



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

FOURTH SECTION

CASE OF DUDIČOVÁ v. SLOVAKIA

(Application no. 15592/03)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Dudičová 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 15592/03) 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, Mrs Margita-Gréta Dudičová (“the applicant”), on 6 May 2003.

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

3. On 7 July 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Snina.

5. In the 1950s State authorities took land and other agricultural property from the applicant’s father. The property was put at the disposal of a cooperative. Following the fall of the communist regime the applicant and the other members of the family sought restitution of the property. They relied mainly on the Land Ownership Act 1991. The following relevant events occurred and decisions were taken in that context.

1. Proceedings concerning the restitution of plots of land

6. In August 1991 and on 20 November 1992 the applicant, together with other members of her family, claimed restitution of three plots of land which were used by a cooperative.

7. On 2 December 1992 the Land Office in Michalovce found that the claimants were entitled to have the land restored to them. It further decided that the claimants were co-owners of the land at issue.

8. On 29 December 1992 the cooperative challenged that decision before the Košice Regional Court.

9. On 23 March 1993 the Regional Court quashed the administrative decision.

10. On 26 May 1993 the Land Office in Michalovce again found that the applicant and four other persons were the owners of the land and that it should be restored to them.

11. On 21 July 1993 a record was drawn up in the presence of the applicant's advocate indicating that the cooperative had returned the land to the owners.

12. On 23 July 1993 the Land Office in Michalovce issued a decision confirming that the plots of land had been returned to the applicant and the other claimants.

2. Proceedings concerning compensation for livestock and other property (Michalovce District Court file 10 C 419/93)

13. In August 1991 and on 20 November 1992 the applicant and other persons also claimed compensation for livestock and movable property which had been taken from their predecessor.

14. As no agreement had been reached by the parties, the applicant claimed compensation before the Michalovce District Court in 1993.

15. On 23 August 1994 the District Court asked an expert to assess the value of the property.

16. On 15 February 1995 the Košice Regional Court dismissed the defendant's request for exclusion of the District Court judge from the case.

17. On 7 September 1995 the District Court ordered the defendant to pay the applicant a part of the sum claimed. It decided to deal separately with the outstanding claim. On the defendant's appeal, the Regional Court quashed the judgment and remitted the case to the first-instance court on 19 September 1997.

18. On 23 January 1998 the District Court joined the excluded claim to the original set of proceedings and ordered the defendant to compensate the applicant for the property at issue. The judgment stated that the administrator in insolvency of the cooperative had accepted the claim and had agreed that the proceedings on this claim continue notwithstanding that

insolvency proceedings had been brought against the defendant cooperative in the meantime.

19. The judgment became final on 12 March 1998.

3. Proceedings concerning compensation for destroyed property (Michalovce District Court file 10 C 418/93)

20. In 1993 the applicant claimed compensation for agricultural buildings belonging to her late father which had been destroyed.

21. On 30 May 1994 the Michalovce District Court ordered the defendant cooperative to pay compensation to the applicant. The defendant appealed. The applicant submitted observations on the appeal on 4 October 1994.

22. On 15 November 1994 the defendant challenged the District Court judge. On 30 January 1995 the Košice Regional Court dismissed the request.

23. On 6 October 1995 the Regional Court quashed the first-instance judgment to the extent that it obliged the defendant to pay compensation to the applicant.

24. On 1 July 1996 the District Court ordered an expert to assess the value of the destroyed barn within thirty days.

25. On 23 January 1998 the District Court ordered the defendant to compensate the applicant for the damage to the property at issue. The judgment stated that the administrator in insolvency of the cooperative had accepted the claim and had agreed that the proceedings on this claim continue notwithstanding the fact that insolvency proceedings had been brought against the defendant cooperative in the meantime.

26. The judgment became final on 12 March 1998.

27. On 12 November 2007 the District Court ordered its financial department to return 28.40 Slovakian korunas (SKK) (the equivalent of EUR 0.94) to the applicant. This sum was the balance of an advance payment made by the applicant in 1994. On the same day the District Court also ruled on an expert's fees and ordered its financial department to pay, from the State resources, an amount of money to the expert. The applicant appealed on 12 February 2008. No further information has been made available.

4. Proceedings concerning the applicant's share in a cooperative's property (Michalovce District Court files 10 C 806/94 and 10 C 843/96)

28. On 7 March 1994 the applicant requested the cooperative in Zemplínske Hámre to put at her disposal her share of the cooperative's property.

29. As her request was not granted, the applicant sued the cooperative before the Michalovce District Court on 24 August 1994.

