



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

FOURTH SECTION

CASE OF KOCIANOVÁ v. SLOVAKIA

(Application no. 21692/06)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kocianová 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 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 21692/06) 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 Viera Kocianová (“the applicant”), on 10 May 2006.

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

3. On 5 March 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was 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 Viničné.

A. Proceedings concerning the applicant's action of 1997

5. On 12 November 1997 the applicant lodged an action with the Bratislava Regional Court against a limited liability company. She claimed, among other issues, to have the right to consult the company's

documentation and to enter its premises. In this way the applicant wished to receive information allowing her to lodge an action for damages against the company. The Supreme Court, on appeal, found in her favour. The decision was served on the applicant on 7 July 2003, it thus became final.

6. At the applicant's request, on 29 September 2003, the Pezinok District Court appointed an enforcement officer to enforce the above decision. Due to the inactivity of the enforcement officer, the applicant requested that the decision be enforced by a court. The enforcement by the enforcement officer was discontinued on 9 March 2005.

7. The enforcement proceedings were then pending before the Bratislava III District Court. On 14 April 2005 they were discontinued on the ground that the defendant company had been dissolved and wound up. The decision became final on 17 May 2005.

8. In the meantime, on 18 April 2005, the applicant complained about the inactivity of the enforcement officer to the Association of Enforcement Officers. On 24 October 2005 the complaint was rejected as being manifestly ill-founded. On 19 March 2007 the Ministry of Justice concluded that the applicant's complaint was justified. It informed the enforcement officer that no disciplinary proceedings would be initiated.

B. Constitutional proceedings

9. On 13 July 2005 the applicant complained before the Constitutional Court about, among other issues, the overall length of the proceedings. On 21 September 2005 the Constitutional Court declared inadmissible the complaint about the length of the proceedings under Article 6 § 1 of the Convention. The Constitutional Court held that the civil proceedings had ended on 7 July 2003, that is more than two months before the applicant had lodged the constitutional complaint. As regards the period of the enforcement by the enforcement officer, it held that the applicant did not use the available remedies pursuant to the Act on Enforcement Officers and Enforcement Proceedings, that is a complaint against an enforcement officer or a request that her case be assigned to another enforcement officer. It examined the period of the enforcement proceedings pending before the District Court and found no delays in that phase.

10. The Constitutional Court rejected the complaint under Article 1 of Protocol No. 1 as being manifestly ill-founded and noted that at the time when the applicant had requested enforcement of the judgment of 2003, the defendant company had already been dissolved. The decision was served on the applicant's lawyer on 14 November 2005.

THE LAW

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

11. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the length of the proceedings. The Court considers it reasonable to examine the complaint under 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

12. The Government argued that the applicant had not sought redress before the Constitutional Court in accordance with the applicable formal requirements and the Constitutional Court's practice. They noted that it was the latter's practice (i) to examine the length of proceedings complaints only when the proceedings were still pending before the authority liable for the alleged violation at the moment when the complaint was lodged with the Constitutional Court, and (ii) to declare inadmissible the complaints which were introduced after the proceedings complained of had been concluded. They further stated that such practice had also been accepted by the Court (see also *Obluk v. Slovakia*, no. 69484/01, §§ 61-62, 20 June 2006 and *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

13. The applicant argued that she had complained before the Constitutional Court about the overall length of the proceedings and the Constitutional Court's decision to split the examination of their length into several parts had been too formalistic.

14. In the case of *Mazurek*, cited above, the Court held that the applicants should, in line with the Constitutional Court's practice, lodge their length of proceedings complaints before the proceedings complained of had ended. However, the position in the present case is different. The Constitutional Court did not declare the applicant's complaint inadmissible on the ground that the proceedings as a whole were no longer pending at the time of the lodging of the complaint. It examined the last phase of the proceedings (which had ended within the statutory two-month time-limit) and concluded that its duration had not been unreasonable. This part of the application cannot therefore be rejected for the applicant's failure to lodge her constitutional complaint in accordance with the formal requirements.

15. The Court reiterates that enforcement of a judgment given by any court is to be regarded as an integral part of the “trial” for the purposes of

Article 6 of the Convention. This principle has been found applicable in cases concerning the length of proceedings (see *Sika v. Slovakia*, no. 2132/02, § 25, 13 June 2006, with further references).

16. The Court observes that the applicant formulated her constitutional complaint in a manner permitting the Constitutional Court to examine the overall duration of the proceedings (see *Obluk*, cited above). The Constitutional Court thus could have addressed their overall length, in line with the Court's approach when examining similar cases (see *SOFTEL, spol. s r. o. v. Slovakia (no. 2)*, no. 32836/06, § 21, 16 December 2008). In a number of cases the Constitutional Court, indeed, adopted such approach (see also *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005; *Šedý v. Slovakia*, no. 72237/01, §§ 66-67, 19 December 2006; and *SOFTEL, spol. s r. o. v. Slovakia (no. 1)*, no. 32427/06, § 8, 16 December 2008). However, in the present case it excluded from its review a substantial phase of the proceedings on the ground that the Regional Court was no longer dealing with the case and that the statutory two-month time-limit had expired, and examined only the last short period of the District Court's proceedings.

17. In view of the above, the Court does not accept the Government's argument that the applicant should have separately complained before the Constitutional Court of the individual parts of the proceedings in her case at the time when they were pending before each of the authorities involved.

18. The Government's objections must therefore be dismissed.

19. The Court observes that the civil proceedings were dealt with by courts at two levels of jurisdiction for five years and eight months and the subsequent enforcement stage lasted more than a year and a half. Their overall duration was thus approximately seven years and a half.

20. It follows that this part of the application cannot be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and it 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

21. 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).

22. 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).

23. Having examined all the materials 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. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant, in substance, claimed that she could not effectively seek redress before the Constitutional Court. Even though she did not invoke Article 13 of the Convention, the Court considers it appropriate to examine this issue under that provision, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

25. The Government argued that the applicant's constitutional complaint was capable of leading to an examination of the overall length of the proceedings, had the applicant lodged it in accordance with the formal requirements.

26. The applicant disagreed.

27. The Court notes that this complaint 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

28. The Court takes the view that the remedy under Article 127 of the Constitution is likely to provide appropriate and sufficient redress to applicants where it allows for examination of the entire duration of the proceedings complained of.

29. Since the applicant in the present case complained to the Constitutional Court about the overall duration of the proceedings and since, unlike in other decisions, the Constitutional Court excluded from its review their substantial part and examined only a short period of the proceedings of which the applicant complained, the Court considers that the applicant's right to an effective remedy has not been respected.

There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

32. The Government left the matter to the Court's discretion.

33. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,000 under that head.

B. Costs and expenses

34. The applicant also claimed EUR 300 for the legal representation before the Constitutional Court and the Court. The applicant's lawyer explained that the applicant would be asked to pay that amount after the case has been decided by the Court. The applicant also claimed EUR 150 in respect of translation services.

35. The Government contested these claims, noting that the applicant had not submitted any supporting documents.

36. 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 absence of any evidence to support the applicant's claim as to costs and expenses, no award is made under this head.

C. Default interest

37. 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* that there has been a violation of Article 13 of the Convention;
4. *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, EUR 4,000 (four 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President