



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

FOURTH SECTION

CASE OF RAPOŠ v. SLOVAKIA

(Application no. 25763/02)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Rapoš 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 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 25763/02) 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 Ivan Rapoš (“the applicant”), on 26 June 2002.

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

3. On 29 January 2006 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 1956 and lives in Bratislava.

A. Proceedings in the applicant’s action of 1996

5. On 15 March 1996 the applicant sued a limited company before the Bratislava II District Court. He claimed royalties for a furniture line which he had designed.

6. On 12 February 1997 the District Court granted the applicant's request that a second company should be joined to the proceedings as a defendant. On 23 May 1997 the Regional Court in Bratislava upheld that decision.

7. As the first defendant was declared insolvent, the applicant withdrew his claim against it on 2 June 1998. That company was subsequently deleted from the companies register.

8. On 18 September 1998 the Bratislava II District Court decided to transfer the case to the District Court in Žilina. On 30 November 1998 the Supreme Court decided that the case fell within the jurisdiction of the Bratislava II District Court.

9. Between 22 April 1999 and 2 October 2001 the District Court scheduled eleven hearings. The defendant's representative failed to appear on seven occasions.

10. On 2 October 2001 the District Court dismissed the applicant's claim. On 12 December 2001 the applicant appealed.

11. On 16 October 2003 the Bratislava Regional Court quashed the first-instance judgment. The court of appeal held that the applicant was entitled to remuneration for the design in question. Further evidence was to be taken with a view to determining the amount.

12. Between 5 March 2004 and 15 April 2004 the file was examined by the Constitutional Court.

13. On 26 April 2004 the case was assigned to a different judge of the District Court.

14. On 16 July 2004, the District Court appointed an expert. As the expert stated that he was not competent in the area concerned, a different expert was appointed on 27 August 2004. On account of the latter's health problems, a third expert was appointed on 22 November 2004. The third expert informed the District Court that he was not qualified to determine remuneration for artistic design, and for this reason a fourth expert was appointed on 22 April 2005. That expert informed the court that she was not authorised to prepare an opinion on the point in issue. On 7 November 2005 the Bratislava II District Court appointed a fifth expert with a view to having determined the remuneration due to the applicant. On 7 December 2005 that expert replied that he was not entitled to give an opinion on the point in issue. On 9 January 2005 the court asked the second expert, who had earlier stated that he was suffering from health problems, whether he could submit an opinion. He replied in the negative.

15. On 10 July 2006 the judge made a note in the file indicating that it had been impossible to find an expert in intellectual property who was qualified to determine royalties for the design of office furniture.

16. On 19 July 2006 the District Court asked five companies for information on royalties paid to furniture designers. It repeated the request on 26 September 2006.

17. In November and December 2006 the court sent a similar request to the Slovak Chamber of Architects, the School of Creative Arts, the Slovak Design Centre and the Slovak Fund of Creative Arts. In March 2007 and April 2007 the court urged the School of Creative Arts to submit the information.

18. On 14 June 2007 the District Court held a hearing. The applicant was asked to submit documentary evidence concerning the use by the defendant of the furniture line designed by him. The applicant submitted the evidence on 20 June 2007.

19. On 22 October 2007 the District Court appointed an expert in household equipment and furniture and asked him to submit an opinion within forty days. That expert has been registered in the list of experts, translators and interpreters of the Ministry of Justice since 1988. He submitted the opinion on 3 January 2008. On 28 January 2008 the District Court decided on the expert's fees.

20. The proceedings are pending.

B. Constitutional proceedings

21. On 6 March 2003 the applicant complained to the Constitutional Court that the Bratislava II District Court and the Bratislava Regional Court had violated his right under Article 6 § 1 of the Convention to a hearing within a reasonable time.

22. On 3 June 2004 the Constitutional Court found that the District Court had violated the applicant's right in issue. The case was of a certain complexity in that expert evidence was required. The applicant had not contributed by his conduct to the length of the proceedings. The defendant had failed to appear at seven hearings, which had resulted in the proceedings being prolonged. The District Court had not proceeded with the case in a smooth and efficient manner, as a result of which the applicant's claim had not yet been determined.

