



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF SIKA v. SLOVAKIA (no. 6)

(Application no. 868/05)

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 Sika v. Slovakia (no. 6),

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *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. 868/05) 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 Vladimír Sika (“the applicant”), on 11 December 2004.

2. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 3 July 2008 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 1937 and lives in Trnava.

A. Proceedings concerning the action of 22 September 2000

5. On 22 September 2000 a housing cooperative filed an action before the Trnava District Court against the applicant, seeking payment of a sum of money.

6. On 7 October 2002 the District Court decided against the applicant and dismissed his counterclaim. The applicant lodged an appeal.

7. On 18 November 2002 the applicant complained about unjustified delays to the President of the District Court and challenged a District Court judge for bias.

8. On 31 March 2003 his request for waiver of the court fees was dismissed by a judicial clerk. The applicant filed an appeal.

9. On 8 August 2003 the case file was transferred to the Trnava Regional Court. On 4 September 2003 the Regional Court remitted it back, as the District Court had failed to decide on the applicant's appeal in respect of his request for waiver of the court fees. On 23 February 2004 a District Court judge dismissed the applicant's request for waiver of the court fees. The applicant appealed.

10. On 30 June 2004 the case file was transferred to the Regional Court. On 13 August 2004 the Regional Court remitted it to the District Court, as the decision of 23 February 2004 was delivered by the judge who had previously been challenged for bias by the applicant. Following a statement by the judge concerned as to her alleged bias, the case file was transferred to the Regional Court on 23 September 2004. On 30 September 2004 the Regional Court decided not to exclude the District Court judge in question from dealing with and deciding on the case.

11. On 31 January 2005 the Regional Court quashed the District Court's judgment and confirmed the decision not to grant the applicant a waiver of the court fees. The case file was remitted to the District Court on 18 February 2005.

12. On 13 February 2006 the District Court decided against the applicant. The applicant appealed. On 4 April 2006 the file was transferred to the Regional Court which, on 17 July 2006, quashed the first-instance judgment.

13. On 11 January 2007 the applicant lodged a counterclaim. On 21 February 2007 the District Court dismissed the applicant's request for waiver of the court fees for lodging his counterclaim. The applicant appealed and the file was transferred to the Regional Court on 14 March 2007. On 13 April 2007 the Regional Court remitted it back as being submitted prematurely. On 18 April 2007 the file was repeatedly transmitted to the Regional Court. On 30 April 2007 the Regional Court upheld the first-instance decision of 21 February 2007.

14. Between January and October 2007 the District Court held 6 hearings. On 29 October 2007 the District Court delivered its third judgment and decided against the applicant.

15. On 9 November 2007 the applicant appealed. On 27 February 2008 the District Court dismissed the applicant's request for waiver of the court fees for lodging his appeal. The applicant appealed. On 27 March 2008 the file was transferred to the Regional Court which, on 18 April 2008, upheld the first-instance decision of 27 February 2008.

16. On 5 November 2008 the Regional Court quashed the first-instance judgment of 29 October 2007. According to the information submitted by the applicant a hearing was to be held on 10 June 2009 before the District Court.

B. Constitutional proceedings

1. Applicant's first constitutional complaint

17. On 15 March 2004 the applicant applied to the Constitutional Court, challenging the length of the proceedings before the Trnava District Court.

18. On 4 November 2004 the Constitutional Court rejected his complaint. It noted that, in accordance with its long-established practice, it could examine complaints in respect of the length of the proceedings only if the proceedings were still pending before the authority liable for the alleged violation. The proceedings before the District Court had ended before the introduction of his constitutional complaint.

2. Applicant's second constitutional complaint

19. On 7 November 2005 the Constitutional Court found that the Trnava District Court, of which the applicant exclusively complained, had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay and his right under Article 6 § 1 of the Convention to a hearing within a reasonable time.

20. The Constitutional Court held that there was a degree of factual complexity to the case which could not, however, justify the length of the proceedings. The applicant's conduct had not contributed to the length of the proceedings. However, the exercise of his procedural rights (counterclaim, challenge of a judge for bias, waiver of the court fees) had prolonged the proceedings, which could not be imputed to the relevant authority. The District Court's ineffective performance (from delivery of its judgment, two years had passed before the case file was duly transferred to the Regional Court for decision on the applicant's appeals; its judgment was quashed on account of insufficient establishment of the facts) had resulted in avoidable delays.

21. The Constitutional Court awarded the applicant SKK 20,000 (the equivalent of 514 euros at that time) as just satisfaction in respect of

non-pecuniary damage. It ordered the Trnava District Court to avoid any further delay in the proceedings and to reimburse the applicant's legal costs.

