



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

FOURTH SECTION

CASE OF ČAVAJDA v. SLOVAKIA

(Application no. 65416/01)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Čavajda v. Slovakia,

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

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

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 65416/01) 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 Slovakian national, Mr Ivan Čavajda (“the applicant”), on 16 November 2000.

2. On 27 June 2007 the applicant appointed Mr Š. Schnelly, a lawyer practising in Žilina, to represent him in the proceedings before the Court. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 7 October 2005 the President of the Fourth Section decided to give notice of the applicant’s complaint concerning the length of the proceedings for protection of his personal rights to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3). On 12 June 2007 the Chamber decided to give notice of the other set of proceedings complained of by the applicant to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1955 and lives in Nesluša.

1. Proceedings concerning the termination of the applicant's service in the police

5. The applicant served as a member of the Police Corps of the Slovak Republic. As he intended to engage in political life, he requested that he should be released from service in the police. In an order of 5 August 1993 the applicant's superior acceded to the request and released the applicant with effect from 31 December 1993.

6. On 13 August 1993 the applicant's superior issued a new order dismissing the applicant from the police. Reference was made to a negative assessment of the applicant's performance and behaviour. The order stated that the applicant had been found incapable of carrying out any service within the police within the meaning of section 110(1)(d) of the Police Corps Service Act 1991. The applicant and his superior subsequently agreed that the applicant would leave the police by 31 August 1993.

7. On 30 September 1993 the President of the Police Corps dismissed the applicant's appeal against the order of 13 August 1993. On 22 December 1993 the Minister of the Interior dismissed an extraordinary representation made by the applicant holding that the applicant's service in the police had been terminated in accordance with the law in force.

8. On 22 May 1995 the applicant sued the Ministry of the Interior before the Bratislava I District Court. He claimed that his dismissal from the police was void and that the allowance related to his departure from the police should be increased. In parallel, he claimed protection of his personal rights with reference to his dismissal and the assessment of his performance made in that context. The District Court processed the latter claim (see paragraphs 20 et seq. below). It started dealing with the claim concerning the termination of the applicant's service and the payment of an allowance in a separate set of proceedings on 2 December 1996.

9. On 18 April 1997 the District Court found that it lacked jurisdiction in the case. It established that the applicant sought a review of the assessment of his service in the police and of the decision on his dismissal.

10. On 14 July 1997 the Supreme Court returned the case to the District Court as the latter had not clearly established what the applicant claimed.

11. Subsequently the District Court requested the applicant to specify his action. The applicant replied on 5 December 1997 and 9 March 1998. The file was transmitted to the Supreme Court.

12. On 29 September 1998 the Supreme Court returned the file to the District Court. The accompanying letter stated that the former lacked jurisdiction in the case as the applicant had not sought judicial review of the decision on his dismissal from the police. The District Court judge disagreed. On 21 December 1998 the Supreme Court decided that the action fell to be determined by the Bratislava I District Court.

13. The District Court held the first hearing on 31 March 1999. On 10 July 2000 it discontinued the proceedings. It noted that the applicant had

claimed that his service in the police had ended with his release at his own request and that the allowance to which he was entitled upon his departure from the police should be increased accordingly. The court found that the applicant's service in the police was not governed by labour law. The relevant issues were to be determined by the Ministry of the Interior to which the District Court decided to transfer the case.

14. On 13 September 2000 the Bratislava Regional Court upheld that decision. The court of appeal noted that the applicant had not sought judicial review of a decision given by an administrative authority. Had he done so, the ordinary courts would have been entitled to deal with the matter under the provisions of the Code of Civil Procedure governing the administrative judiciary. The decision to discontinue the proceedings became final on 21 November 2000.

15. On 23 August 2004 the Ministry of the Interior informed the applicant that the decision on his dismissal from the police had been issued in 1993. The applicant's appeal had been dismissed by the President of the Police Corps. The Minister of the Interior had dismissed the applicant's extraordinary remedy on 22 December 1993. The ministry's letter stated that the decision on the applicant's dismissal was final. No further steps could be taken in the case.

16. In reply to further requests by the applicant the Ministry of the Interior reiterated its above position on 29 September 2004, 2 November 2004 and 10 October 2006. The ministry informed the applicant that the courts' decision to discontinue the proceedings was of a procedural nature. It did not oblige the ministry to review the case as the law did not allow that.

17. On 24 October 2006 the applicant brought an action against the Ministry of the Interior. With reference to the District Court's decision of 10 July 2000 he requested the District Court to require the Ministry of the Interior to issue a decision stating that the termination of his service in the police was void and that his lost salary should be paid to him.

