



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ĎURECH AND OTHERS v. SLOVAKIA

(Application no. 42561/04)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Žurech and Others 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 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 42561/04) 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 three Slovak nationals, Mr Július Žurech, Mr Pavol Žurech and Ms Marta Máthéová (“the applicants”) on 9 November 2004.

2. 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. Mr. Július Žurech and Mr Pavol Žurech were born in 1933 and 1940 respectively and live in Prešov. Ms Marta Máthéová was born in 1930 and lives in Košice. The applicants are siblings.

5. On 7 October 1987 the applicants requested a judicial determination of their ownership title to a house.

6. The first-instance court delivered judgments on 18 November 1987, 25 October 1988, 5 June 1990, 4 July 1995 and 3 March 1997. The court of

appeal quashed those judgments on 26 May 1988, 22 December 1988, 28 February 1991, 5 March 1997 and 29 October 1999 respectively.

7. On 28 January 2004 the Constitutional Court found that the Košice II District Court had violated the applicants' right under Article 6 § 1 of the Convention to a hearing within a reasonable time.

8. The Constitutional Court had jurisdiction to examine the length of the proceedings as from 15 February 1993, but it had regard to the stage which the proceedings had reached by that date. The case was not complex and the applicants by their conduct had not caused any delay. The overall length of the proceedings was in itself incompatible with the applicants' right to a hearing within a reasonable time.

9. The Constitutional Court ordered the District Court to proceed with the case without further delay. It also awarded 100,000 Slovakian korunas (the equivalent of 2,465 euros at that time) to each applicant as just satisfaction in respect of non-pecuniary damage. The Constitutional Court ordered the District Court to reimburse the applicants' costs.

10. On 1 February 2005 the District Court delivered a judgment. The Košice Regional Court quashed that judgment on 14 November 2005 on the ground that the District Court had failed to assess the relevant evidence and to give sufficient reasons for the conclusion reached.

11. On 28 November 2006 the District Court found against the applicants. The judgment was upheld on appeal by the Regional Court on 30 April 2008. The decision was served on the applicants' lawyer on 2 July 2008.

12. On 24 November 2008 the applicants asked the Prosecutor General to lodge an extraordinary appeal on points of law against the above final decision on their behalf. No further information has been made available.

THE LAW

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

13. The applicants 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

14. The Government concurred with the Constitutional Court in that the length of the proceedings in this case had been unreasonable but they expressed the view that the applicants could no longer claim to be victims of a violation of their 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 had not been manifestly inadequate in the circumstances of the case. As to the period of the proceedings after the Constitutional Court's judgment, the applicants should have repeatedly sought redress by way of a fresh complaint under Article 127 of the Constitution.

15. The applicant disagreed.

16. The Court observes that the period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the fact that, already at that time, the proceedings had been pending for four years and almost six months. The period under consideration ended on 2 July 2008 when the Regional Court's decision was served on the applicants' lawyer. It follows that, since the date of the entry into force of the Convention in respect of Slovakia, the proceedings lasted more than sixteen years for two levels of jurisdiction.

17. The Court further notes that the Constitutional Court awarded each of the applicants the equivalent of EUR 2,465 as just satisfaction in respect of non-pecuniary damage. As regards the relevant period of the proceedings examined by the Constitutional Court, as well as the state of the proceedings at the time when the Convention entered into force in respect of the respondent State, this amount cannot be considered to have provided adequate and sufficient redress to the applicants 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-...). In view of the above, it concludes that the applicants did not lose their status as victims within the meaning of Article 34 of the Convention (see, for example, *Bič v. Slovakia*, no. 23865/03, § 37, 4 November 2008).

18. Accordingly, the applicants were not required, for the purposes of Article 35 § 1 of the Convention, to again resort to the complaint under Article 127 of the Constitution in respect of the proceedings 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).

19. 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

20. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

21. 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).

22. 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. It observes that the proceedings ended four years and five months after the Constitutional Court's judgment and finds further delays in that period of the proceedings.

23. 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 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

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 applicants jointly claimed 40,497 euros (EUR) in respect of pecuniary damage. They stated that due to the overall length of the proceedings of more than twenty years they suffered non-pecuniary damage the amount of which they considered difficult to calculate.

26. The Government contested the claim as to the pecuniary damage. They further stated that the applicants had not specified the amount of non-pecuniary damage but they left the matter to the Court's discretion, pointing out that the applicants had obtained adequate compensation from the Constitutional Court.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, having regard to its case-law on the subject and to the fact that the applicants obtained partial redress at the domestic level, it awards each of the applicants EUR 5,600.

B. Costs and expenses

28. The applicants jointly claimed EUR 849 for the legal costs incurred in the proceedings before the Constitutional Court. This sum approximately amounted to the difference between the sum agreed between the applicants and their lawyer pursuant to the contract submitted to the Court and the sum reimbursed by the Constitutional Court. The applicants also claimed EUR 159 for unspecified travel expenses and EUR 20 in respect of their other out-of-pocket expenses (postal and telephone costs).

29. The Government, stating that the applicants failed to support their claims by necessary invoices, left the matter to the Court's discretion.

30. The Court considers it reasonable to award the applicants, who were not represented by a lawyer in the proceedings before the Court, jointly the amount of EUR 300.

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 applicants, 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 5,600 (five thousand six hundred euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 300 (three hundred euros) jointly, plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President