



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GAJDOŠ v. SLOVAKIA

(Application no. 19304/04)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Gajdoš 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 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 19304/04) 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 Ján Gajdoš (“the applicant”), on 11 May 2004.

2. The applicant was represented by Mr J. Koval, a lawyer practising in Banská Bystrica. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 16 February 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 1961 and lives in Zvolen.

5. On 27 April 1994 the applicant filed an action with the Zvolen District Court. He claimed a sum of money which the defendant had failed to pay for the work done by the applicant.

6. On 9 May 1995 the District Court gave an interim judgment confirming that the applicant’s claim was justified. The amount owed by the defendant remained to be determined in further proceedings.

7. In the subsequent period the District Court experienced some difficulties in finding a suitable expert and obtaining an opinion from a specialised institute.

8. On the applicant's complaint, on 26 March 2003, the Constitutional Court found that the District Court had violated the applicant's right to a hearing without unjustified delay. The length of the proceedings was partly due to the factual complexity of the case. The applicant had not contributed to the overall length of the proceedings in a significant manner.

9. The Constitutional Court awarded 20,000 Slovakian korunas (SKK) (the equivalent of approximately 480 euros (EUR) at that time) to the applicant as just satisfaction in respect of non-pecuniary damage. It also ordered the District Court to proceed with the case without further delay and to reimburse the applicant's costs.

10. In the subsequent period the file was pending before the Banská Bystrica Regional Court for several months. The latter examined the amount of the fee to be paid to the specialised institute.

11. On 3 May 2004 the District Court partially found in the applicant's favour.

12. Both the applicant and the defendant appealed.

13. On 23 September 2005 the Regional Court upheld the first-instance judgment on the merits. It quashed its part concerning the costs and remitted the matter to the District Court. The decision on the merits became final on 4 November 2005.

THE LAW

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

14. 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..."

A. Admissibility

15. The Government concurred with the Constitutional Court in that the length of the proceedings in this case had been unreasonably long. However, they argued that the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. They expressed the view that the amount of just satisfaction awarded at the

domestic level had not been manifestly inadequate in the circumstances of the case, and that there had been no further delays in the period after the Constitutional Court's judgment until 4 November 2005 when the decision on the merits of the case had become final.

16. The applicant disagreed. He argued that the redress obtained at the domestic level had not been sufficient and that there had been further delays in the proceedings after the Constitutional Court's judgment until 3 May 2004 when the District Court had delivered its judgment.

17. The Court observes that the period to be taken into consideration started on 27 April 1994. In the absence of any information concerning determination of the costs of the proceedings after the decision on the merits of the case became final, and since it does not appear from the documents available that the applicant intended to complain about delays in that period of the proceedings, the Court will examine the length of the proceedings until 4 November 2005, that is up to the moment when the decision on the merits of the case became final.

18. The Court notes that the Constitutional Court took into consideration the period of eight years and eleven months when the case had been dealt with by the District Court. It awarded the applicant the equivalent of EUR 480 as just satisfaction in respect of non-pecuniary damage. As regards the relevant period examined by the Constitutional Court, 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-...).

19. The Court thus concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention (see, for example, *Bič v. Slovakia*, no. 23865/03, § 37, 4 November 2008). In view of the above, it does not consider the argument that the courts actively dealt with the case in the subsequent period sufficient to deprive the applicant of his status as a victim in respect of the period of the proceedings before the Constitutional Court's judgment.

20. 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

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).

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, the Court concurs with the view expressed by the Constitutional Court and considers 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. It finds no further substantial delays in the period after the Constitutional Court's judgment.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed EUR 4,000 in respect of non-pecuniary damage.

26. The Government contested the claim.

27. The Court considers that it should award the full sum claimed.

B. Costs and expenses

28. The Registry invited the applicant to submit his claims for just satisfaction together with the supporting documents by 17 August 2007. Within the given time-limit the applicant, represented by a lawyer, claimed, without providing any supporting documents, 15 % of the Court's award in respect of non-pecuniary damage. On 11 October 2007 the applicant's lawyer submitted a copy of the contract pursuant to which the applicant agreed to pay to the lawyer 15 % of the amount awarded by the Court.

29. The Government argued that the amount was overstated and that the applicant had not submitted the relevant supporting documents on time.

30. According to the Court's case-law, an applicant is entitled to the reimbursement of the 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, having regard to the failure to

substantiate his claim within the time-limit set and thus to comply with the terms of Rule 60 § 2 of the Rules of Court, the Court makes no award under this head.

C. Default interest

31. 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 4,000 (four 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 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President