30. On 30 December 1994 the Košice Regional Court dismissed the defendant's request for the withdrawal of the District Court judge.

31. A hearing before the District Court was scheduled for 27 January 1995. On 23 January 1995 the defendant cooperative informed the court that it would prefer an out-of-court settlement.

32. On 18 September 1995 the District Court ordered the defendant to pay SKK 82,363.92 to the applicant. It decided to determine in separate proceedings the remainder of the action related to the applicant's share in the cooperative's property. On 24 November 1995 the defendant appealed. As it later withdrew the appeal, the Regional Court discontinued the appellate proceedings on 11 June 1996. The judgment became final on 27 June 1996.

33. On 24 July 1996 the applicant requested an executions office to enforce the sum awarded to her by the above decision of 18 September 1995.

34. On 3 June 1997 the executions office replied that insolvency proceedings had been brought against the debtor. It was open to the applicant to register her claim in the context of the insolvency proceedings pending before the Košice Regional Court.

35. On 30 March 1998 the District Court ordered the defendant to pay an additional sum to the applicant corresponding to her share in the cooperative's property. The judgment stated that the administrator in insolvency of the cooperative had accepted the claim and had agreed that the proceedings on this claim continue notwithstanding that insolvency proceedings had been brought against the defendant cooperative in the meantime.

36. The judgment became final on 21 April 1998.

5. Insolvency proceedings against the cooperative (Košice Regional Court file K 149/96)

37. On 2 April 1996 a bank sought to have the above cooperative declared insolvent.

38. On 16 May 1997 the Košice Regional Court started insolvency proceedings against the cooperative and appointed an administrator to it.

39. On 8 September 1997 the applicant registered her claims against the debtor in the context of the insolvency proceedings. On 5 March 1998 she specified the sum claimed at the Regional Court's request.

40. The administrator in insolvency died on 29 May 1998. A different person was appointed to carry out that function on 27 August 1998.

41. On 12 March 1999 the Regional Court asked the administrator to submit a report on the cooperative's property and its realisation. The administrator did not reply. He was summoned for 26 November 1999 but

failed to appear before the Regional Court. The latter therefore appointed a new administrator in insolvency on 31 January 2000.

42. On 25 May 1999 the acting President of the Regional Court informed the applicant, in reply to her complaint, about the developments in the insolvency proceedings. The letter stated that, due to the judges' heavy workload, the proceedings had not yet ended.

43. On 13 February 2000 the newly appointed administrator requested that he be released from that function as he was biased. On 5 May 2000 the Regional Court granted the request and appointed a different person as administrator in insolvency of the cooperative. That decision became final on 14 June 2000.

44. On 2 July 2001 a hearing was held with a view to classifying the claims of the creditors.

45. On 24 September 2001 the Regional Court gave its agreement to the sale of a part of the cooperative's property. Sales of the property were carried out in November 2001, January 2002 and May 2002.

46. A meeting of creditors was held on 31 October 2002.

47. On 3 February 2003 the Regional Court granted the administrator's request for removal from the office and appointed a new administrator in insolvency.

48. In April, June and December 2003 three sales of property were carried out.

49. On 10 May 2004 the administrator informed the Regional Court that a part of the property included in the insolvency assets constituted the subject matter of another set of proceedings which was pending before the Regional Court (file 17 Cb 705/01). In these proceedings one of the creditors (other than the applicant) requested that a part of the property be excluded from the insolvency assets. The administrator stated that, as a result, the insolvency proceedings could not continue.

50. In May 2004 a sale of the property was carried out.

51. On 29 October 2004 the Regional Court ordered the administrator to submit a report on his activities. The latter complied with the order on 18 November 2004.

52. On 18 February 2005 the case was assigned to a new judge at the Regional Court. The judge ordered the administrator to inform the court of his activities in the insolvency. The administrator's reply was delivered to the court on 16 March 2005. He stated, *inter alia*, that the insolvency proceedings could not continue, as the above proceedings concerning a creditor's request for exclusion of a part of the property from the insolvency assets had not ended yet (file 17 Cb 705/01).

53. The administrator asked to be removed from the office due to his long-term stay abroad. A new administrator was appointed on 12 December 2005.

54. On 24 May 2006 the Regional Court received a report from the administrator in the insolvency.

55. According to the information available, the proceedings were still pending on 16 July 2008.

6. Proceedings before the Constitutional Court (file III. ÚS 199/02)

56. On 28 March 2002 the applicant complained to the Constitutional Court that the Košice Regional Court had violated her right to a hearing without unjustified delay in the insolvency proceedings against the cooperative.

