



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF NOVÁK v. SLOVAKIA

(Application no. 1494/05)

JUDGMENT

STRASBOURG

2 June 2009

FINAL

02/09/2009

This judgment may be subject to editorial revision.

In the case of Novák 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 12 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 1494/05) 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 Slovak national, Mr Vladimír Novák (“the applicant”), on 16 December 2004.

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

3. On 3 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 1967 and lives in Spišské Podhradie. The applicant introduced his application through the intermediary of an advocate, Mrs Elena Smiková. Subsequently, the applicant corresponded with the Registry himself.

A. Proceedings concerning termination of the applicant's employment

5. On 4 February 1994 the applicant filed an action with the Spišská Nová Ves District Court. He challenged the lawfulness of his dismissal from his employment.

6. On 22 December 2005 the district court dismissed the action. The Košice Regional Court upheld the first-instance judgment on 29 January 2007 (final on 14 March 2007).

B. Constitutional proceedings

7. On 23 August 2005 the Constitutional Court found that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay and under Article 6 § 1 of the Convention to a hearing within a reasonable time.

8. The Constitutional Court held that the case was not complex and that the applicant's conduct had contributed to the length of the proceedings. Delays imputable to the district court totalled 10 years and 8 months.

9. The Constitutional Court awarded the applicant SKK 90,000 (the equivalent of 2,328 euros at that time) as just satisfaction in respect of non-pecuniary damage. It ordered the Spišská Nová Ves District Court to reimburse the applicant's legal costs and avoid any further delay in the proceedings.

THE LAW

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

10. 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..."

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

A. Admissibility

12. 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 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 and paid without undue delay was not manifestly inadequate in the circumstances of the case. They further argued that the Constitutional Court's finding had a preventive effect as no further delays had occurred in the subsequent period. In any event, the applicant had not exhausted domestic remedies as it had been open to him to lodge (i) a fresh complaint with the Constitutional Court in respect of proceedings before the District Court and (ii) a constitutional complaint in respect of proceedings before the Regional Court.

13. 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 and contested the accelerating effect of the Constitutional Court's finding.

14. The Court notes that at the time of the Constitutional Court's judgment the proceedings had been pending for more than 11 years and 6 months before the District Court. The Constitutional Court awarded the applicant the equivalent of EUR 2,328 as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

15. 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-...).

16. In view of the above, in respect of the proceedings before the District Court up to the Constitutional Court's judgment, the Court concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

17. Since the compensatory effect 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 use again the remedy under Article 127 of the Constitution in respect of the proceedings before the District Court 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).

18. The proceedings started on 4 February 1994 and ended on 14 March 2007 when the Regional Court's judgment became final. They thus lasted more than 13 years and 1 month at two levels of jurisdiction.

19. 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 more than 12 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).

20. 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.

B. Merits

21. 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). The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

22. 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).

23. Having examined all the material submitted to it and having regard to its case-law on the subject and the nature of the dispute, 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. In particular, at the time of the Constitutional Court's judgment the proceedings had been pending for more than 11 years and 6 months before a single instance. Following the Constitutional Court's judgment the proceedings were pending for another 6 months before the District Court, but no substantial delay occurred during that period.

24. The Court concludes that the overall length of the period under consideration was incompatible with the applicant's right to a hearing within a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant further complained that he had no effective remedy at his disposal in respect of his complaint of the excessive length of proceedings. He relied on Article 13 of the Convention which provides:

“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.”

27. The Government argued that the applicant had an effective remedy at his disposal in respect of the above complaint.

28. The Court reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *e.g.*, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). In the light of this principle the Court finds that the fact that the redress obtained by the applicant from the Constitutional Court was not sufficient for Convention purposes does not render the remedy under Article 127 of the Constitution in the circumstances of the present case incompatible with Article 13 of the Convention (see also *Solárová and Others v. Slovakia*, no. 77690/01, § 56, 5 December 2006, with further reference).

29. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. In the application form the applicant claimed EUR 25,000 in compensation for non-pecuniary damage. On 19 September 2008, after the application had been communicated to the respondent Government and the parties informed that the admissibility and merits of the case would be examined at the same time, the Court invited the applicant to submit his claims for just satisfaction before 30 October 2008.

32. Without claiming any specific amount within the time-limit set for that purpose, the applicant argued that he had suffered non-pecuniary damage and therefore maintained his application.

33. The Government objected that the applicant had failed to submit his claims for just satisfaction in accordance with Rule 60 of the Rules of the Courts and pointed to the Court’s case-law (*Bzdúšek v. Slovakia*, no. 48817/99, § 31-32, 21 June 2005, *Ryabykh v. Russia*, no. 52854/99, §§ 66-68, 24 July 2003).

34. Even in the absence of quantification, the Court accepts that the applicant has suffered non-pecuniary damage which would not have been sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case and the award made by the Constitutional Court, the Court awards the applicant EUR 4,270 under this head.

B. Costs and expenses

35. The applicant claimed EUR 210 for the costs and expenses incurred before the Constitutional Court and EUR 774 for unspecified legal services.

36. The Government contested the costs incurred before the Constitutional Court as those had been reimbursed to the applicant by the Constitutional Court's finding of 23 August 2005. The Government argued that the applicant failed to itemise the remainder of his costs, but nevertheless accepted that certain costs must have been incurred in order to put right the violation of the Convention.

37. 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 costs claimed for the proceedings before the Constitutional Court noting that these have already been reimbursed to the applicant. The Court considers it reasonable to award the sum of EUR 500 for the applicant's expenses incurred in the proceedings before the Court.

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, the following amounts:

(i) EUR 4,270 (four thousand two hundred and seventy euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred 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 2 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President