



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF EUGEN KUČERA AND PAVEL KUČERA v. SLOVAKIA

(Application no. 29749/05)

JUDGMENT

STRASBOURG

15 December 2009

FINAL

15/03/2010

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 Eugen Kučera and Pavel Kučera 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 24 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 29749/05) 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 two Slovak nationals, Mr Eugen Kučera and Mr Pavel Kučera (“the applicants”), on 5 August 2005.

2. The applicants were represented by Mr M. Malach, a lawyer practising in Bratislava. The Slovakian 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 applications at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants are siblings. They were born in 1928 and 1938 respectively and live in Bratislava.

A. Civil proceedings

5. On 6 January 1992 the applicants' mother filed an action with the Bratislava I District Court. She claimed restitution of real property.

6. On 5 April 1994 the applicants' representative informed the District Court of their mother's death. He also submitted a confirmation from the public notary stating that the applicants were legal heirs of the deceased.

7. On 14 April 1994 the District Court stayed the proceedings pending the outcome of the inheritance proceedings. On 29 July 1994 the applicants' representative informed the District Court of the outcome of the inheritance proceedings and requested that the first-instance court should proceed with the case.

8. On 14 November 1994 the District Court again stayed the proceedings pending the outcome of other related inheritance proceedings. In July 2001 the District Court was informed about the outcome of the latter inheritance proceedings.

9. On 4 October 2005 the Bratislava I District Court allowed the applicants' claim. The judgment was served on Mr Pavel Kučera on 22 December 2005.

10. On 4 and 26 January 2006 the applicants' lawyer complained that the judgment had not been served on him and the other applicant.

11. On 4 January 2006 the defendant appealed.

12. On 9 January 2006 the District Court transmitted the case to the Regional Court in Bratislava. On 17 March 2006 the court of appeal sent the case back to the District Court as its judgment had not been duly served on the applicants' representative. The latter received the judgment on 27 March 2006.

13. On 3 May 2006 the District Court sent the case to the court of appeal. On 31 July 2006 the latter again returned the case to the District Court for rectification of a mistake in the judgment of 4 October 2005.

14. On 24 October 2006 the District Court rectified its judgment. On 4 December 2006 the case was transmitted to the Regional Court.

15. On 31 October 2007 the Regional Court quashed the first-instance judgment of 4 October 2005 and remitted the file to the District Court.

16. On 21 February 2008 the District Court delivered a judgment. The defendant appealed. On 19 November 2008 the Regional Court remitted the file to the District Court ordering the latter to obtain another expert opinion.

17. On 6 May 2009 the District Court appointed an expert and ordered the elaboration of an expert opinion. On 31 July 2009 the District Court urged the submission of the expert opinion. The proceedings are pending.

B. Constitutional proceedings

18. On 1 April 2004 the Constitutional Court found that the Bratislava I District Court had violated the applicants' right to a hearing within a reasonable time. In its view, the factual complexity of the case did not justify the overall length of the proceedings. No delays could be imputed to

the applicants' conduct. The proceedings had been pending for 12 years without a decision on the merits. That was due to the conduct of the District Court which had failed to proceed with the case in an efficient manner. The Constitutional Court observed that the District Court could have proceeded with the case after it had been informed about new parties to the proceedings on 5 December 1994. It further stated that the applicants had a right to a hearing within a reasonable time also when the proceedings had been stayed.

19. The Constitutional Court awarded the equivalent of 2,492 euros to each of the applicants as just satisfaction. It ordered the District Court to avoid further delays in the proceedings and to reimburse the applicants' costs incurred in the constitutional proceedings.

THE LAW

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

20. 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

21. The Government objected that, in respect of the proceedings examined by the Constitutional Court, the applicants could no longer claim to be victims of a violation of their right to a hearing within a reasonable time. They argued that the Constitutional Court had expressly acknowledged such a violation, had ordered the District Court to avoid further delays and the amount of just satisfaction awarded was not manifestly inadequate in the circumstances of the case.

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

23. The applicants disagreed, claimed that they were still victims of a violation of their right to a hearing within a reasonable time and pointed to several periods of ineffective performance of the domestic courts. They further argued that the Constitutional Court's finding had not had a preventive effect as in August 2009 the proceedings were still pending.

24. The Court observes that the period to be taken into consideration began only 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. At the time of the Constitutional Court's finding the relevant period lasted a little over 12 years. Although the applicants formally became party to the proceedings in 1994, after their mothers' death, the overall length of that period should be taken into consideration (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-V). The Constitutional Court awarded each applicant the equivalent of 2,492 euros as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

25. The amount awarded by the Constitutional Court cannot be considered as providing adequate and sufficient redress to the applicants 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).

26. 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 applicants did not lose their status as victims within the meaning of Article 34 of the Convention.

27. Since the effects produced by the Constitutional Court's finding did not satisfy the criteria applied by the Court, the applicants were 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).

28. The period under consideration started on 18 March 1992 and the proceedings are still pending. It has lasted 17 years and more than 7 months so far.

29. The Court notes that 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

30. 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).

31. 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).

32. 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 over 12 years. Following the Constitutional Court's finding the proceedings have continued for approximately 5 years and 6 months at two levels of jurisdiction and further delays occurred.

33. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicants claimed 50,000 euros (EUR) each in respect of their non-pecuniary damage.

37. The Government considered the claim 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.

38. The Court, having regard to the amount of compensation already awarded to the applicants at the national level, awards the applicants EUR 7,500 each in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicants also claimed EUR 5,160 for the costs and expenses incurred before the ordinary courts in Slovakia.

40. The Government requested the Court to dismiss this claim as the costs had not incurred to prevent or obtain redress for the violation of the invoked article of the Convention.

41. 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 rejects the claim for costs and expenses.

C. Default interest

42. 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 applicants, 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 7,500 (seven thousand five hundred euros) to each applicant, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President