



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

FOURTH SECTION

CASE OF LADOMÉRY v. SLOVAKIA

(Application no. 39783/05)

JUDGMENT

STRASBOURG

7 April 2009

FINAL

07/07/2009

This judgment may be subject to editorial revision.

In the case of Lodoméry v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 39783/05) 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 Hungarian national, Mr Endre Lodoméry (“the applicant”), on 29 October 2005.

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

3. On 29 May 2007 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 was born in 1931 and lives in Budapest.

1. The applicant's action of 1993

5. On 24 May 1993 the applicant filed an action with the Bratislava – vidiek District Court. He claimed the estate of his predecessor.

6. The District Court held several hearings in 1993. On 10 December 1993 it issued an injunction which the court of appeal quashed on 31 May 1994.

7. In the second half of 1994 and in 1995 the District Court scheduled a number of hearings. The parties or their representatives were unable to attend several of them. The District Court took further evidence during that period.

8. There was no progress in the case between 25 November 1996 and 28 October 1999. In 1997 the case fell to be examined by the Bratislava III District Court to which the court business of the former Bratislava – vidiek District Court had been transferred.

9. On 18 April 2000 the applicant submitted further documents following a request by the District Court which his representative had received on 29 December 1999. In June and December 2001 the applicant specified his action and submitted further documents as requested by the District Court. On 8 February 2002 the District Court asked the applicant to submit another original of the document in which he provided further particulars of his claims.

10. In August 2002 the District Court asked the defendant to comment on the claims. The defendant replied on 14 October 2002.

11. On 13 April 2004 the District Court scheduled a hearing for 2 June 2004.

12. As the defendant's representative was unable to attend, the case was adjourned until 27 September 2004. On that date the case was again adjourned as the defendant was ill. A hearing was scheduled for 22 November 2004.

13. Hearings were held in 2006. On 13 November 2006 the District Court allowed the applicant to modify his action.

14. On 18 January 2007 the Bratislava III District Court delivered an interim judgment confirming that the applicant was the heir of the person whose estate he claimed.

15. The defendant appealed.

16. On 1 April 2008 the Bratislava Regional Court changed the first-instance decision in that it dismissed the applicant's action. It held that the applicant's claim had lapsed.

2. Proceedings before the Constitutional Court

17. On 21 October 2004 the Constitutional Court found that the Bratislava III District Court had violated the applicant's right to a hearing within a reasonable time. There was no indication that the case was complex. The applicant by his conduct had not contributed to the length of the proceedings which, however, had been prolonged for reasons imputable to the defendant. The Constitutional Court noted, in particular, that the defendant had repeatedly been ill and that his representative had been

unable to attend hearings several times in 1995 and in 2004. The District Court had remained inactive between 20 May 1996 and 28 October 1999, between 18 April 2000 and 3 May 2001 and also from 14 October 2001 to 13 April 2004. Unjustified delays thus exceeded 70 months.

18. The Constitutional Court awarded the equivalent of 1,500 euros (EUR) to the applicant as just satisfaction for non-pecuniary damage. It ordered the District Court to proceed with the case and to reimburse the applicant's costs.

THE LAW

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

19. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement and that the decision to dismiss his action was arbitrary. He relied on Article 6 § 1 of the Convention, which in its relevant part 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. As regards the length of the proceedings

20. The Government argued that the applicant could no longer claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time as regards the period that had already been examined by the Constitutional Court. They pointed out that the Constitutional Court had provided the applicant with preventive and compensatory redress. The Government considered this redress adequate and sufficient.

21. The Government also argued that the applicant had failed to lodge a fresh complaint under Article 127 of the Constitution about the length of the proceedings after the Constitutional Court's judgment of 21 October 2004.

22. The applicant disagreed.

23. The Court observes that the applicant's status as a victim depends on whether the redress afforded to him at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case law (see, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213,

ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

24. The Court notes that the Constitutional Court awarded the applicant, on 21 October 2004, the equivalent of EUR 1,500 in respect of non-pecuniary damage. This amount is disproportionately low, having regard to what the Court generally awards in similar cases.

The redress obtained by the applicant at the domestic level was thus insufficient (see *Scordino (no. 1)*, cited above, §§ 214-5). The applicant can accordingly still claim to be a “victim”.

25. In view of the above conclusion, the Court finds that the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to resort to the remedy under Article 127 of the Constitution anew (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007) as far as his complaint about the length of the proceedings before the District Court is concerned.

26. The proceedings started on 24 May 1993 and ended on 1 April 2008. They thus lasted 14 years, 10 months and 12 days for two levels of jurisdiction. The Court must take into account that before the Constitutional Court the applicant exclusively complained of the proceedings at first instance (see, for example, *Judt v. Slovakia*, no. 70985/01, § 61, 9 October 2007, with further reference). The relevant part of the proceedings lasted 13 years and almost 8 months.

27. 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. As regards the applicant’s right to a fair hearing

28. To the extent that the applicant complained about the arbitrariness of the Regional Court’s decision, the Court finds that he could have sought redress by way of an appeal on points of law to the Supreme Court and, subsequently, he could have lodged a complaint under Article 127 of the Constitution with the Constitutional Court.

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

B. Merits

30. 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).

31. 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).

32. Having examined all the material submitted to it, 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. Having regard to its case-law on the subject, the Court considers 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. 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 EUR 10,000 without further specification.

35. The Government contested the claim as far as pecuniary damage might be concerned. As regards non-pecuniary damage they 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 considering that the applicant obtained partial redress at domestic level, it awards him EUR 5,000 under that head.

B. Costs and expenses

37. The applicant submitted no claim under this head.

C. Default interest

38. 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 concerning the excessive length of the proceedings 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, EUR 5,000 (five thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President