



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

FOURTH SECTION

CASE OF RUSŇÁKOVÁ v. SLOVAKIA

(Application no. 51071/06)

JUDGMENT

STRASBOURG

14 April 2009

FINAL

14/07/2009

This judgment may be subject to editorial revision.

In the case of Rusňáková 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 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 51071/06) 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 a Slovak national, Ms Irena Rusňáková (“the applicant”), on 15 December 2006.

2. The applicant was represented by Ms E. Hencovská, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their co-Agent, Ms M. Bálintová.

3. On 7 February 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

4. The applicant was born in 1925 and lives in Košice.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 17 May 1996 the applicant filed an action with the Košice – okolie District Court. She sought the dissolution of a joint ownership of real property.

7. On 18 August 2004 the Constitutional Court found that the Košice – okolie District Court had violated the applicant’s right under Article 48 § 2 of the Constitution to a hearing without unjustified delay. The case was not complex. The applicant had contributed to the length of the proceedings in

that she had challenged judges and an expert. The District Court was responsible for delays totalling 53 months.

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

9. On 29 September 2004 the District Court issued an interim measure. On 15 October 2004 the applicant appealed.

10. On 22 November 2004 the District Court discontinued the appeal proceedings concerning the interim measure as the applicant had not paid the court fees.

11. On 29 July 2005 the District Court dissolved the joint ownership of the property in issue. On 14 October 2005 the applicant appealed. On 2 December 2005 the District Court delivered a decision correcting a clerical error in its judgment.

12. On 26 September 2005 the applicant appointed a new legal representative.

13. On 26 May 2006 the applicant filed a submission with the District Court seeking an interim measure. On 17 July 2006 the applicant withdrew her submission.

14. On 28 November 2006 the District Court transferred the file to the Court of Appeal.

15. On 4 April 2007 the Court of Appeal returned the file to the District Court for a decision on the applicant's request for an exemption from the obligation to pay court fees.

16. On 15 April 2007 the applicant challenged the judge.

17. On 20 September 2007 the District Court transferred the file to the Court of Appeal.

18. On 26 May 2008 the Court of Appeal upheld the first-instance judgment of 29 July 2005.

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 laid down in 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 ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

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 her right to a hearing within a reasonable time as regards the period that had already been examined by the Constitutional Court. The Constitutional Court had provided the applicant with preventive and compensatory redress, which the Government considered to be 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 decision.

22. The applicant disagreed.

23. The Court notes that the Constitutional Court awarded the applicant, on 18 August 2004, the equivalent of EUR 1,000 in respect of non-pecuniary damage. This amount is disproportionately low to what the Court generally awards in similar cases (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-...). Moreover, the Constitutional Court's direction to the District Court to speed up the proceedings does not appear to have had any effect. 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".

24. 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 again to the remedy under Article 127 of the Constitution anew (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007) as far as her complaint about the continuing length of the proceedings before the District Court is concerned.

25. The proceedings started on 17 May 1996 and ended on 26 May 2008. They thus lasted 12 years and 12 days for two levels of jurisdiction.

26. The Court must however take into consideration the fact that the applicant's constitutional complaint was only directed at the proceedings before the first-instance court. The Court notes that the overall proceedings before the first-instance court lasted in total more than 10 years. These facts have to be taken into account when determining the merits of the application and, if appropriate, the applicant's claims for just satisfaction under Article 41 of the Convention (see, for example, *Solárová and Others v. Slovakia*, no. 77690/01, § 42, 5 December 2006 and *Judt v. Slovakia*, no. 70985/01, § 61, 9 October 2007, with further reference).

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 applicant argued that the proceedings had lasted an excessively long time both prior to and after the Constitutional Court's judgment.

29. The Government, with reference to the Constitutional Court's judgment, admitted that the complaint was not unsubstantiated. However, no further delays in the proceedings imputable to the State had occurred in the period after the Constitutional Court's decision. It was the applicant who had contributed to the length of the proceedings in that she had changed her legal representatives, withdrawn her petition for an interim measure, supplemented her submission and challenged the judge.

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 finds no 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 concurs with the Constitutional Court that the length of the proceedings up to the date of the Constitutional Court's judgment was excessive and failed to meet the "reasonable time" requirement.

33. The Court notes that after the delivery of the Constitutional Court's judgment the proceedings before the District Court lasted more than three years until the case was transferred, on 20 September 2007, to the Court of Appeal for a decision on the merits. The Court finds the length of the above proceedings excessive notwithstanding the fact that the applicant by her conduct had contributed to a certain extent to the length of the proceedings.

34. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government submitted that the claim was overstated.

39. 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 her EUR 4,600 under that head.

40. The applicant claimed EUR 2,264 for the costs and expenses incurred before the domestic courts. She also claimed EUR 1,174 for costs and expenses incurred before the Court. That sum comprised legal representation costs (EUR 949), postal expenses (EUR 6) and translation costs (EUR 219).

41. The Government contended that the costs and expenses concerning the legal representation in the domestic proceedings had not been incurred to prevent or obtain redress for the violations alleged. As to the applicant's costs of legal representation before the Court, the Government stated that the claim was exaggerated. They did not contest the claim for translation and postal costs.

42. 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 and awards the sum of EUR 1,174 for the proceedings before the Court.

B. Default interest

43. 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, EUR 4,600 (four thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 1,174 (one thousand one hundred and seventy-four euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 14 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President