



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MAJERÍKOVÁ v. SLOVAKIA

(Application no. 21057/06)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

24/02/2010

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 Majeríková 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 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 21057/06) 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, Ms Emília Majeríková (“the applicant”), on 10 May 2006.

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

3. On 3 April 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 1933 and lives in Teplice nad Váhom.

A. Proceedings concerning the applicant's action for distribution of an estate

5. On 14 May 1993 the applicant and eleven other persons filed an action with the Žilina District Court for determination of their shares in an estate. The action was dismissed on 24 October 1995.

6. On 6 May 1996 and on 19 February 1997 the Banská Bystrica Regional Court, without deciding on the merits, returned the case to the District Court to rectify errors in its judgment. On 10 October 1997 the case file was again submitted to the Banská Bystrica Regional Court. The latter quashed the first-instance judgment and remitted the case to the District Court on 30 October 1997.

7. In 2000 the Žilina Regional Court decided that the District Court judge was biased and the case was assigned to a different judge.

8. Following the Constitutional Court's finding (see below), the District Court and the Regional Court decided on several occasions on the parties' requests for interim measure. The District Court also requested additional information, collected further evidence and invited the parties to the proceedings to specify their claims. The proceedings are still pending before the first-instance court.

B. Constitutional proceedings

9. On 6 October 2005 the Constitutional Court found that the Žilina District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay and under Article 6 § 1 of the Convention to a hearing within a reasonable time.

10. The Constitutional Court held that the case was complex from the factual but not from the legal point of view and that the applicant's conduct had not contributed to the length of the proceedings. The Constitutional Court noted that the District Court by its erroneous conduct was responsible for a major part of the duration of the proceedings before the Regional Court. Delays imputable to the District Court totalled 74 months.

11. The Constitutional Court awarded the applicant SKK 80,000 (the equivalent of 2,062 euros at that time) as just satisfaction in respect of non-pecuniary damage and ordered the Žilina District Court to avoid any further delay in the proceedings. The applicant claimed reimbursement of his legal costs in the amount of 941 euros. The Constitutional Court ordered the District Court to reimburse the applicant the equivalent of 479 euros for legal representation.

THE LAW

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

12. 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

13. 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 her 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 and paid without undue delay was not manifestly inadequate in the circumstances of the case.

14. In any event, the applicant had not exhausted domestic remedies as it had been open to her to lodge a fresh complaint with the Constitutional Court in respect of the proceedings following the Constitutional Court's finding.

15. The applicant disagreed, pointed to several delays in the proceedings and argued that the amount of just satisfaction granted by the Constitutional Court was disproportionately low in the circumstances of the case and that the Constitutional Court's finding had not had a preventive effect.

16. The applicant further argued that she was not obliged to have recourse again to the constitutional remedy.

17. The Court notes that at the time of the Constitutional Court's finding the proceedings had been pending for 12 years and more than 4 months at two levels of jurisdiction. The Constitutional Court awarded the applicant the equivalent of EUR 2,062 as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

18. 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).

19. In view of the above, in respect of the proceedings up to the time of the Constitutional Court's finding, the Court concludes that the applicant did

not lose her status as a victim within the meaning of Article 34 of the Convention.

20. Since the effects produced by the Constitutional Court's finding 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 Constitutional Court's finding (see, *mutatis mutandis*, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

21. The proceedings started on 14 May 1993 and are still pending before the first-instance court. They have already lasted 16 years and more than 4 months.

22. 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.

B. Merits

23. 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).

24. 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).

25. 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 Constitutional Court's finding the proceedings had been pending for 12 years and more than 4 months. Following the Constitutional Court's finding the proceedings continued for approximately 4 years at two levels of jurisdiction and further delays occurred.

26. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government considered the claim for non-pecuniary damage exaggerated. They left the matter to the Court's discretion and requested the Court to take into account the just satisfaction awarded by the Constitutional Court.

31. The Court, having regard to the amount of compensation already awarded to the applicant at the national level, awards the applicant EUR 5,300 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed EUR 462 for the costs and expenses incurred before the Constitutional Court which had not been reimbursed to her and EUR 2,607 for those incurred before the Court. She further claimed EUR 50 for administrative costs and postal fees.

33. The Government requested the Court to dismiss the claim for costs for legal representation incurred before the Constitutional Court. The Government considered the claim for costs incurred before the Court exaggerated and had no objection to the award of the demonstrably incurred sum for administrative costs and postal fees.

34. 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 1,500 under this head.

C. Default interest

35. 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 5,300 (five thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President