23. The Constitutional Court ordered the District Court to proceed with the case without further delay and awarded the applicant 20,000 Slovak korunas (the equivalent of 500 euros at that time) in just satisfaction. It also ordered the District Court to reimburse the applicant's costs.

THE LAW

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

24. 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 provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

25. The Government did not contest that argument but argued that the application was inadmissible for the reasons set out in paragraph 27 below.

26. The period to be taken into consideration began on 15 March 1996 and has not yet ended. It has thus lasted more than 12 years. During this period the merits of the case were dealt with by courts at two levels of jurisdiction. In addition, the question as to which first-instance court had jurisdiction to deal with the case was examined by the Supreme Court.

A. Admissibility

27. The Government objected that, in view of the Constitutional Court’s judgment of 3 June 2004, the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time in respect of the period covered by that judgment. As to the subsequent period, the applicant had not exhausted domestic remedies as required by Article 35 § 1, as he had not sought redress by means of a fresh complaint to the Constitutional Court.

28. The applicant argued that the satisfaction awarded to him by the Constitutional Court was inadequate and that the District Court had failed to proceed with the case speedily after the delivery of the Constitutional Court’s decision.

29. The Court notes that when the Constitutional Court’s judgment was given the proceedings had already been pending for 8 years and more than 2 months. The just satisfaction awarded by the Constitutional Court corresponds to approximately 9% of the Court’s likely award under Article 41 of the Convention in respect of the period from the introduction of the proceedings until the Constitutional Court’s judgment, due account being taken of the particular circumstances of the case. It cannot therefore 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 - ...). Furthermore, the applicant’s action has been before the Bratislava II District Court for a further period of

more than 3 years and 9 months since the Constitutional Court's order, without the merits of the case having been determined.

30. In the above circumstances, the Constitutional Court's judgment of 3 June 2004 failed to produce effects which would have permitted the Court to conclude that the applicant had lost his status as a victim within the meaning of Article 34 of the Convention. Accordingly, the applicant was not required to seek repeatedly redress before the Constitutional Court as suggested by the Government (for a recapitulation of the relevant case-law, see, for example, *Španír v. Slovakia*, no. 39139/05, §§ 46-47, 18 December 2007, with further references).

31. 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

32. 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).

33. 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).

34. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In particular, the Court concurs with the conclusions reached by the Constitutional Court on 3 June 2004. It further takes the view that the difficulties which the Bratislava II District Court experienced in finding an expert cannot in themselves justify the duration of the subsequent period of more than 3 years and 9 months.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained that he had no effective remedy at his disposal as regards his complaint under Article 6 § 1. He relied on Article 13 of the Convention which provides as follows:

"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."

36. The Government contended that a separate examination of this complaint was not called for.

37. 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).

38. 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

39. The applicant complained that, as a result of the ordinary courts’ failure to decide on his action, he had been unable to use his property, namely the royalties due from the defendant, default interest and the expenses which he had been obliged to incur in the context of the proceedings concerning his action. 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.”

40. The Court observes that the applicant in his action claimed remuneration for the design of a furniture line. As his claim has not yet been determined by a final decision, the applicant has been in the position of a 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...).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

41. The applicant also complained that, on account of the length of the domestic proceedings, he cannot use the sums which he was obliged to incur in the context of those proceedings. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage and EUR 8,000 in respect of non-pecuniary damage.

44. The Government contested these claims.

45. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and noting that the applicant obtained partial redress in the proceedings before the Constitutional Court, it awards him EUR 4,000 under that head.

B. Costs and expenses

46. The applicant also claimed EUR 3,000 for the costs and expenses incurred both at domestic level and in the proceedings before the Court.

47. The Government contested the claim.

48. 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 rejects the claim for costs and expenses in the domestic proceedings. As to the Convention proceedings,

the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 200.

C. Default interest

49. 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, the following amounts, to be converted into Slovakian korunas at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 200 (two 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 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President