57. On 13 August 2002 the applicant's representative submitted further information at the Constitutional Court's request. The advocate indicated that, in particular, unjustified delays had occurred between 10 May 1999 and 31 January 2000 and from 13 February 2000 to 14 June 2000. The letter referred to the heavy workload of judges dealing with insolvency cases. It concluded that, given the overall length of the proceedings, the Regional Court had not proceeded with the applicant's case in an appropriate manner.

58. On 17 December 2002 the Constitutional Court rejected the complaint as being manifestly ill-founded. The decision stated that it was the Regional Court's task to avail itself of the means available with a view to ensuring that the administrator in insolvency proceeded in an appropriate manner. As to the first period referred to by the applicant, the Regional Court had taken several steps, including the revocation of the administrator and the appointment of a new one. As to the second period, the administrator had requested that he be released from that function on 13 February 2000, and the Regional Court had decided on that request on 5 May 2000, that is after less than three months. That period was not an unjustified delay.

II. RELEVANT DOMESTIC LAW AND PRACTICE

59. Insolvency proceedings are regulated by the Bankruptcy Act (Act No. 328/1991 Coll. was in force until 1 January 2006, when it was replaced by Act No. 7/2005 Coll.). According to the relevant provisions, the administrator in insolvency administers the insolvency assets, converts the insolvency assets into money and satisfies the creditors' claims. Pursuant to § 66f of the 1991 Bankruptcy Act and § 196 of the 2005 Bankruptcy Act, the Code of Civil Procedure is the *lex generalis* in relation to the Bankruptcy Act in respect of bankruptcy and insolvency proceedings.

60. The general responsibilities of a bankruptcy court can be found in §§ 8 and 12 of the 1991 Bankruptcy Act and in §§ 40-42 of the 2005 Bankruptcy Act. In bankruptcy and insolvency proceedings the court appoints and removes the administrator. It can, *inter alia*, impose a fine on the administrator for a failure to fulfil his or her duties, ask the administrator

to submit reports and explanations and consult the administrator's accounts. The court can also order the administrator to act in a certain manner.

THE LAW

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

61. The applicant complained that her right to a fair hearing by a tribunal established by law had been violated in the proceedings concerning her claims and that the length of the proceedings had been excessive. She relied on Article 6 § 1 of the Convention, 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. Insolvency proceedings against the cooperative (Košice Regional Court file K 149/96)

(a) Alleged unfairness of the proceedings

62. The insolvency proceedings are still pending and any complaint of their unfairness within the meaning of Article 6 § 1 of the Convention is premature.

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

(b) Length of the proceedings

63. The Government contested the applicant's argument that the length of the insolvency proceedings had been excessive. They concurred with the Constitutional Court which had not found any unjustified delays in these proceedings and had rejected the complaint of their excessive length by the decision of 17 December 2002. The Government further stated that, as regards the period after the Constitutional Court's decision, the applicant had the opportunity to lodge a fresh complaint with the Constitutional Court pursuant to Article 127 of the Constitution, as in force since 1 January 2002.

64. The applicant reiterated her complaint.

65. At the time of the Constitutional Court's decision the proceedings had been pending before the Regional Court for more than five years. The Constitutional Court concluded that this period was not excessive. This

decision did not produce effects which would have allowed the Court to conclude that the applicant had lost her status as a victim within the meaning of Article 34 of the Convention. Since the applicant was unable to obtain redress before the Constitutional Court in respect of a substantial part of the proceedings, the Court concludes that, as regards the period of the proceedings following the Constitutional Court's decision, she was not required to repeatedly seek redress before the Constitutional Court as suggested by the Government (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). In this context it is also relevant that the present application was introduced without substantial delays after the Constitutional Court's decision (see *Španír v. Slovakia*, no. 39139/05, § 47, 18 December 2007, or *Weiss v. Slovakia*, no. 28652/03, § 33, 18 December 2007).

66. The applicant registered her claim in the insolvency proceedings on 8 September 1997 and these proceedings have not yet ended. It follows that the period under the Court's consideration has lasted more than eleven years at one level of jurisdiction.

67. 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.

2. The remaining sets of proceedings

68. The Court notes that the application was introduced on 6 May 2003. It further notes that the proceedings concerning the restitution of plots of land, the proceedings concerning compensation for livestock and other property (file 10 C 419/93), the proceedings concerning compensation for destroyed property (file 10 C 418/93) and the proceedings concerning the applicant's share in the cooperative's property (files 10 C 806/94 and 10 C 843/96) had ended more than six months before the application was lodged with the Court.

