



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF JANÍK v. SLOVAKIA

(Application no. 5952/05)

JUDGMENT

STRASBOURG

27 October 2009

FINAL

27/01/2010

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 Janík 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 6 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 5952/05) 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 Anton Janík (“the applicant”), on 20 January 2005.

2. The applicant was represented by Ms O. Beláňová, a lawyer practising in Bratislava. 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 1934 and lives in Trenčín.

A. Proceedings concerning the action of 16 November 1999

5. On 16 November 1999 the applicant challenged the validity of a company's statute before the Trenčín Regional Court. The case was registered under the file number 7 Cb 73/99.

6. The case was dealt with by the Regional Court. The Supreme Court examined, for three months, the applicant's request for an interim measure.

7. On 7 May 2003 the Regional Court discontinued the proceedings as there was an obstacle of *litis pendens*. The applicant's appealed.

8. On 4 August 2003 the file was transferred to the Supreme Court which quashed the first-instance decision and remitted the case to the Regional Court. The file was transferred back to the latter on 31 October 2003.

9. On 20 May 2004 the Regional Court delivered a judgment on the applicant's claims.

10. The defendant appealed. The file was transferred to the Supreme Court on 11 October 2004.

11. On 3 November 2005 the Supreme Court adopted a judgment which was served on the parties and became final on 20 December 2005.

B. Proceedings related to the other actions lodged by the applicant

12. In 2000 the applicant filed two and in 2003 one action, in which he challenged decisions taken at a company's general meeting.

13. The Regional Court dealt with the first action in proceedings no. 7 Cb 13/00. Its judgment was partially upheld and partially amended by the Supreme Court. The judgment became final on 21 June 2005.

14. The second action was examined in the proceedings 7 Cb 60/00. On 20 May 2004 it was joined to and decided upon in the proceedings 7 Cb 73/99 mentioned above (see point A).

15. The proceedings on the third action (file no. 7 Cbs 5/03) ended by the Supreme Court's decision of 20 June 2007.

C. Constitutional proceedings

16. On 18 August 2004, on the applicant's complaint, the Constitutional Court found that the Regional Court had violated the applicant's right to a hearing within a reasonable time in the proceedings no. 7 Cb 73/99. The length of the proceedings was partly due to the complexity of the case and the applicant's conduct. The Regional Court had remained inactive for a period exceeding two years. The overall length of the proceedings was in itself excessive in the particular circumstances of the case.

17. The Constitutional Court ordered the Regional Court to proceed with the case without further delay and to reimburse the applicant's costs. It held that its finding in itself provided appropriate just satisfaction to the applicant. The Constitutional Court, therefore, dismissed the applicant's claim in that respect.

THE LAW

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

18. The applicant complained that the length of the above sets of 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

1. Proceedings concerning the action of 16 November 1999

19. The Government 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 had ordered the Regional Court to proceed with the case. Its decision not to award any just satisfaction had been reasoned and justified. The Government stated that, with respect to the Supreme Court's proceedings which followed the Constitutional Court's judgment, the applicant could have lodged a fresh complaint with the Constitutional Court.

20. The applicant disagreed.

21. The Court observes that the proceedings started on 16 November 1999 and ended on 20 December 2005. They thus lasted six years and one month at two levels of jurisdiction. It also notes that the applicant's constitutional complaint was directed exclusively against the proceedings before the Regional Court.

22. At the time of the Constitutional Court's judgment the proceedings before the Regional Court had lasted four years and three months. As regards the relevant period examined by the Constitutional Court, the redress obtained by the applicant at the domestic level cannot be considered adequate and sufficient in view of the Court's established case-law (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V).

23. 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. Accordingly, 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, for

the recapitulation of relevant principles, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

24. The Court notes that this part of 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.

2. Proceedings related to the other actions lodged by the applicant

25. The Government stated that, as regards the remaining sets of proceedings brought by the applicant, he had not exhausted the available remedies, more specifically a complaint under Article 127 of the Constitution.

26. The applicant argued that the individual sets of proceedings were interrelated and should not be examined separately. In his view he was not required to lodge separate complaints concerning the individual sets of proceedings, stating that the subject-matter of individual cases was similar.

27. The Court observes that the remedy under Article 127 of the Constitution became available as from 1 January 2002 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX). It further notes that the Constitutional Court's examination of individual human rights complaints is limited by statute to the summary of complaints, as formulated by the applicants (*Obluk v. Slovakia*, no. 69484/01, §§ 48 and 61, 20 June 2006). The summary of the applicant's constitutional complaint was directed exclusively against the length of the proceedings pending under file no. 7 Cb 73/99 (see point 1 above). The Constitutional Court was, therefore, prevented from examining the other sets of proceedings initiated by the applicant.

28. It follows that the complaint of the length of the remaining sets of proceedings initiated by the applicant must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

29. 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).

30. 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).

31. 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. There were no further delays present in the proceedings after the Constitutional Court's judgment.

32. Having examined all the materials 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

33. The applicant also complained that he had not had an effective remedy at his disposal within the meaning of Article 13 of the Convention, which reads:

"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."

34. The Government contested that argument.

35. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. As mentioned earlier, the applicant had at his disposal a complaint procedure under Article 127 of the Constitution but he failed to use it in respect of three sets of proceedings (see paragraphs 25-28 above).

36. The applicant lodged a complaint with the Constitutional Court only in connection with the proceedings on his action of 16 November 1999 (no. 7 Cb 73/99). On the basis of his complaint, the Constitutional Court found a violation of his right to a hearing within a reasonable time. The fact that the redress obtained at the domestic level was not sufficient for the 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 *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

It follows that this complaint 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

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 2,500 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 the full sum claimed.

B. Costs and expenses

41. The applicant also claimed SKK 6,510 (the equivalent of EUR 216) for his legal representation before the Court. He further claimed EUR 514 for the court fees paid in the proceedings before the ordinary courts.

42. The Government contested these claims.

43. Having regard to the materials in its possession, the Court considers it reasonable to award the sum of EUR 216 covering legal costs incurred in the proceedings before the Court.

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 complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings on the applicant's action of 16 November 1999 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 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 216 (two hundred and sixteen 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 27 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President