



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

FOURTH SECTION

CASE OF SOFTEL spol. s r.o. v. SLOVAKIA (no. 2)

(Application no. 32836/06)

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. 2),

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. 32836/06) 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 4 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 action against the applicant

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

6. On 24 January 1996 the Žilina District Court delivered a judgment. On 20 June 1996 the Banská Bystrica Regional Court, upon the applicant's appeal, quashed the first-instance judgment and remitted the case for further examination to the Žilina District Court.

7. On 16 December 1998 the case was transferred to the Čadca District Court and on 10 July 2001 to the Martin District Court upon decisions of the Žilina Regional Court as to bias on the part of judges.

8. On 27 February 2006 the Martin District Court delivered a judgment. The parties appealed and the file was transferred to the Žilina Regional Court on 12 May 2006.

9. The plaintiffs' representative lodged their observations on the applicant's appeal in August 2006. The case file circulated within the Regional Court until 24 January 2008 when a hearing was scheduled for 19 February 2008. The hearing was adjourned upon an objection by the applicant as to bias on the part of judges.

10. On 31 March 2008 the file was transferred to the Supreme Court for a decision on the objection of bias. On 1 April 2008 the Supreme Court decided not to exclude the challenged judges from hearing and deciding on the case.

11. On 22 April 2008 the Regional Court quashed the first-instance judgment and remitted the case to the Martin District Court, also because of the latter's failure to respect the legal opinion of the appellate court given on 20 June 1996.

12. On 12 May 2008 the file was transferred to the Martin District Court. In August 2008 the applicant informed the Court that the proceedings were pending.

B. Constitutional proceedings

13. The applicant complained about the length of the proceedings before the Žilina, Čadca and Martin District Courts to the Constitutional Court. On 18 January 2006 the Constitutional Court (First Chamber) rejected the applicant's complaint about unjustified delays in the proceedings before the District Courts in Žilina and Čadca as being belated (as those courts no longer dealt with the case and the complaints had been lodged outside the statutory two-month time-limit).

14. On 4 May 2006 the Constitutional Court found that the Martin District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay.

15. The Constitutional Court held that the case was complex from a factual point of view. However, the Martin District Court had only assessed the evidence adduced before the District Courts in Žilina and Čadca and the

duration of the proceedings could not be explained by the complexity of the case. The applicant had not contributed to the length of the proceedings. The Martin District Court had failed to proceed in an appropriate manner and it was responsible for delays totalling 43 months.

16. The Constitutional Court awarded SKK 60,000 (the equivalent of 1,612 euros at that time) to the applicant as just satisfaction in respect of non-pecuniary damage. It ordered the Martin District Court to reimburse the applicant's legal costs but did not order it to avoid further delays in the proceedings, as that court had delivered its decision on the merits in the meantime.

THE LAW

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

17. 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..."

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

A. Admissibility

19. 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 was not manifestly inadequate in 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 with the Constitutional Court.

20. 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. Moreover, the Constitutional Court had rejected its complaint in respect of a substantial part of the proceedings and the proceedings were again pending before the Martin District Court owing to the latter's failure to respect the legal opinion given in the first Regional Court's judgment.

21. The Court notes that at the time of the Constitutional Court's judgment the proceedings had been pending for 11 years, 3 months and 12 days. Although the applicant complained to the Constitutional Court about the proceedings before the Žilina, Čadca and Martin District Courts, the Constitutional Court declared inadmissible its complaint in respect of a substantial part of the proceedings in issue and examined only the length of the proceedings before the Martin District Court, where the proceedings had been pending at the time it lodged the constitutional complaint. In this context it has to be noted that in similar proceedings, examined under application no. 32427/06 before the Court, a different chamber of the Constitutional Court examined also the length of the proceedings before the District Courts in Žilina and Čadca and did not declare the complaints in this respect inadmissible. Moreover, it has been the Court's practice to examine the overall length of the proceedings complained of (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

22. The Constitutional Court awarded the applicant the equivalent of EUR 1,612 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-...).

23. 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.

24. 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).

25. 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) and that the proceedings are still pending before the Martin District Court. This part of the application, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

26. The period to be taken into consideration began on 1 February 1995 and according to the information available the proceedings are pending before the Martin District Court. The proceedings have thus lasted more than 13 years and 8 months.

27. 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

28. The Court reiterates that the reasonableness of the length of the 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).

29. 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.*).

30. 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 11 years. Since the Constitutional Court's judgment the proceedings have continued for more than 2 years and 5 months and according to the information available they are still pending. During that period one substantial delay of approximately 17 months (in the period between August 2006 and January 2008) occurred owing to the Regional Court's ineffective performance.

31. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

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

35. The Government considered the claim overstated and left the matter to the Court's discretion.

36. 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 4,000 under that head.

B. Costs and expenses

37. The applicant also claimed EUR 546 for the costs and expenses incurred before the Court.

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

39. 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 546 for the proceedings before the Court.

C. Default interest

40. 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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 546 (five hundred and forty-six 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