18. On 30 March 2007 the Bratislava I District Court discontinued the proceedings as under the relevant law issues related to a person's service in the police were to be determined by the Minister of the Interior. That decision became final on 26 May 2007. On 27 June 2007 the District Court transferred the case to the Ministry of the Interior.

19. On 2 April 2008 the applicant requested the District Court to require the Ministry of the Interior to proceed with the case on the basis of the decision of 30 March 2007.

2. Proceedings concerning the protection of the applicant's personal rights

20. As stated above, the applicant brought an action for protection of his personal rights against the Ministry of the Interior on 22 May 1995. He

alleged, *inter alia*, that his dismissal and the assessment of his performance in that context interfered with his personal rights. He claimed compensation for non-pecuniary damage.

21. On 4 September 1995 the Bratislava I District Court transferred the case to the Bratislava II District Court for reasons of jurisdiction. On 11 October 1995 the applicant was requested to pay court fees. On 6 December 1995 he asked to be exempted from the obligation to pay court fees.

22. On 30 January 1996 the Bratislava City Court decided that the case fell within the jurisdiction of the Bratislava I District Court. The file was transferred to the latter on 1 April 1996.

23. In the course of April 1996 the Bratislava I District Court asked the applicant to submit information about his situation. It also forwarded the applicant's action to the defendant for comments.

24. On 12 August 1996 the Bratislava I District Court transferred the file to the Čadca District Court with the request for the applicant to be heard before that court. On 26 August 1996 the applicant stated before the court in Čadca that he insisted on a hearing being held before the Bratislava I District Court.

25. On 13 January 1997 the Bratislava I District Court adjourned the case as it was established that the defendant had not been duly summoned. The second hearing, scheduled for 17 February 1997, had to be adjourned for the same reason.

26. At the third hearing, held on 22 September 1997, the court heard the parties.

27. In July 1998 the District Court asked the applicant for information about the proceedings concerning the termination of his service in the police. Between July and September 1998 the District Court inquired whether the proceedings concerning the applicant's dismissal were pending before the Supreme Court.

28. Between January and April 1999 the file was examined by the Constitutional Court.

29. On 28 June 2000 the Bratislava Regional Court rejected the applicant's request for exclusion of the Bratislava I District Court judge from dealing with the case.

30. On 28 December 2000 the Bratislava I District Court discontinued the proceedings in respect of claims which the applicant had withdrawn. The court further stayed the proceedings in respect of the applicant's claim for compensation for damage of a non-pecuniary nature pending a final decision on the applicant's above claim concerning his dismissal from the police.

31. On 24 October 2001 the District Court asked the applicant to inform it whether a final decision had been given on his claim concerning termination of his service in the police.

32. In October 2001 the case was assigned to a different judge.

33. On 14 October 2002 the District Court judge made an inquiry as to whether a final decision had been given in the proceedings concerning the termination of the applicant's service in the police. On 20 January 2003 the applicant replied that no final decision had been given yet in the other set of proceedings. On 13 February 2003 the judge adjourned the case for six months on that ground. The case was adjourned for a further six months on 26 August 2003.

34. On 19 January 2004 the District Court held a hearing. The applicant could not attend as he was ill.

35. A further hearing was held on 17 March 2004 in the absence of the defendants.

36. On 28 April 2004 and 2 June 2004 the District Court heard the parties. In a judgment delivered orally on the latter date the District Court dismissed the applicant's action.

37. On 2 July 2004 the judgment was prepared in writing. The judgment with reasons was served on the applicant on 26 July 2004. The applicant appealed on 26 August 2004.

38. After receiving the defendant's comments, the District Court submitted the file to the Bratislava Regional Court on 20 October 2004.

39. The Regional Court scheduled a hearing for 1 December 2005. On 25 November 2005 the applicant informed the court that he was unable to attend due to health problems.

40. On 1 December 2005 the Bratislava Regional Court upheld the first-instance judgment of 2 June 2004.

3. Constitutional proceedings

a) Case no. I. ÚS 75/98

41. On 27 October 1999 the Constitutional Court found that the Bratislava I District Court had violated the applicant's right to a hearing without unjustified delay in both sets of proceedings concerning the claims of 22 May 1995.

