



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

FOURTH SECTION

CASE OF KOCIANOVÁ v. SLOVAKIA (No. 2)

(Application no. 45167/06)

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 Kocianová v. Slovakia (no. 2),

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. 45167/06) 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 31 October 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.

5. On 30 September 1997 she lodged an action against a limited liability company with the Bratislava Regional Court. She requested that the decisions, which had been adopted at the general meeting of the company members held on 1 July 1997, be declared void.

6. On 24 February 2004 the Constitutional Court found a violation of the applicant's right under Article 6 § 1 of the Convention to a hearing within a reasonable time, awarded her the equivalent of 985 euros (EUR) (at

that time) in respect of non-pecuniary damage, ordered the Regional Court to proceed without further delay and to reimburse the applicant's costs.

7. On 2 September 2004 the civil proceedings were discontinued on the ground that the defendant company had been dissolved and wound up. In the absence of an appeal, the decision became final on 20 October 2004.

8. On 18 January 2006 the Constitutional Court rejected a fresh complaint lodged on 6 December 2004 as being manifestly ill-founded (as to the length of proceedings) and for non-exhaustion of domestic remedies (as to the alleged unfairness of the proceedings and interference with the applicant's property rights). The decision was served on the applicant's lawyer on 5 May 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS

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

“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 24 February 2004 the applicant could no longer claim to be a victim of a violation of her right to a hearing within a reasonable time.

11. The applicant reiterated her complaint.

12. At the time of the Constitutional Court's judgment of 2004 the proceedings had lasted six years and five months. Their overall duration was seven years and one month at one level 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 finds that the applicant can still be considered a victim and thus dismisses the Government's objection. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and 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 24 February 2004 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 after the Constitutional Court's judgment.

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

II. REMAINING COMPLAINTS

16. The applicant complained that the manner, in which the Regional Court had dealt with the case, had been contrary to her rights guaranteed under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

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.

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 82,984.79 in respect of pecuniary and non-pecuniary damage.

20. The Government contested these claims.

21. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Considering the fact that the applicant obtained partial redress at domestic level, it awards her EUR 1,300 for non-pecuniary damage suffered.

B. Costs and expenses

22. The applicant claimed EUR 400 for the legal costs incurred before the Court. The applicant's lawyer explained that the applicant would be asked to pay that amount after the end of the proceedings before the Court.

23. The Government contested the claim.

24. 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

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 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, EUR 1,300 (one thousand three hundred 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;

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