



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KESZELI v. SLOVAKIA

(Application no. 34602/03)

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 Keszeli 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. 34602/03) 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 Vojtech Keszeli (“the applicant”), on 22 October 2003.

2. The Slovak Government (“the Government”) were represented by Mrs A. Poláčková and Mrs M. Pirošíková, their successive Agents.

3. On 27 March 2006 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**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1952 and lives in Šaľa.

A. Proceedings concerning the applicant's action of 7 July 1994

5. On 7 July 1994 the applicant filed an action with the Bratislava I District Court against a private company. He claimed the equivalent of approximately 3,300 euros (EUR) which the company owed him.

6. On 28 April 1998 insolvency proceedings were brought against the company and the proceedings on the applicant's action were stayed *ex lege* pending the outcome of the insolvency proceedings (see point B below).

B. Insolvency proceedings against the applicant's debtor

7. On 23 October 1996 the Bratislava Regional Court started insolvency proceedings against the debtor company. That decision was quashed by the Supreme Court. Subsequently, the Regional Court started a new set of insolvency proceedings on 28 April 1998.

8. The administrator in insolvency refused to acknowledge the applicant's claim originally introduced on 7 July 1994 (see point A above). The applicant, therefore, lodged a separate action, on 17 April 1997, with a view to having his title to the debtor company determined. In a judgment which became final on 9 July 2001 the Regional Court confirmed that the applicant was entitled to the sum claimed. He was, however, not entitled to default interest on the amount claimed by him.

9. Meanwhile, on 23 September 1999 and 28 September 2000 the administrator in insolvency informed the Regional Court about her activities.

10. A meeting of creditors was held on 24 October 2000.

11. On 15 February and 11 October 2001 the administrator submitted a report on her activities in the proceedings.

12. On 22 April and 16 December 2002 the court asked the administrator to submit a report on her activities in the insolvency proceedings. She was informed that her failure to comply with the court's order would lead to the imposition of a fine.

13. The administrator submitted her report on 31 January and 2 October 2003 and 24 February 2004.

14. On 17 November 2004 the court asked the administrator to submit her final report and her claims for fees and expenses.

15. The administrator complied with the order on 27 January 2005.

16. The court repeatedly asked the administrator to modify the final report. She submitted the report on 21 September 2005.

17. On 23 November 2005 the final report was accepted by the court.

18. Meanwhile, several other creditors lodged separate actions with the Regional Court in respect of their claims to the debtor company's property. In 2006 three of those sets of proceedings, initiated in 2001, were pending.

19. The insolvency proceedings are still pending.

C. Constitutional proceedings

20. On 1 October 2003 the Constitutional Court rejected the applicant's complaint of a violation of Article 6 § 1 of the Convention and of Article 1

of Protocol No. 1 in the proceedings on his action of 7 July 1994 and the insolvency proceedings. The decision stated that the Bratislava I District Court was prevented from dealing with the case as the proceedings before it had been stayed *ex lege* pending the outcome of the insolvency proceedings against the debtor company. At that time the District Court could not, therefore, be held liable for any violation of the applicant's rights. The Constitutional Court could not examine the alleged delays in the District Court's proceedings before they had been stayed, as the relevant part of the application had been submitted after the expiry of the statutory two-month time-limit. The Constitutional Court found no particular delays in the insolvency proceedings pending before the Regional Court.

21. As regards the alleged violation of the applicant's rights under Article 1 of Protocol No. 1, the Constitutional Court held that their protection fell within the jurisdiction of the ordinary courts. Furthermore, the insolvency proceedings were still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Insolvency proceedings are regulated by the Insolvency Act (Act No. 328/1991 Coll. was in force until 1 January 2006, when it was replaced by Act No. 7/2005 Coll.). According to the relevant provisions, the administrator in insolvency administers the insolvency assets, converts the insolvency assets into money and satisfies the creditors' claims. Pursuant to § 66f of the 1991 Insolvency Act and § 196 of the 2005 Insolvency Act, the Code of Civil Procedure is the *lex generalis* in relation to the Insolvency Act in respect of insolvency proceedings.

23. The general responsibilities of an insolvency court are set out in §§ 8 and 12 of the 1991 Insolvency Act and in §§ 40-42 of the 2005 Insolvency Act. In insolvency proceedings the court appoints and removes the administrator. It can, *inter alia*, impose a fine on the administrator for a failure to fulfil his or her duties, ask the administrator to submit reports and explanations and consult the administrator's accounts. The court can also order the administrator to act in a certain manner.

