



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ŠPATKA v. SLOVAKIA

(Application no. 36528/05)

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 Špatka v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

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. 36528/05) 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 Václav Špatka (“the applicant”), on 4 October 2005.

2. The applicant was represented by Mrs I. Rajtáková, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 22 May 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 applicant was born in 1963 and lives in Lučatín.

A. Applicant's action of 1997

5. On 21 August 1997 the applicant claimed a sum of money from an association and its three individual members before the Banská Bystrica District Court.

6. In November 1997 the District Court held a hearing at which neither the applicant nor his lawyer appeared. The applicant also failed to appear at the hearing of December 1997.

7. Another hearing was scheduled for 12 March 1998 but did not take place due to the absence of the judge. A further hearing was scheduled for 23 April 1998 but could not take place because it turned out that the judge who had been charged earlier that day with replacing the judge dealing with the case was the wife of the lawyer of the defendants.

8. On 10 December 1998 the District Court discontinued the proceedings in respect of two of the defendants.

9. In letters of 20 September 1999 and 21 February 2001 the President of the District Court acknowledged that there had been unjustified delays in the proceedings.

10. On 20 March 2001 and 5 April 2002 the District Court held further hearings. The former took place before a substitute judge who had been charged with replacing the judge initially appointed on health grounds earlier that day. Consequently, he had no in-depth knowledge of the case file and he could not proceed with the case. The latter hearing took place before a further judge who, again, was not familiar with the details for the case. It was adjourned *sine die* with a view to obtaining expert evidence.

11. In the meantime, on 31 January 2002, the Banská Bystrica Regional Court dismissed as unfounded the applicant's challenge to all judges of the District Court.

12. On 9 January 2003 the District Court appointed an expert and ordered that the applicant pay an advance on the expert's fees. The applicant appealed against the latter ruling.

13. On 24 June 2003 the District Court discharged the expert and appointed another one. On 29 July 2003 it corrected clerical errors in that decision.

14. On 30 January 2004 the District Court urged the expert to submit his opinion. The expert first requested an extension of the time-limit for the elaboration of his opinion and, subsequently, an exemption from his obligation to elaborate the opinion.

15. On 9 June 2004 the District Court did not exempt the expert from his obligation and urged the submission of the opinion by 8 October 2004. The expert requested the District Court to appoint a different expert due to his heavy workload. On 24 October 2004 the District Court prolonged the time-limit for elaboration of the expert opinion and warned the expert that a fine would be imposed on him in the absence of a reply. On 21 January 2005 the expert filed his opinion.

16. Between 5 April 2005 and 12 December 2006 the District Court held eleven hearings. They were adjourned with a view to obtaining further evidence and summoning witnesses and the defendants.

17. On 15 December 2006 the District Court delivered a judgment dismissing the action.

18. On 19 April 2007 the Regional Court, upon the applicant's appeal, partly confirmed and partly revised the first-instance judgment.

19. On 27 November 2007 the Supreme Court, upon the applicant's appeal on points of law, quashed the appellate court judgment.

20. On 4 September 2008 the Regional Court approved the friendly settlement reached between the parties. The decision became final on 9 October 2008.

B. Constitutional proceedings

21. On 13 September 2002 the applicant lodged a complaint with the Constitutional Court in respect of delays in the proceedings before the District Court. On 28 May 2003 the Constitutional Court found that the District Court had violated the applicant's right to a hearing within a reasonable time, awarded him SKK 45,000¹ in respect of non-pecuniary damage, ordered the District Court to proceed with the action promptly and reimburse the legal costs.

22. The Constitutional Court found that the subject-matter of the proceedings was not of any particular legal or factual complexity. No delays or procedural inactivity could be imputed to the applicant apart from his and his lawyer's absence at the hearing in November 1997.

23. As to the District Court's conduct, the Constitutional Court observed that the action was still pending at first instance without a single decision on the merits having been taken. The District Court had been inactive or its treatment of the case had been inefficient and, at times, even erroneous in the period after 23 April 1998.

THE LAW

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

24. 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...”

¹ SKK 45,000 was equivalent to EUR 1,094 at the time of the Constitutional Court's finding

25. The Government argued that the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time as the Constitutional Court had acknowledged a violation of that right in the proceedings, had provided him with adequate redress and ordered the District Court to avoid further delays. Furthermore, the Government argued that the applicant had not complained to the Constitutional Court about any delays in the subsequent proceedings.

26. The applicant contested the argument that the Constitutional Court's finding had had a sufficient compensatory and accelerating effect. He further argued that he had not been obliged to have recourse again to the constitutional remedy.

27. The Court notes that at the time of the Constitutional Court's finding, the proceedings before the District Court, of which the applicant complained to the Constitutional Court, had been pending for 5 years and more than 7 months. In addition, the proceedings had been pending before the appellate court for more than 1 month and a half. The Constitutional Court awarded the applicant the equivalent of 1,094 euros (EUR) as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

28. The Constitutional Court's finding 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).

29. In view of the above, in respect of the proceedings examined by the Constitutional Court, the Court concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

30. 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).

31. The proceedings started on 21 August 1997 and ended on 9 October 2008 when the Regional Court's decision became final. They lasted 11 years and more than 1 month for three levels of jurisdiction.

32. 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.

Merits

33. 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).

34. 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).

35. 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 period under consideration had lasted 5 years and more than 7 months for one level of jurisdiction. Following the Constitutional Court's finding the proceedings had continued for 5 years and more than 4 months for three levels of jurisdiction and further delays had occurred, in particular in the proceedings before the District Court.

36. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

40. The Government considered the claim exaggerated.

41. The Court, bearing in mind the sum awarded by the Constitutional Court, awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant claimed EUR 1,327 for the costs and expenses incurred before the Court.

43. The Government contested that claim and argued that the applicant had failed to support it by any evidence.

44. 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 1,000 for the applicant's representation in the proceedings before the Court.

C. Default interest

45. 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 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 15 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President