42. As regards the proceedings for protection of the applicant's personal rights in particular, the decision stated that the District Court had failed to deal with the case in an appropriate manner. As a result, several substantial delays had occurred and the action had not been determined within one year as was then required by the relevant provision of the Code of Civil Procedure. The Constitutional Court further noted that the case was not complex and that the length of the proceedings could not be imputed to the applicant's behaviour.

b) Case no. III. ÚS 155/06

43. On 11 January 2005 the applicant complained to the Constitutional Court about delays in the above two sets of proceedings. He also claimed that his dismissal from the police was null and void.

44. On 17 May 2006 the Constitutional Court declared admissible the complaint about the length of the proceedings concerning the protection of the applicant's personal rights. It rejected the remaining complaints for the following reasons.

45. The Constitutional Court noted that it had been open to the applicant to seek judicial review of the decision on his dismissal from the police within thirty days of its finally taking effect. The applicant had not used that remedy.

46. The Bratislava I District Court's decision to discontinue the proceedings concerning the validity of his dismissal from the police had become final on 21 November 2000. The complaint about the length of those proceedings had been lodged after the expiry of the two-month time-limit laid down in the Constitutional Court Act 1993.

47. In its judgment of 12 September 2006 the Constitutional Court found that the District Court had violated the applicant's right to a hearing without unjustified delay in the proceedings for protection of his personal rights.

48. The Constitutional Court noted that it had already found in its judgment of 27 October 1999 that the District Court had not respected the applicant's right in issue. In the subsequent period the District Court had failed to deal with the case in an appropriate manner. As a result, delays totalling nearly three years had occurred. The case was not complex and the length of the proceedings could not be imputed to the applicant's behaviour. As the applicant had exclusively complained of delays imputable to the Bratislava I District Court, the Constitutional Court did not examine the period during which the court of appeal had been dealing with the case.

49. The Constitutional Court awarded the applicant 50,000 Slovakian korunas (SKK) (the equivalent of 1,330 euros (EUR) at that time) in compensation for non-pecuniary damage. It also ordered the District Court to reimburse the applicant's costs.

c) Case no. III. ÚS 47/08

50. On 7 September 2007 the applicant complained to the Constitutional Court that the Bratislava I District Court had failed to determine his action of 24 October 2006 and that the Ministry of the Interior had not determined the lawfulness of his dismissal either.

51. On 7 February 2008 the Constitutional Court declared the complaint inadmissible. The proceedings concerning the applicant's action in issue had ended on 30 March 2007 (final effect on 26 May 2007). In that respect the applicant had not respected the statutory two-month time-limit. As to the validity of the applicant's dismissal from the police, the Constitutional

Court referred to its above conclusion in case no. III. ÚS 155/06. In any event, it lacked jurisdiction to examine the issue.

B. Relevant domestic law and practice

1. Constitutional provisions

52. Prior to 1 January 2002 when the amended Article 127 of the Constitution entered into force the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights to a hearing without unjustified delay. It could neither grant compensation to the person concerned nor impose a sanction on the public authority liable for the violation found. The relevant provisions of the Constitution as well as the practice of the Constitutional Court are described in detail in, for example, *Jakub v. Slovakia*, no. 2015/02, §§ 25-38, 28 February 2006, and *Savka v. Slovakia* (dec.), no. 77936/01, 30 May 2006.

2. The Police Corps Service Act 1991

53. At the relevant time the following provisions of Act no. 410/1991 Coll. on Service in the Police Corps of the Slovak Republic were in force.

54. Under section 110(1)(d) a policeman could be dismissed where it was concluded that he or she was incapable of carrying out any service within the police.

55. Pursuant to section 135(1) and (2), a policeman could appeal against his superior's decision and challenge the assessment of his or her aptitude to serve in the police within fifteen days.

56. Section 139(1) entitled the Minister of the Interior to quash a final decision where it was established that such a decision had been issued contrary to the law. Paragraph 2 of section 139 limited the minister's power to do so to a period of three years after the decision had become final.

57. Section 141(1)(a) entitled policemen who were dismissed for reasons set out, *inter alia*, in section 110(1)(d) to bring an action for judicial review of their superior's decision. Pursuant to paragraph 2 of section 141, an action for review could be brought within thirty days of the contested decision's becoming final.

THE LAW

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

58. The applicant complained that his right to a fair hearing within a reasonable time had been violated in the above two sets of proceedings. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. Proceedings concerning the termination of the applicant's service in the police

59. The Government maintained that the proceedings concerning the termination of the applicant's service in the police did not attract the guarantees of Article 6 § 1 of the Convention.

