



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

FOURTH SECTION

CASE OF GERSTBREIN v. SLOVAKIA

(Application no. 17252/04)

JUDGMENT

STRASBOURG

21 April 2009

FINAL

21/07/2009

This judgment may be subject to editorial revision.

In the case of Gerstbrein 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 31 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 17252/04) 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, Mr Peter Gerstbrein (“the applicant”), on 7 May 2004.

2. The applicant was represented by Mr R. Belanský, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 2 April 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 was born in 1952 and lives in Košice.

5. He was the successful plaintiff in civil proceedings for payment against an individual which ended with a judgment of the Košice II District Court of 6 August 1998.

6. On 3 February 1999 enforcement proceedings were brought against the applicant’s debtor (file no. Ex 4/99).

7. The debtor submitted his objections to the enforcement and its costs to the executions officer. On 24 March 1999 the latter transferred the objections to the District Court for decision (*file no. Er 85/99*). The objections were dismissed on 16 September 2003.

8. On 6 August 2003 the applicant complained to the Constitutional Court about delays in the proceedings pending under file no. Er 85/99. On 5 November 2003 the Constitutional Court found a violation of the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay, awarded him SKK 25,000 (equivalent to 604 euros (EUR) at that time) in respect of non-pecuniary damage and ordered reimbursement of his legal costs. It did not order the District Court to proceed without further delay on the ground that a decision on the debtor's objections had already been taken.

9. On 13 April 2005 the executions officer returned his authorisation for enforcement to the District Court with the applicant's consent, as the debtor had no property with which he could satisfy the applicant's claim. The enforcement proceedings thus ended.

THE LAW

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

10. The applicant complained that the District Court's inactivity in the proceedings concerning the debtor's objections (*file no. Er 85/99*) had prevented him from having the judgment enforced. He also claimed that, as a result, he had suffered material damage. The applicant 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 ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

1. Length of the proceedings

11. The Government argued that, in respect of the period of the proceedings examined by the Constitutional Court, the applicant could no longer claim to be a victim of a violation of his 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. According

to the Government, there were no delays in the enforcement proceedings in the period subsequent to the Constitutional Court's judgment.

12. The applicant disagreed.

13. The Court observes that the enforcement proceedings started on 3 February 1999 and ended on 13 April 2005. Having regard to the fact that the applicant complained before the Constitutional Court exclusively about the length of the proceedings concerning the debtor's objections to the enforcement (file no. Er. 85/99), the Court will consider the period of 4 years and 6 months during which the District Court examined that issue.

14. The Court notes that, in respect of that period, the Constitutional Court awarded the applicant the equivalent of EUR 604 as just satisfaction in respect of non-pecuniary damage. This amount cannot be considered to have provided 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-...).

15. In view of the above, in respect of the proceedings examined by the Constitutional Court, it concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention (see, for example, *Eliáš v. Slovakia*, no. 21326/07, § 24, 18 March 2008, or *Bič v. Slovakia*, no. 23865/03, § 37, 4 November 2008).

16. 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 complaint

17. The applicant further complained that he could not have the judgment of 1998 enforced. The Court notes that the enforcement ended in 2005 due to the fact that the debtor did not have any property with which he could satisfy the applicant's claim. It recalls in this connection that the execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see the *Hornsby v. Greece* judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40). That does not mean that a State could be held responsible for non-enforcement of a judgment due to the insolvency of the debtor (*Sanglier v. France*, 50342/99, § 39, 27 May 2003). However, when the authorities are obliged to act in order to enforce a judgment, as in the instant applicant's case, and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (*Scollo v. Italy*, judgment of 28 September 1995, Series A no. 315-C, § 44). However, and in so far as the applicant is not complaining about the length of the above-mentioned proceedings concerning the debtor's objections, it is to be noted that the applicant did not claim compensation under the State

Liability Act of 2003 (Act no. 514/2003 Coll.) for defective or negligent enforcement on the part of the executions officer (see *Šebeková and Horvatovičová v. Slovakia*, no. 73233/01, § 52, 14 February 2006), and did not, ultimately, seek redress before the Constitutional Court.

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

B. Merits

18. 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).

19. 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).

20. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court concurs with the Constitutional Court that the length of the proceedings concerning the debtor's objections to the enforcement 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

21. 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

22. In respect of pecuniary damage the applicant claimed EUR 4,066, which corresponded to the amount to be enforced at the domestic level, plus default interest. He also claimed an additional amount of EUR 314. In respect of non-pecuniary damage the applicant claimed EUR 3,319.

23. The Government contested these claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims.

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 fact that the applicant obtained partial redress in the proceedings before the Constitutional Court, it awards EUR 1,300 under that head.

B. Costs and expenses

25. The applicant also claimed EUR 365 for the costs and expenses incurred before the Court.

26. The Government contested the claim, noting that the applicant did not support it by providing any bills or invoices.

27. The Court will make an award in respect of costs and expenses in so far as these were actually and necessarily incurred and were reasonable as to quantum. The Court considers it reasonable to award the sum of EUR 365, as claimed by the applicant, who was represented by a lawyer (see *Çelik and İmret v. Turkey*, no. 44093/98, § 68, 26 October 2004).

C. Default interest

28. 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 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, the following amounts:
 - (i) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 365 (three hundred and sixty-five 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 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President