



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

FOURTH SECTION

CASE OF SOFTEL spol. s r.o. v. SLOVAKIA (no. 1)

(Application no. 32427/06)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of SOFTEL spol. s r.o. v. Slovakia (no. 1),

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 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 32427/06) 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 the company SOFTEL spol. s r.o. (“the applicant”), on 2 August 2006.

2. The applicant was represented by Mr V. Vidra, the sole owner and managing director of the company. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 4 March 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant is a private limited liability company with its registered office in Žilina.

A. Proceedings concerning the applicant's action against third persons for unjust enrichment

5. On 1 June 1995 the applicant filed an action with the Žilina District Court. It sued eight persons for a sum of money on grounds of unjust enrichment.

6. On 20 November 1998 the case was transferred to the Čadca District Court and on 22 August 2001 to the Martin District Court upon decisions of the Žilina Regional Court as to bias on the part of judges.

7. Subsequently, the Martin District Court obtained further evidence including expert opinions, delivered several procedural decisions and held four hearings. On 21 April 2008 it delivered a judgment. The parties appealed and in August 2008 the applicant informed the Court that the proceedings were still pending.

B. Constitutional proceedings

8. On 5 April 2006 the Constitutional Court (Third Chamber) found that the Martin District Court had violated, and that the District Courts in Žilina and in Čadca had not violated, the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay.

9. The Constitutional Court held that the case was complex in that expert evidence had to be adduced and related proceedings had been pending. The applicant company by its conduct had contributed to the length of the proceedings. The Martin District Court had failed to proceed in an appropriate manner and was responsible for delays totalling 16 months.

10. The Constitutional Court awarded SKK 40,000 (the equivalent of 1,066 euros at that time) to the applicant as just satisfaction in respect of non-pecuniary damage. It also ordered the Martin District Court to avoid any further delay in the proceedings and to reimburse the applicant's legal costs.

THE LAW

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

11. 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..."

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

A. Admissibility

13. 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 its 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 and paid without undue delay was not manifestly inadequate in the circumstances of the case. As to the period subsequent to the Constitutional Court's judgment, the applicant company had not exhausted domestic remedies by lodging a fresh complaint with the Constitutional Court.

14. 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. It maintained that the District Courts in Žilina and in Čadca had also violated its right to a hearing without unjustified delay. The applicant further pointed out periods of inactivity and ineffective performance (for example, the belated appointment of an expert) on the part of all three District Courts involved.

15. The Court notes that at the time of the Constitutional Court's judgment the proceedings had been pending for 10 years, 10 months and 7 days. The Constitutional Court, when determining the just satisfaction, took into account the subject matter of the dispute, its complexity and length, and above all, decided on the amount with regard to the established period of inactivity on the part of the Martin District Court.

16. The Constitutional Court awarded the applicant the equivalent of EUR 1,066 as just satisfaction in respect of the proceedings examined by it. The amount awarded by the Constitutional Court 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-...).

17. In view of the above, in respect of the proceedings up to the Constitutional Court's judgment, the Court concludes that the applicant did not lose its status as a victim within the meaning of Article 34 of the Convention.

18. Since the effects produced by the decision of the Constitutional Court did not satisfy the criteria applied by the Court, the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to have recourse again to the remedy under Article 127 of the Constitution in respect of the proceedings subsequent to the Constitutional Court's

judgment (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

19. In this context the Court also considers it relevant that the present application was introduced without substantial delay after the Constitutional Court's judgment (see *Španír v. Slovakia*, no. 39139/05, § 47, 18 December 2007, and *Weiss v. Slovakia*, no. 28652/03, § 33, 18 December 2007). The application, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

20. The period to be taken into consideration began on 1 June 1995 and has not yet ended. The proceedings have thus lasted more than 13 years and 4 months, whereas the first decision on the merits of the case was delivered after more than 12 years and 10 months.

21. 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

22. 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).

23. 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*, *ibid.*).

24. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. At the time of the Constitutional Court's judgment the proceedings had been pending for more than 10 years and 10 months without the merits of the case having been determined. Since the Constitutional Court's judgment the proceedings have continued for more than 2 years and 6 months and according to the information available they are still pending.

25. The Court concludes that the overall length of the period under consideration has been incompatible with the applicant's right to a hearing within a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 6,500 euros (EUR) in respect of non-pecuniary damage.

29. The Government considered the claim overstated and left the matter to the Court’s discretion.

30. 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 company obtained partial redress in the proceedings before the Constitutional Court, it awards it EUR 4,150 under that head.

B. Costs and expenses

31. The applicant also claimed EUR 571 for the costs and expenses incurred before the Court.

32. The Government had no objection to the award of a demonstrably incurred sum.

33. 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 sum claimed in full, i.e. EUR 571 for the proceedings before the Court.

C. Default interest

34. 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 4,150 (four thousand one hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 571 (five hundred and seventy-one 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 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President