



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF FEKIAČ AND FEKIAČOVÁ v. SLOVAKIA

(Application no. 39202/04)

JUDGMENT

STRASBOURG

10 November 2009

FINAL

10/02/2010

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 Fekiač and Fekiačová 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 20 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 39202/04) 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 Slovak nationals, Mr Pavel Fekiač (“the first applicant”) and Mrs Jolana Fekiačová (“the second applicant”), on 13 October 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. The applicants are spouses. The first applicant was born in 1930 and the second applicant was born in 1940. They live in Detva.

5. On 8 January 1997 the applicants claimed that the joint ownership of a real property should be dissolved and that the property in issue should be distributed between them and a third co-owner.

6. On 24 February 1997 the Zvolen District Court delivered a judgment against which the defendant appealed.

7. The judgment was quashed by the Banská Bystrica Regional Court on 12 June 1997.

8. On 28 August 2002 the Regional Court upheld the first-instance decision of 19 July 2002 ordering each of the applicants to pay an advance on expert's fees. The second applicant unsuccessfully complained that she was not obliged to pay that sum (the equivalent of 92 euros (EUR) at that time). Subsequently, enforcement of the above decision was ordered. The second applicant submits that she was thereby put in a difficult situation as her only income was an invalidity pension.

9. On 22 April 2002 the first applicant complained to the Constitutional Court about excessive delays in the Zvolen District Court's proceedings. The Constitutional Court asked him to rectify shortcomings in his submission. On 23 May 2002 the first applicant appointed a lawyer to represent him in the constitutional proceedings. On 30 May 2002 the lawyer, on behalf of the first applicant, complied with the Constitutional Court's request.

10. On 8 January 2003 the Constitutional Court found that the District Court had violated the first applicant's right to a hearing within a reasonable time in that it had significantly contributed to the length of the proceedings. It awarded the first applicant 25,000 Slovakian korunas (SKK) (the equivalent of EUR 607 at that time), ordered the District Court to avoid further delays and to reimburse the first applicant's costs.

11. On 24 June 2003 the Zvolen District Court decided to transfer the case to the Lučenec District Court.

12. The file was transferred to the Lučenec District Court on 7 August 2003. The latter delivered a judgment on the merits on 3 October 2005. The applicants appealed and filed additional claims for compensation.

13. The file was transferred to the court of appeal on 18 November 2005. On 15 March 2006 the Regional Court upheld the first-instance judgment, noting that it could not examine any additional claims which the plaintiffs had not submitted to the first-instance court. The decision was served on the applicants on 27 March 2006.

THE LAW

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

14. 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

1. *As to the second applicant*

15. The Government argued that the second applicant had not exhausted domestic remedies, as she had failed to raise her complaint before the Constitutional Court. They relied, *inter alia*, on the Constitutional Court Act 1993, according to which an applicant must be identified and must sign his or her constitutional complaint. They further pointed out that the Constitutional Court was bound by law to examine complaints as formulated by the applicants.

16. The second applicant stated that the Constitutional Court could not decide on a violation of her rights as the District Court had withdrawn the relevant documents from the file concerning the civil proceedings.

17. The Court observes that the complaint lodged with the Constitutional Court on 22 April 2002 was signed by the first applicant. Only the first applicant appointed a lawyer to represent him in the constitutional proceedings. The subsequent submission of 30 May 2002 was filed by the lawyer and was clearly made only on behalf of the first applicant.

18. It does not consider relevant the second applicant's argument that the Constitutional Court could not decide on her complaint on the ground that some documents were missing from the file concerning her civil case.

It follows that the second applicant's complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. *As to the first applicant*

19. The Government expressed the view that the first 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, had ordered the Zvolen District Court to act and had awarded adequate just satisfaction. Additionally, the case was transferred to the Lučenec District Court shortly after the Constitutional Court's judgment and the first applicant did not exhaust domestic remedies in respect of the period of the proceedings before that court, as well as before the Regional Court.

20. The first applicant reiterated his complaint.

21. The Court observes that at the time of the Constitutional Court's decision the overall length of the proceedings was six years. The Court notes that the first applicant directed his constitutional complaint only against the first-instance proceedings. On the basis of his complaint, the Constitutional Court examined the period of five years and eight months when the case had been dealt with by the Zvolen District Court. It observes that, in respect of that period, the amount of just satisfaction awarded at the domestic level cannot be considered to have provided adequate and sufficient redress to the first 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-...).

22. In view of the above, the Court concludes that the first applicant did not lose his status as a victim within the meaning of Article 34 of the Convention. It further finds that he was not required to again resort to the complaint under Article 127 of the Constitution in respect of the period of the proceedings after the Constitutional Court's judgment (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

23. It 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

24. 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).

25. 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).

26. Having examined all the materials 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 in the instant case the length of the first-instance proceedings up to the date of the Constitutional Court's judgment was excessive and failed to meet the "reasonable time" requirement. It further observes that courts at two levels of jurisdiction dealt with the case for more than three years after the Constitutional Court's judgment and finds further delays in that period.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

27. The second applicant complained under Article 8 of the Convention that payment of fees was unlawfully enforced against her, and that by withdrawing relevant documents from the file the courts had prevented her from obtaining redress from the Constitutional Court.

28. Both applicants also alleged a violation of Article 1 of Protocol No. 1 in that they had been unable to use the property at issue.

29. However, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence or have not already been addressed in the context of the finding of a breach of Article 6 § 1 of the Convention, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application 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

30. 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

31. The first applicant claimed EUR 9,295 in respect of pecuniary damage and EUR 1,660 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. 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 first applicant must have sustained non-pecuniary damage. Having regard to its case-law on the subject and to the fact that the first applicant obtained partial redress at the domestic level, it awards EUR 1,660 as claimed.

B. Costs and expenses

34. The first applicant claimed EUR 332 for the costs and expenses incurred before the Constitutional Court, EUR 491 for translation costs and EUR 398 for various expenses incurred in the proceedings before the ordinary courts.

35. The Government contested these claims, except for those concerning translation costs.

36. Having regard to the materials in its possession and the Constitutional Court's decision ordering reimbursement of the first applicant's costs, the Court considers it reasonable to award the first applicant, who was not represented by a lawyer, EUR 600 covering the translation costs and out-of-pocket expenses incurred before the Court.

C. Default interest

37. 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 concerning the excessive length of the proceedings in respect of the first applicant 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 first 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 1,660 (one thousand six hundred and sixty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 600 (six 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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President