



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

FOURTH SECTION

CASE OF BÍRO v. SLOVAKIA (No. 5)

(Application no. 45109/06)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

18/08/2010

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

In the case of Bíro v. Slovakia (no. 5),

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 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 45109/06) 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, Mr Dušan Bíro (“the applicant”), on 5 November 2006.

2. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 23 June 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 1951 and lives in Bratislava.

A. Proceedings concerning the action for damages

5. On 3 December 2001 the applicant lodged an action for damages against two individuals. The Trnava District Court's decisions concerning the applicant's obligation to pay court fees and the appointment of

a legal-aid lawyer to the applicant were examined by the Trnava Regional Court for approximately half a year.

6. On 11 October 2006 the Trnava District Court discontinued the proceedings as the applicant had not paid the court fees. On 28 September 2007 the Regional Court upheld that decision. The latter was served on the applicant on 14 January 2008 and thus became final.

B. Constitutional proceedings

7. On 23 August 2006 the Constitutional Court found that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay. It held that the case was not complex and that the applicant's conduct had not contributed to the length of the proceedings. It awarded the applicant 20,000 Slovakian korunas (SKK), which was the equivalent of 531 euros (EUR) at that time in respect of non-pecuniary damage and ordered the District Court to proceed without further delay. It also ordered the District Court to reimburse the applicant's legal costs by paying SKK 5,788 to the lawyer. The amount corresponded to approximately half of the sum claimed by the applicant.

8. On 23 April 2008 the Constitutional Court declared another complaint inadmissible. The complaint was lodged on 19 January 2008 and delivered to the Constitutional Court on 23 January 2008. To the extent the applicant alleged that his right of access to a court had been violated, the view was expressed that the applicant had not exhausted the available remedies as he had not lodged an appeal on points of law. The Constitutional Court further rejected the applicant's length of proceedings complaint. That finding was based on the Constitutional Court's long established practice to examine length of proceedings complaints only when proceedings were still pending at the moment when a constitutional complaint was lodged.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

9. 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

10. The Government argued that in view of the Constitutional Court's judgment of 23 August 2006 the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. They expressed the view that, as the applicant had lodged a fresh constitutional complaint, his complaint as to the period of the proceedings after the Constitutional Court's judgment of 2006 was premature.

11. The applicant reiterated his complaint.

12. The proceedings in the present case started on 3 December 2001 and ended on 14 January 2008. The period under consideration is thus six years and almost two months at two levels of jurisdiction. In view of its established case-law (see, among many others, *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007), 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

13. 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).

14. 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).

15. Having examined all the materials submitted to it and having regard to its case-law on the subject, the Court concurs with the view expressed by the Constitutional Court on 23 August 2006 that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. It does not find further delays in the period of the proceedings after the Constitutional Court's judgment of 2006.

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

II. REMAINING COMPLAINTS RAISED BY THE APPLICANT

16. Relying on Article 6 § 1 of the Convention the applicant complained that the Constitutional Court had ordered reimbursement of his legal costs to his lawyer and not directly to him. Under Articles 14 and 17 of the Convention he alleged that the domestic courts had discriminated against him and he could not seek redress before them. Lastly, he complained that

he had not had an effective remedy within the meaning of Article 13 of the Convention.

17. However, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see, among many others, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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

19. The applicant claimed EUR 147,177 in respect of pecuniary damage. Without claiming any specific amount the applicant argued that the just satisfaction awarded by the Constitutional Court had been inadequate having regard to the damage caused by the inactivity of the judge.

20. The Government contested the claim in respect of pecuniary damage and argued that the applicant had not claimed any compensation for non-pecuniary damage.

21. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Even in the absence of quantification, the Court accepts that the applicant has suffered non-pecuniary damage which would not have been sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case and the award made by the Constitutional Court, the Court awards the applicant EUR 1,000 under this head (see *Novák v. Slovakia*, no. 1494/05, §§ 31-34, 2 June 2009).

B. Costs and expenses

22. The applicant also claimed EUR 346 for the costs and expenses incurred before the Constitutional Court, EUR 25 for those incurred before the Court and EUR 13 in respect of costs and expenses before the ordinary courts, including travel expenses.

23. The Government did not contest these claims, except for those concerning legal representation in the domestic proceedings.

24. Having regard to the materials in its possession and to the fact that the applicant's legal costs were partially reimbursed by the Constitutional Court (see paragraph 7), the Court considers it reasonable to award the sum of EUR 180 for the proceedings before the Court and the Constitutional Court.

C. Default interest

25. 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 complaint under Article 6 § 1 of the Convention concerning the length of the proceedings admissible and the remainder of the application inadmissible;
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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 180 (one hundred and eighty euros) 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 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 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President