THE LAW

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

24. The applicant complained under Article 6 § 1 of the Convention about the length of the above sets of proceedings. Under Article 1 of Protocol No. 1 he claimed that, due to the courts' failure to proceed with his

case in an appropriate manner, he had been unable to obtain the sum owed to him. The Court considers it appropriate to examine his complaints under Article 6 § 1 alone, which in its relevant part 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

25. The Government contested the applicant's argument. They also argued that, as regards the period after the Constitutional Court's decision, the applicant could have lodged a fresh complaint under Article 127 of the Constitution.

26. The applicant reiterated his complaint.

27. The Court observes that the Constitutional Court declared the applicant's complaint inadmissible. Since the applicant was unable to obtain redress before the Constitutional Court in respect of a substantial part of the proceedings, the Court concludes that, as to the period of the proceedings following the Constitutional Court's decision, he was not required to repeatedly seek redress before the Constitutional Court as suggested by the Government (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). In this context it is also relevant that the present application was introduced without any substantial delays after the Constitutional Court's decision (see *Španír v. Slovakia*, no. 39139/05, § 47, 18 December 2007).

28. The Court notes that the applicant introduced his civil claim on 7 July 1994 and that the respective proceedings were stayed on 28 April 1998 as a result of the insolvency proceedings brought against his debtor. Consequently, the applicant sought to register his original claim with the administrator in the context of the insolvency proceedings. As the administrator had refused to acknowledge the claim, the applicant was forced to lodge a separate action against the administrator with a view to having his entitlement acknowledged by a court. The Regional Court confirmed the applicant's right to claim the sum in the context of the insolvency proceedings by a decision that became final on 9 July 2001. In this respect the Court notes that at that time the applicant did not have at his disposal an effective remedy for his complaint about the length of the proceedings, as the complaint under Article 127 of the Constitution became available only as from 1 January 2002 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002). After the judicial confirmation of the applicant's entitlement to claim the above amount of money in the insolvency proceedings, the latter have remained pending.

29. In accordance with its practice to examine the length of the proceedings taken as a whole, the Court finds that, in the circumstances of the case, the individual proceedings should be treated as a single dispute over the applicant's claim introduced in 1994 (see, *mutatis mutandis*, *Komanický v. Slovakia* (no.2), no. 56161/00, § 118, 2 October 2007, *Sika v. Slovakia*, no. 2132/02, §§ 25, 26, 13 June 2006). It concludes that the period under consideration started in 1994 and that two courts, both acting as first-instance courts, have been dealing with the applicant's claim since that time, that is for fifteen years.

30. 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

31. The Government argued that there were no delays either in the civil proceedings brought in 1994 or in the insolvency proceedings which could be imputed to the court, the administrator or other authorities. In their view the administrator fulfilled her duties duly, speedily and adequately and the insolvency court appropriately exercised its obligations pursuant to the relevant provisions of the Insolvency Act. Furthermore, the insolvency proceedings could not end before the final decisions in three other related sets of proceedings were adopted.

32. The applicant disagreed, stating that the length of the proceedings had been excessive.

33. 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).

34. 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).

35. It observes that the District Court has been prevented by law from dealing with the applicant's civil claim as from 1998 when the proceedings were stayed. As regards the insolvency proceedings, it accepts the Government's argument that their course partially depends on the outcome of three related sets of proceedings pending before the same court. However, those sets of proceedings, which had already started in 2001, have not yet ended and no arguments justifying such a long period have been submitted. These circumstances cannot justify the overall duration of the

proceedings (see *Dudičová v. Slovakia*, no. 15592/03, § 73, 8 January 2009).

36. Having examined all the materials submitted to it, and having regard to its case-law on the subject, the Court considers that the period under its consideration has been excessive and has 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

37. 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

38. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to its case-law on the subject, it awards him EUR 10,000 under that head.

B. Costs and expenses

41. The applicant claimed EUR 400 in respect of the costs and expenses incurred before the Constitutional Court and the Court.

42. The Government contested these claims. They noted that the only invoices submitted concerned the applicant's legal costs incurred in the constitutional proceedings (the equivalent of EUR 292.10) and some out-of-pocket expenses (the equivalent of EUR 24.55).

43. The Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum claimed.

C. Default interest

44. 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 400 (four 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 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President