced him to ten years' imprisonment. With reference to the experts' conclusions, the Regional Court found that the applicant had exceeded the limits of legitimate defence in the circumstances of the case.

31. On 22 February 2001 and 20 March 2001 the applicant appealed. Relying on the evidence in the case he argued that the first-instance court had erred in the legal qualification of his action. He had acted in self-defence and his action did not constitute a criminal offence.

32. On 6 June 2001 the Supreme Court, referring to the evidence included in the file, upheld the first-instance conclusion that the applicant had committed murder. The Supreme Court accepted that the applicant had initially acted in legitimate defence, in that he had protected his sister from their father's attacks. In the subsequent stage, however, after he had separated his father from his sister, the applicant had inflicted more than 50 injuries on his father using a machete that was 45 centimetres in length. That action had been in excess of legitimate defence. After the attack the applicant had tied up his wounded father, and then rolled him up in a carpet without attempting to provide assistance. In view of the circumstances of the case the Supreme Court reduced the applicant's sentence to seven years' imprisonment.

THE LAW

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

33. The applicant complained that his right to a fair hearing within a reasonable time had been violated. He relied on Article 6 §§ 1 and 3(c) and (d) of the Convention, the relevant parts of which provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing ...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

A. Admissibility

1. Alleged unfairness of the proceedings

34. The applicant complained that the domestic courts had arbitrarily convicted him of murder despite the fact that he had acted in self-defence. Referring to the police investigator’s letter of 11 September 1997 (see paragraph 11 above), he further complained that he had not been able to defend himself and to examine witnesses against him in person.

35. The Court recalls that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 45, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

36. In the instant case the Court observes that the applicant, who was assisted by counsel, had the benefit of adversarial proceedings and that he was able to submit the arguments he considered relevant to his case. The courts gave reasons for their decisions with reference to the evidence available.

37. As regards the complaint about the investigator’s letter of 11 September 1997 in particular, the Court notes that the applicant’s counsel had had an opportunity to attend the questioning of witnesses and that the applicant had been cross-examined on several occasions along with the witnesses. The applicant consulted the case file and submitted his comments on the statements of several witnesses at the pre-trial stage. Prior

to his conviction by the Regional Court on 6 December 2000, the applicant expressly stated that he had no further proposals for evidence to be taken. In the proceedings before the appellate court the applicant did not allege that his right to defend himself and to have witnesses examined had been infringed.

38. In the above circumstances, the Court finds no indication that the national courts' decisions were arbitrary or that the proceedings were otherwise unfair or in breach of Article 6 §§ 1 and 3 of the Convention.

39. 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.

2. Length of the proceedings

40. The Government maintained that the case was complex in that, *inter alia*, twenty-seven witnesses had been heard and seven expert opinions had been ordered. The overall duration of the proceedings was not excessive in the particular circumstances of the case.

41. The applicant disagreed.

42. The period to be taken into consideration lasted from 24 July 1996 to 24 December 1996 (when the public prosecutor's decision to discontinue the proceedings became final) and from 16 April 1997 (when the Supreme Court quashed that decision) to 6 June 2001 (when the Supreme Court decided on the appeal). It thus lasted 4 years, 6 months and 22 days for the pre-trial stage and judicial proceedings at two levels.

43. 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

44. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

45. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to that in the present case (see *Pélissier and Sassi*, cited above).

46. The Court accepts the Government's argument that the case was complex to a certain extent. There is no indication that the applicant contributed by his conduct to the length of the proceedings in a significant manner. As to the conduct of the domestic authorities, the Court notes, in

particular, that between 3 March 1998 and 7 July 1999 the courts involved twice returned the case to the prosecuting authorities on the ground that the latter had failed to comply with earlier instructions from the Supreme Court or had made procedural errors. Subsequently, on 1 December 1999, the public prosecutor withdrew the indictment which he had filed on 4 October 1999. The case was returned to the investigator and a new indictment was filed on 10 February 2000. The above indicates that the authorities dealing with the case at the pre-trial stage failed to proceed in an effective manner. This resulted in unjustified delays in the proceedings.

47. In these circumstances, and 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. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7

48. The applicant complained that the criminal proceedings against him had been resumed notwithstanding that the case had been dropped by a decision given by a public prosecutor on 13 December 1996 which had become final. He relied on Article 4 of Protocol No. 7, which provides:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case...”

49. Even assuming that this complaint was filed within the six-month time-limit laid down in Article 35 § 1 of the Convention (see *Paulow v. Finland* (dec.), no. 53434/99, 14 February 2006), the Court notes that the investigation against the applicant was discontinued by the prosecutor as he found that the applicant had acted in self-defence. It cannot be said that the applicant was finally acquitted as no court of law had ruled on the matter prior to the public prosecutor’s decision to set the case aside (see, *mutatis mutandis*, *Wassdahl v. Sweden* (dec.), no. 36619/03, 29 November 2005). Consequently, the applicant cannot claim to have been tried twice as a result of the fact that the Supreme Court later quashed the public prosecutor’s decision to discontinue the proceedings.

50. It follows that this complaint 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

51. 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

52. The applicant claimed 400,00 Slovakian korunas (SKK) in respect of pecuniary damage and SKK 600,000 in respect of non-pecuniary damage.

53. The Government contested these claims.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 2,800 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant indicated that he was unable to substantiate his claim for the costs and expenses as the relevant documents were not available to him in prison.

56. The Government considered that the Court should make no award under this head.

57. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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 not represented by a lawyer, the sum of EUR 100 for his out-of-pocket expenses related to the proceedings before the Court.

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 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Slovakian korunas at the rate applicable at the date of settlement:
 - (i) EUR 2,800 (two thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 13 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President