69. Even assuming, as regards the decisions adopted in 2008, that the proceedings concerning compensation for destroyed property (file 10 C 418/93) are still pending and concern the applicant's civil rights, the applicant did not exhaust available remedies by raising these issues before the Constitutional Court under Article 127 of the Constitution.

It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

70. The Government agreed with the Constitutional Court's conclusion that there had been no delays in the period of the insolvency proceedings

(file K 149/96) challenged by the applicant. As to the subsequent period of the proceedings the Government expressed the view that the Regional Court had proceeded adequately. They highlighted that several administrators had had to be appointed in the course of the proceedings and that the period during which the individual administrators had had to familiarise themselves with the subject matter of the proceedings could not be attributed to the Regional Court. The Government stated that the course of the proceedings had been substantially influenced by the fact that another set of proceedings, in which one of the creditors requested exclusion of a part of the property from the insolvency assets (file 17 Cb 705/01), was pending before the Regional Court.

71. 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).

72. 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).

73. The insolvency proceedings have been pending for more than eleven years before the Regional Court and have not ended yet. The Court accepts the Government's argument that the necessity to appoint several administrators influenced the length of the insolvency proceedings. It also acknowledges that the course of the proceedings partially depended on the outcome of the related set of proceedings pending before the Regional Court (file 17 Cb 705/01). However, it is noted that the latter proceedings, which had already started in 2001, have not ended yet and that no arguments justifying such a long period have been submitted. These circumstances cannot justify the overall duration of the proceedings of more than eleven years at a single level of jurisdiction. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the insolvency proceedings pending before the Regional Court has been excessive and has failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

74. Relying on Article 8 of the Convention and on Article 1 of Protocol No. 1 the applicant complained that, by failing to restore the property to her speedily, the Slovakian authorities had prevented her from enjoying her

property and from starting an agricultural business in which her family members would also be employed.

75. The applicant further relied on Article 14 of the Convention and complained that she had been discriminated against, as an individual farmer, in that the agricultural property to which she was entitled had not been returned to her, that it had been used by a cooperative, and that she had been obliged to seek the return of the property or compensation in the context of insolvency proceedings brought against the cooperative.

76. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence or have not already been addressed in the context of the finding of a breach of Article 6 of the Convention, 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

77. Lastly, the applicant complained that she had no effective remedy at her disposal within the meaning of Article 13 of the Convention which provides that:

“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.”

A. Admissibility

1. The length of the insolvency proceedings

78. The Government argued that the applicant had at her disposal an effective remedy, a complaint under Article 127 of the Constitution, in respect of her complaint of the length of the insolvency proceedings.

79. The applicant reiterated her complaints.

80. 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.

2. The remaining complaints

81. As regards the alleged absence of an effective remedy in respect of the remaining complaints, the Court reiterates that Article 13 applies only

where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court found these complaints inadmissible. Accordingly, the applicant did not have an “arguable claim” and Article 13 is, therefore, not applicable.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

82. The Court has repeatedly held that the remedy under Article 127 of the Constitution is “effective” within the meaning of Article 13 (see, among many others, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

83. The circumstances of the present case are different. At the time of the Constitutional Court’s rejection of the applicant’s allegation of a violation of her right to a hearing within a reasonable time, the insolvency proceedings had been pending for more than five years. In view of the above it is noted that the applicant did not have the opportunity to obtain redress from the Constitutional Court in respect of the overall length of these proceedings (see paragraph 65 above). The Court considers that the remedy under Article 127 of the Constitution, as applied in the present case, cannot be regarded as “effective” within the meaning of Article 13 of the Convention (see, *mutatis mutandis*, *Tur v. Poland*, no. 21695/05, §§ 67-68, 23 October 2007).

There has accordingly been a violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed SKK 1,808,702.90 (equivalent of EUR 60,038) in respect of pecuniary damage. She submitted that this amount corresponded to the sum claimed by her in the individual proceedings before the ordinary courts. She also claimed SKK 200,000 (equivalent of EUR 6,640) in respect of non-pecuniary damage.

86. The Government contested these claims.

87. 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 having regard to the circumstances of the case, the Court awards EUR 6,640 under that head, as claimed by the applicant.

B. Costs and expenses

88. The applicant did not submit a claim under that 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* admissible the complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the bankruptcy proceedings (file K 149/96) and the absence of an effective remedy in that respect;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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, EUR 6,640 (six thousand six hundred and forty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President