60. The applicant disagreed.

61. The Court notes that the applicant's superior put an end to the applicant's service in the police with reference to section 110(1)(d) of the Police Corps Service Act 1991 by an order issued on 13 August 1993. The applicant's appeal against that decision was dismissed on 30 September 1993. The decision on the applicant's dismissal thus became final. In accordance with section 141 of the Police Corps Service Act 1991 it was open to the applicant to seek judicial review of the decision within thirty days of its becoming final. The applicant did not use that remedy.

62. Instead, the applicant lodged an action, on 22 May 1995, seeking a ruling that his service in the police had ended at his request, which had earlier been accepted by his superior. Ordinary courts at two levels held that the action as introduced by the applicant fell outside their jurisdiction as issues relating to service in the police fell primarily to be determined by the Ministry of the Interior and its relevant decisions were reviewable by the administrative courts. That view was upheld by the Constitutional Court. The Ministry of the Interior refused to re-examine the case, holding that the relevant law prevented it from doing so. The Court finds no reason to disagree with this assessment of the legal position in the applicant's case.

63. Thus, by lodging the action of 22 May 1995 the applicant had recourse to a legal avenue which, from the outset, was not capable of producing the effect expected by him, namely to modify the decision on his dismissal from the police which had become final in 1993. There is no

indication that he had been unable to use the remedy available, namely to seek a judicial review of the decision which had put an end to his service in the police.

64. In these circumstances, and assuming that a “civil right” held by the applicant was at stake (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-...), the Court finds that the outcome of the proceedings complained of could have no effect on it (for recapitulation of the relevant case-law see *Sultana v. Malta* (dec.), no. 970/04, 11 December 2007, with further references).

65. It follows that this part of the application 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.

2. Proceedings concerning the protection of the applicant's personal rights

a) Alleged unfairness of the proceedings

66. The applicant complained that the proceedings concerning his action for protection of his personal rights had been unfair.

67. It does not appear from the documents submitted that the applicant submitted this complaint, after having used the other remedies available, to the Constitutional Court in accordance with Article 127 of the Constitution.

68. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

b) Duration of the proceedings

69. The Government referred to the Constitutional Court's judgment of 12 September 2006 and maintained that the applicant could no longer claim to be a victim in respect of the period during which the Bratislava I District Court had dealt with the case. As to the appeal proceedings, the applicant had not exhausted domestic remedies as he had not complained about their length to the Constitutional Court.

70. The period to be taken into consideration began on 22 May 1995 and ended on 20 October 2004 when the District Court submitted the case to the Bratislava Regional Court for a decision on the applicant's appeal. The examination of the merits thus lasted nine years and five months for one level of jurisdiction. During that period the court of appeal decided on which court had jurisdiction in the case at first instance and on the applicant's request for exclusion of a judge.

71. The Court concurs with the Government that the applicant's failure to complain to the Constitutional Court of the duration of the proceedings before the court of appeal prevents it from examining the period after

20 October 2004 (see *Eliáš v. Slovakia*, no. 21326/07, § 25, 18 March 2008).

72. The just satisfaction awarded by the Constitutional Court corresponds to approximately 14% of the Court's likely award under Article 41 of the Convention in respect of the period under consideration. 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-..., and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...). In these circumstances, the applicant has not lost his status as a victim within the meaning of Article 34 of the Convention.

73. 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

74. The Government, with reference to the Constitutional Court's judgments of 27 October 1999 and 12 September 2006, admitted that undue delays had occurred in the proceedings.

75. 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).

76. 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).

77. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the above admission by the Government, 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 ARTICLES 10, 14 AND 17 OF THE CONVENTION

78. The applicant alleged that the facts of his case gave rise to a violation of Articles 10, 14 and 17 of the Convention.

79. The Court has examined these complaints but finds, in the light of all the material in its possession and in so far as the matters complained of are

within its competence, that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

80. 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

81. 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

82. The applicant claimed SKK 5,000,000 in respect of non-pecuniary damage.

83. The Government contested the claim.

84. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to the partial redress which the applicant obtained at domestic level (see paragraph 49 above) it awards him EUR 3,000 under that head.

B. Costs and expenses

85. The applicant also claimed SKK 54,263 (equivalent to approximately EUR 1,800) for costs and expenses.

86. The Government contested the claim.

87. 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 are reasonable as to quantum.

88. In the present case, regard being had to information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was represented by a lawyer only from 27 June 2007 and who was only partly successful in the proceedings before it, the sum of EUR 400 under this head.

C. Default interest

89. 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 about the excessive length of the proceedings concerning the protection of the applicant's personal rights 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 in case of payment prior to 1 January 2009):
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 400 (four 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 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President