



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

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1959 · 50 · 2009

FOURTH SECTION

**CASE OF KIŠ v. SLOVAKIA**

*(Application no. 3673/05)*

JUDGMENT

STRASBOURG

13 October 2009

**FINAL**

*13/01/2010*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Kiš 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 22 September 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 3673/05) 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 Jozef Kiš (“the applicant”), on 11 January 2005.

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

3. On 8 March 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 1969 and lives in Košice.

5. On 3 April 2001 the applicant filed an action with the Košice II District Court. He claimed that the defendants had lost the right to use a flat.

6. The first hearing in the case was held on 21 September 2004.

7. On 23 September 2004, on the applicant's complaint, the Constitutional Court found a violation of Article 6 § 1 of the Convention in respect of the length of the above proceedings. It noted that the case was not complex. The applicant's conduct had partially contributed to their duration

at the initial stage in that he had not paid the court fees at the time of filing the action. The District Court was responsible for delays totalling twenty-five months. The Constitutional Court awarded the applicant 20,000 Slovakian korunas (SKK) (the equivalent of 500 euros (EUR) at that time) as just satisfaction. It also ordered the District Court to reimburse the applicant's legal costs and to proceed with the case speedily.

8. On 12 April 2005 the District Court found against the applicant.

9. The Košice Regional Court, on appeal, quashed the judgment on 16 November 2005 and remitted the case to the District Court.

10. The District Court asked the defendants and the applicant to submit information and invited several doctors to indicate whether the defendants' state of health would allow them to attend a hearing. A hearing was held in November 2006 at which the applicant requested a modification of his action. His request was subsequently rejected.

11. The District Court found against the applicant on 27 February 2007.

12. On 15 October 2007 the Regional Court upheld the judgment. After having been served on the parties to the proceedings, the decision became final on 29 November 2007.

## THE LAW

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

13. 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

14. The Government did not contest that argument but expressed the view that, in respect of the period 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. As to the period subsequent to the Constitutional Court's judgment, the applicant should have lodged a fresh complaint under Article 127 of the Constitution.

15. The applicant disagreed.

16. The Court notes that at the time of the Constitutional Court's judgment the proceedings had lasted three years and six months at a single level of jurisdiction. The Constitutional Court awarded the applicant the equivalent of EUR 500 as just satisfaction in respect of non-pecuniary damage suffered. 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-...). In view of the above, the Court 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). The Court further finds that he was not required to again resort to the complaint procedure under Article 127 of the Constitution in respect of the period of the proceedings after the Constitutional Court's judgment (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

17. 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**

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 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, after the Constitutional Court's order to proceed with the case, the proceedings lasted a further three years and two months and during that period, courts of two instances dealt with the subject-matter of the case on two occasions. The Court finds no further substantial inactivity either on the part of the District Court or the Regional Court in the proceedings subsequent to the Constitutional Court's judgment.

21. 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

22. 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

23. The applicant claimed EUR 15,822 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

24. The Government contested these claims.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, having regard to its case-law on the subject and the fact that the applicant obtained partial redress at the domestic level, it awards the applicant EUR 800.

### B. Costs and expenses

26. As regards the proceedings before the Court, the applicant claimed EUR 664 for his legal representation, EUR 70 for translation costs and EUR 9 for postal expenses. He further claimed EUR 1,236 for costs and expenses incurred in the proceedings before the ordinary courts.

27. The Government contested these claims, except those concerning postal expenses and translation costs incurred in the Court's proceedings.

28. The Court considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 743 for the proceedings before the Court.

### C. Default interest

29. 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, the following amounts:
    - (i) EUR 800 (eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 743 (seven hundred and forty-three 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 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President