THE LAW

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

22. The applicant complained that his right to a fair hearing had been violated in the above proceedings and that the length of the proceedings had been excessive. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal...”

A. Alleged unfairness of the proceedings

23. It appears from the applicant's submission that the proceedings are still pending. Moreover, the applicant did not complain of their alleged unfairness to the Constitutional Court.

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

B. Length of the proceedings

25. The Government did not contest the argument in respect of the unreasonable length of the proceedings but argued that this part of the application was inadmissible for the reasons set out below.

26. The Government objected that, in respect of the proceedings 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 acknowledged such a violation and the amount of just satisfaction awarded was not manifestly inadequate in the circumstances of the case. The Government invoked the similarity of the present situation with that examined by the Court in its judgment of 19 December 2006 in the case of *Šedý v. Slovakia* (no. 72237/01) in the action against a housing co-operative.

27. As to the subsequent period, the Government argued that the applicant had not exhausted domestic remedies as it had been open to him to lodge (i) a fresh complaint with the Constitutional Court in respect of the

proceedings before the District Court and (ii) a constitutional complaint in respect of the proceedings before the Regional Court.

28. The applicant disagreed and argued that the amount of just satisfaction granted by the Constitutional Court was disproportionately low in the circumstances of the case. He further argued that he was not obliged to have recourse again to the constitutional remedy.

29. The Court notes that at the time of the second Constitutional Court's judgment the proceedings had been pending for 5 years and more than 1 month at two levels of jurisdiction. However, the applicant complained to the Constitutional Court exclusively about the length of the proceedings before the District Court. Due to the fact that the delays which occurred until the file was duly transferred to the Regional Court (see paragraphs 9, 10) were imputable to the District Court, the relevant period to be taken into consideration exceeded 4 years and 8 months. The Constitutional Court awarded the applicant the equivalent of EUR 514 as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

30. The amount awarded by the Constitutional Court cannot be considered as providing 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-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V).

31. As for the Government's comparative argument concerning the case of *Šedý*, the Court observes that, in contrast to the present case, the relevant part of the proceedings referred to in *Šedý* lasted no more than about 2 years and 5 months at a single instance (see, *Šedý*, cited above, § 73).

32. In view of the above, in respect of the proceedings before the District Court up to the time of the second Constitutional Court's judgment, the Court concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

33. Since the effect produced by the decisions of the Constitutional Court did not satisfy the criteria applied by the Court, the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to use again the remedy under Article 127 of the Constitution in respect of the proceedings subsequent to the second Constitutional Court's judgment (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

34. The proceedings started on 22 September 2000 and in June 2009 they were still pending before the District Court. They have lasted approximately 8 years and 8 months at two levels of jurisdiction so far.

35. 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.

C. Merits

36. 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).

37. 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).

38. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, at the time of the second Constitutional Court's judgment the period for which the District Court was responsible exceeded 4 years and 8 months. After that date the proceedings lasted approximately 3 years and a half at two levels of jurisdiction. It is observed that the District Court's judgment had to be quashed by the Regional Court three times (see paragraphs 11, 12 and 16 above).

39. In view of the above considerations the Court concludes that the overall length of the period under consideration was incompatible with the applicant's right to a hearing within a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 12 TO THE CONVENTION

41. In connection with the facts of the case the applicant alleged discrimination contrary to Article 14 of the Convention.

42. The applicant also complained about violation of Article 1 of Protocol No. 12 to the Convention.

43. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the right guaranteed under Article 14 of the Convention.

44. The complaint under Article 1 of Protocol No. 12 to the Convention is incompatible *ratione personae* with the provisions of the Convention (see *Sika v. Slovakia* (dec.), no. 2132/02, 10 May 2005).

45. It follows that this part of the application is partly manifestly ill-founded and partly incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 2,944 euros (EUR) in respect of pecuniary damage and EUR 4,923 in respect of non-pecuniary damage.

48. The Government contested the pecuniary damage claimed by the applicant. They considered the claim for non-pecuniary damage exaggerated.

49. 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, and bearing in mind the sum awarded by the Constitutional Court, it awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant claimed a lump sum for the costs and expenses incurred before the domestic courts and the Court and supported his claim by several invoices.

51. As to the costs of the domestic proceedings the Government had no objection against the award of a demonstrably incurred sum.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100 for the applicant's out-of-pocket expenses incurred in the proceedings before the Court.

C. Default interest

53. 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 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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 100 (one 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 10 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President