



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

FOURTH SECTION

CASE OF BIČ v. SLOVAKIA

(Application no. 23865/03)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Bič 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 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 23865/03) 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 Jozef Bič (“the applicant”), on 21 July 2003.

2. The applicant was represented by Mr R. Žikla, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by Mrs A. Poláčková and Mrs M. Pirošíková, their successive Agents.

3. On 14 February 2006 the President of the Fourth Section 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant, Mr Jozef Bič, is a Slovakian national who was born in 1953 and lives in Košice.

A. Proceedings concerning the validity of purchase and donation contracts concerning a flat

5. On 17 May 1999 the applicant filed an action with the Košice I District Court. He challenged the validity of several legal acts relating to the purchase and subsequent donation of a flat in which he had earlier lived with his former wife.

6. On 19 May 1999 the judge invited the defendants to submit their comments on the action. The applicant was invited to pay the court fee. Two defendants submitted their comments in June and July 1999 respectively.

7. On 27 August 1999 the judge asked the applicant to pay a supplement to the court fee. She also requested files from a different court. The applicant paid the sum due on 8 September 1999.

8. On 7 October 1999 the third defendant submitted comments on the action.

9. A hearing was held on 28 March 2000. The case was adjourned.

10. On 2 May 2000 the court heard the parties. The court admitted a further defendant to the proceedings. That defendant submitted observations on the applicant's action on 25 May 2000.

11. On 14 July 2000 the case was adjourned as two defendants had to be summoned. The same defendants failed to appear on 26 September 2000. The court imposed a disciplinary fine on one of them as he had failed to excuse his absence.

12. On 24 October 2000 the case was again adjourned due to the absence of the second defendant. It was not established that the summons had been duly served. On 31 October 2000 that defendant informed the court of her new address in the Czech Republic.

13. On 3 December 2001 the judge requested that the second defendant be heard by a Czech court. On 27 February 2002 the Ministry of Justice of the Czech Republic informed the District Court that the defendant resided at her address in Košice (Slovakia) at that time.

14. On 30 April 2002 the District Court dismissed the applicant's action.

15. The applicant appealed on 30 May 2002.

16. On 7 June 2002 the District Court judge invited the applicant to pay the fee for the appellate proceedings. She also invited the defendants to comment on the appeal. The defendants replied between 20 June 2002 and 11 July 2002.

17. In the meantime, on 19 June 2002, the applicant asked for an exemption from the obligation to pay court fees. On 2 July 2002 the District Court granted the request.

18. The appeal was submitted to the Košice Regional Court on 16 July 2002.

19. The Regional Court held hearings on 10 October 2002 and 7 November 2002. On the latter date it quashed the first-instance judgment. The file was returned to the District Court on 16 December 2002.

20. At the judge's request of 18 December 2002 the applicant specified his claim on 9 January 2003.

21. On 20 March 2003 the District Court again dismissed the applicant's action.

22. The applicant appealed on 2 May 2003 and the file was transferred to the Regional Court on 4 July 2003.

23. On 1 March 2004 the Regional Court scheduled a hearing for 18 March, which was later postponed until 22 April 2004.

24. On 22 April 2004 the Regional Court upheld the District Court's decision on the merits. It quashed the part of the decision as regards costs and remitted the case to the District Court.

25. On 3 June 2004 the file was transferred to the District Court which issued its decision on costs on 28 July 2004.

26. Two of the defendants appealed and the case file was transferred to the Regional Court on 7 October 2004.

27. On 29 December 2004 the Regional Court upheld the District Court's ruling on costs. The decision was served on the applicant's lawyer on 2 February 2005, and thus became final.

B. Constitutional proceedings

28. The applicant filed a complaint with the Constitutional Court alleging a violation of Article 6 § 1 of the Convention in that there had been unjustified delays in the proceedings before the District Court.

29. On 11 June 2003 the Constitutional Court found that the District Court had violated the applicant's right to a hearing without unjustified delay. The Constitutional Court held that the case was not complex and that by his conduct the applicant had not contributed to the length of the proceedings. As to the conduct of the District Court, the Constitutional Court found that it had remained inactive without any justification from 31 October 2000 to 3 December 2001, that is for approximately 13 months.

30. The Constitutional Court noted that the applicant had claimed 80,000 Slovakian korunas (SKK) in just satisfaction. With reference to the circumstances of the case, it awarded the applicant SKK 10,000¹ in this respect.

¹ SKK 10,000 was then the equivalent of 242 euros.

THE LAW

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

31. The applicant complained that the length of the proceedings before the District Court 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...”

32. The Government did not contest that argument but argued that the application was inadmissible for the reasons set below.

A. Admissibility

33. The Government objected that, in respect of the proceedings examined by the Constitutional Court, the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. They argued that the Constitutional Court had expressly acknowledged such a violation and the amount of just satisfaction awarded was not manifestly inadequate to the circumstances of the case. As to the period subsequent to the Constitutional Court’s judgment, the applicant had not exhausted domestic remedies by lodging a fresh complaint to the Constitutional Court.

34. The applicant disagreed and argued that the amount of just satisfaction granted by the Constitutional Court was disproportionately low in the circumstances of the case.

35. The Court observes that in the present case the proceedings started on 17 May 1999 and ended on 2 February 2005. Having regard to the fact that the applicant directed his complaint to the Constitutional Court, as well as to the Court, exclusively against the District Court’s proceedings, the Court will consider only the period of 4 years and 1 month during which the case was dealt with by the District Court.

36. The Court notes that at the time of the Constitutional Court’s judgment the proceedings were pending before the District Court for 3 years and 8 months. The Constitutional Court awarded the applicant in respect of that period the equivalent of EUR 242 as just satisfaction. This amount cannot be considered as providing adequate and sufficient redress to the applicant in view of the Court’s established case-law (see *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-...).

37. In view of the above, in respect of the period of the District Court's proceedings examined by the Constitutional Court, the Court concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention (see, for example, *Weiss v. Slovakia*, no. 28652/03, § 31, 18 December 2007; *Eliáš v. Slovakia*, no. 21326/07, § 24, 18 March 2008; or *Rapoš v. Slovakia*, no. 25763/02, §§ 29-30, 20 May 2008). Accordingly, the applicant was not required to again resort to the complaint under Article 127 of the Constitution in respect of the proceedings pending before the District Court after the Constitutional Court's judgment of 11 June 2003 (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

38. The Court notes that the application 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

39. 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).

40. 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).

41. 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 that the length of the District Court's proceedings in the period examined by the Constitutional Court was excessive and failed to meet the "reasonable time" requirement. The Court further observes that after the Constitutional Court's judgment the proceedings were pending before the District Court for another 5 months. In respect of this period the Court finds no substantial inactivity on the part of the District Court.

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

II. 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 EUR 10,000 in respect of non-pecuniary damage.

44. The Government contested the claim.

45. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, and having regard to its case-law on the subject and to the fact that the applicant obtained partial redress in the proceedings before the Constitutional Court, it awards him EUR 1,100 under that head.

B. Costs and expenses

46. The applicant also claimed SKK 21,500 (equivalent to approximately EUR 560 at that time) for the costs and expenses incurred before the domestic courts and the Court.

47. The Government contested the claim and invited the Court to grant the applicant only reimbursement of reasonably incurred costs.

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. In respect of the Court's proceedings, the Court considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 500.

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 application admissible;

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:
 - (i) EUR 1,100 (one thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five 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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President