



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

FOURTH SECTION

CASE OF BÍRO v. SLOVAKIA (No. 3)

(Application no. 22050/05)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

18/08/2010

Cet arrêt est devenu définitif en vertu de l'article 44 § 2 de la Convention. Il peut subir des retouches de forme.

In the case of Bíro v. Slovakia (no. 3),

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. 22050/05) 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 Dušan Bíro (“the applicant”), on 11 June 2005.

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

3. On 16 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 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. Civil proceedings initiated by the applicant

5. On 24 May 2000 the applicant sued a company before the Bratislava I District Court. He claimed that the defendant should be ordered to comply with its contractual obligations and to compensate damage caused to the

applicant. Courts at two levels of jurisdiction dealt with mainly procedural issues (such as payment of court fees and request for legal assistance) until 26 May 2008 when the Bratislava Regional Court, on appeal, discontinued the proceedings as the applicant had not paid the court fees of 10,270 Slovakian korunas (SKK) the equivalent of 340 euros (EUR) at the time. The applicant lodged an appeal on points of law on 3 July 2008. The proceedings are still pending.

B. Constitutional proceedings

6. The applicant complained to the Constitutional Court about the length of the above proceedings. On 6 July 2002 the Constitutional Court rejected the applicant's request for a legal-aid lawyer, with reference to the applicant's financial situation. As the latter had not appointed a lawyer, his complaint was declared inadmissible on 10 July 2002.

7. On 10 November 2004 the Constitutional Court rejected, for the same reason, the applicant's fresh request for a legal-aid lawyer to be appointed. The applicant subsequently appointed a lawyer to represent him in the constitutional proceedings and paid SKK 10,000 to that lawyer.

8. On 20 April 2005 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 awarded the applicant SKK 30,000 (the equivalent of EUR 755 at that time) as just satisfaction and ordered the District Court to avoid any further delay. The applicant's lawyer requested reimbursement of SKK 14,028 in respect of legal costs. The Constitutional Court ordered the District Court to reimburse the applicant's costs by paying SKK 11,991 to the lawyer.

9. The applicant complained that the legal costs should have been reimbursed directly to him. In a letter of 16 February 2006 a constitutional judge explained to the applicant that it had been the practice of the Constitutional Court to order the payment of costs of successful applicants to the bank account of their legal representatives. The details were subject to the agreement between the individual applicants and their lawyers.

10. In the subsequent period the applicant lodged with the Constitutional Court several complaints about the length of the proceedings. They were declared inadmissible on 30 November 2006 (for non-compliance with formal requirements as the applicant was not legally represented) and on 16 December 2008 (the applicant complained exclusively about a period of the proceedings which had already ended). According to the internet database of the Constitutional Court's decisions, the applicant's latest complaint was rejected on 21 October 2009 for the same reason.

11. On 6 March 2008 the Constitutional Court declared inadmissible as being manifestly ill-founded another complaint. The applicant alleged

a violation of Articles 6 § 1, 13 and 14 in that, on 30 March 2007, the Regional Court, on appeal, had not exempted him from the obligation to pay the court fees and had dismissed his request for a legal-aid lawyer in civil proceedings. The Constitutional Court held that the Regional Court had not refused to deal with the applicant's appeal, but examined it and upheld the first-instance decision. It observed that it took the Regional Court six months to decide on the appeal and that period could not be considered excessive within the meaning of Article 6 § 1.

THE LAW

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

12. The applicant complained about the length of the proceedings and relied on Article 6 § 1 of the Convention, which in its relevant part 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

13. The Government argued that in view of the Constitutional Court's judgment of 2005 the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. In their opinion, the applicant had not exhausted domestic remedies as to the subsequent period, as he had not lodged a fresh constitutional complaint in accordance with the formal requirements.

14. The applicant reiterated his complaint.

15. The proceedings in the present case started on 24 May 2000 and are still pending. It follows that the period under consideration has exceeded nine and a half years at three levels of jurisdiction. The Court has examined similar cases against Slovakia on a number of occasions. Considering its established case-law on the subject it concludes that, in view of the Constitutional Court's judgment of 2005, the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention. Accordingly, he was not required to again resort to the complaint procedure under Article 127 of the Constitution in respect of the period after that judgment (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

16. 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

17. 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).

18. 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).

19. 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 20 April 2005 that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. It observes that the proceedings are still pending and finds further delays in the period of the proceedings after the Constitutional Court's judgment of 2005.

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

II. REMAINING COMPLAINTS RAISED BY THE APPLICANT

20. Under Articles 6 § 1 and 14 of the Convention the applicant complained that his right to a fair hearing had been violated in that (i) the District Court had proceeded with the case in an arbitrary manner and (ii) the Constitutional Court had refused to appoint a lawyer to represent the applicant free of charge and had failed to order the reimbursement of the legal costs directly to the applicant. The applicant finally complained that he had not had an effective remedy at his disposal within the meaning of Article 13 of the Convention.

21. However, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence or have not already been addressed in the context of the above finding of a breach of Article 6 § 1 of the Convention, 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 also *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006 and *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

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

22. 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

23. The applicant claimed 30,117 euros (EUR) in respect of pecuniary damage and EUR 33,194 in respect of non-pecuniary damage.

24. The Government contested these claims.

25. 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, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, and having regard to the fact that the applicant obtained partial redress from the Constitutional Court, it awards him EUR 2,000.

B. Costs and expenses

26. The applicant also claimed EUR 337 for the costs and expenses incurred before the Constitutional Court and EUR 109 for those incurred before the Court.

27. The Government contested the claims. They argued that the amount of 11,991 SKK (the equivalent of EUR 399) had been paid to the applicant's lawyer on the basis of the Constitutional Court's judgment and that the claims in respect of the costs incurred before the Court had been submitted outside the given time-limit.

28. The Court accepts the Government's argument as regards the applicant's costs and expenses before the Constitutional Court. It therefore makes no award in this respect. It notes that the applicant's claims in respect of the expenses incurred before the Court were submitted outside the allotted time. It, however, takes into account that the invoice for translation services amounting to EUR 30 concerned translation into Slovak of the Government's comments on the applicant's claims for just satisfaction. As the relevant document was sent to the applicant after the expiry of the relevant time-limit, the applicant could not submit the invoice for its translation on time. In view of the above the Court finds it reasonable to award EUR 30 in respect of the costs incurred before the Court.

C. Default interest

29. 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 excessive 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 30 (thirty 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