



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ROŠKOVÁ v. SLOVAKIA

(Application no. 36818/06)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Rošková v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 36818/06) 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 Eva Rošková (“the applicant”), on 31 August 2006.

2. The applicant was represented by Mr P. Jonáš, a lawyer practising in Trebišov. The Slovakian Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 7 February 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 1959 and lives in Trebišov.

A. Proceedings concerning the applicant's action for distribution of matrimonial property

5. On 27 August 1991 the applicant filed an action for distribution of matrimonial property with the Spišská Nová Ves District Court.

6. Following the Constitutional Court's finding (see below) the District Court held seven hearings, obtained further evidence and an expert opinion.

7. On 29 November 2006 the District Court delivered a judgment which became final on 30 January 2007.

B. Constitutional proceedings

8. On 13 January 2005 the Constitutional Court found that the District Court had violated the applicant's right under 48 § 2 of the Constitution to a hearing without unjustified delay. The overall length of the proceedings (more than 14 years at a single instance) was clearly inappropriate. The applicant had contributed to the length of the proceedings to a certain extent in that she had failed to appear at hearings on six occasions.

9. The Constitutional Court awarded the equivalent of 1,810 euros (EUR) at that time to the applicant as just satisfaction in respect of non-pecuniary damage. It also ordered the 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

10. 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

11. 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 its finding had had a sufficient compensatory and accelerating effect.

12. 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.

13. The applicant disagreed.

14. The Court observes that the period to be taken into consideration began on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the fact that, already at that time, the proceedings had been pending for more than 6 months. At the time of the Constitutional Court's finding the relevant period had lasted 12 years and 10 months. The Constitutional Court awarded the applicant the equivalent of EUR 1,810 as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

15. 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), even having regard to the accelerating effect of the court's ruling on the subsequent proceedings.

16. 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 victim within the meaning of Article 34 of the Convention.

17. 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).

18. The period under consideration started on 18 March 1992 and ended on 30 January 2007 when the District Court's judgment became final. Thus it lasted 14 years and more than 10 months for one level of jurisdiction.

19. 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

20. The Government agreed with the Constitutional Court's finding that undue delays had occurred in the proceedings examined by it. As to the subsequent period the Government stated that no undue delays had occurred. Moreover, it was the conduct of the parties which had contributed to the prolongation of the proceedings. As to the overall length of the

proceedings, the Government admitted that Article 6 § 1 of the Convention had been violated.

21. The applicant contested the argument that she had contributed to the length of the proceedings subsequent to the Constitutional Court's finding. She further argued that the District Court had failed to use the means available for securing the defendant's presence at the hearings.

22. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. 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).

24. 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 relevant period had lasted 12 years and 10 months. Following the Constitutional Court's finding the proceedings continued for approximately 2 years at one level of jurisdiction. During that period no substantial delay occurred.

25. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. In the application form the applicant claimed EUR 5,500 in compensation for non-pecuniary damage. On 29 April 2008, after the application had been communicated to the respondent Government and the parties had been informed that the admissibility and merits of the case would be examined at the same time, the Court invited the applicant to submit her claims for just satisfaction before 10 June 2008.

29. In her reply of 9 June 2008 the applicant stated that, due to the delays in the proceedings complained of, the enforcement of the amount granted by the domestic court was no longer possible. Furthermore, she argued that the sum in respect of non-pecuniary damage awarded by the Constitutional Court was inadequate.

30. The Government objected that even if the applicant had suffered any pecuniary damage as a result of the excessive length of the proceedings, she could have sought redress by way of an action for damages under the State Liability Act 1969 or, after its entry into force on 1 July 2004, Act No. 514/2003 Coll. on Liability for Damage Caused in the Course of Exercise of Public Authority.

31. 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, the Court qualifies the applicant's reply as an implicit request for non-pecuniary damage as she argued that the award made by the Constitutional Court was insufficient. The Court accepts that the applicant has suffered non-pecuniary damage which would not be sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the award made by the Constitutional Court and the effect of that court's ruling on the conduct of the subsequent proceedings, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

32. The applicant submitted no claim for costs and expenses.

C. Default interest

33. 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 amount of EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President