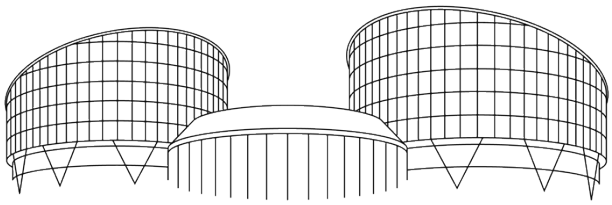

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF SIKA v. SLOVAKIA (no. 5)

(Application no. 284/06)

JUDGMENT

STRASBOURG

2 June 2009

FINAL

02/09/2009

This judgment may be subject to editorial revision.

In the case of Sika 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 12 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 284/06) 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 Slovakian national, Mr Vladimír Sika ("the applicant"), on 15 December 2005.

2. The Slovakian Government ("the Government") were represented by their Agent, Mrs M. Pirošíková.

3. On 26 May 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 1937 and lives in Trnava.

A. Proceedings concerning the applicant's action

5. On 24 October 2000 the applicant filed an action with the Trenčín District Court. He claimed compensation for damage from an insurance company.

6. On 30 November 2001 the Trenčín District Court dismissed the action. On 22 March 2002, upon an appeal by the applicant, the case file was transferred to the Trenčín Regional Court. On 24 October 2002 the Trenčín Regional Court quashed the decision. It remitted the case to the District Court on 15 November 2002.

7. On 14 January 2004 the District Court judge fixed the next hearing for February 2004. On 4 February 2004 the applicant requested additional evidence to be taken and five witnesses to be heard.

8. In April 2004 and February and March 2005 the District Court held three hearings and ordered an expert opinion.

9. On 10 May 2005 the appointed expert asked the District Court for additional documents which he considered necessary for the elaboration of an expert opinion. On 15 November 2005 the District Court informed him that it did not have the requested documents.

10. In June 2006 the District Court held a hearing and delivered its judgment on 4 July 2006.

11. On 9 November 2006 the Trenčín Regional Court, on appeal by the applicant, partly upheld and partly quashed the first-instance judgment.

12. In March 2007 the District Court held a hearing. It dismissed the applicant's claim at a hearing held on 3 April 2007.

13. On 9 August 2007 the Trenčín Regional Court, on appeal by the applicant, upheld the first-instance judgment (the Regional Court's judgment became final on 15 August 2007).

B. Constitutional proceedings

14. On 27 January 2005 the Constitutional Court found that the Trenčín District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay and his right under Article 6 § 1 of the Convention to a hearing within a reasonable time.

15. The applicant had complained exclusively about the proceedings before the Trenčín District Court. The Constitutional Court had regard to the fact that the time taken by the Regional Court to decide the appeal (8 months) had prolonged the proceedings.

16. The Constitutional Court held that the case was to some extent complex from the factual but not the legal point of view. However, the factual complexity of the case could not justify the length of the

proceedings. The applicant's conduct had not contributed to their length. Delays imputable to the Trenčín District Court had exceeded 13 months.

17. The Constitutional Court awarded the applicant 10,000 Slovakian korunas (SKK) – the equivalent of 259 euros at that time – as just satisfaction in respect of non-pecuniary damage. It ordered the Trenčín District Court to avoid any further delay in the proceedings and to reimburse the applicant's legal costs (176 euros).

THE LAW

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

18. The applicant complained that his right to a fair hearing had been violated in the above proceedings and that the length of the proceedings had been excessive. He relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

(a) Alleged unfairness of the proceedings

19. The applicant did not complain of unfairness to the Constitutional Court.

20. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) Length of the proceedings

21. The Government did not contest the argument in respect of the unreasonable length of the proceedings but argued that the application was inadmissible for the reasons set out below.

22. The Government objected that, in respect of the proceedings examined by the Constitutional Court, the applicant could no longer claim to be a victim of a violation of his right to a hearing within a reasonable time. They argued that the Constitutional Court had expressly acknowledged such a violation and the amount of just satisfaction awarded was not manifestly inadequate in the circumstances of the case. They further argued that the Constitutional Court's finding had a preventive effect as no further delays had occurred in the subsequent period. In any event, the

applicant had not exhausted domestic remedies as it had been open to him to lodge (i) a fresh complaint with the Constitutional Court in respect of the proceedings before the District Court and (ii) a constitutional complaint in respect of the proceedings before the Regional Court.

23. The applicant disagreed and argued that the amount of just satisfaction granted by the Constitutional Court was disproportionately low in the circumstances of the case. He further argued that he was not obliged to have recourse again to the constitutional remedy.

24. The Court notes that at the time of the Constitutional Court's judgment the proceedings had been pending for 3 years and more than 7 months before the District Court. The Constitutional Court awarded the applicant the equivalent of EUR 259 as just satisfaction in respect of the proceedings examined by it and ordered the District Court to avoid any further delay in the proceedings.

25. The amount awarded by the Constitutional Court 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-..., and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-...).

26. In view of the above, in respect of the proceedings before the District Court up to the time of the Constitutional Court's judgment, the Court concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

27. Since the effect produced by the decision of the Constitutional Court 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 before the District Court subsequent to the Constitutional Court's judgment (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

28. The proceedings started on 24 October 2000 and ended on 15 August 2007 when the Regional Court's judgment became final. They thus lasted 6 years and more than 9 months at two levels of jurisdiction.

29. The Court must however take into consideration the fact that the applicant's constitutional complaint was only directed at the proceedings before the first-instance court. The Court notes that the overall proceedings before the first-instance court lasted 5 years and more than 8 months. These facts have to be taken into account when determining the merits of the application and, if appropriate, the applicant's claims for just satisfaction under Article 41 of the Convention (see, for example, *Solárová and Others v. Slovakia*, no. 77690/01, § 42, 5 December 2006 and *Judt v. Slovakia*, no. 70985/01, § 61, 9 October 2007, with a further reference).

30. 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.

B. Merits

31. 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).

32. 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*, ibid.).

33. Having examined all the material submitted to it and having regard to its case-law on the subject, 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 judgment the proceedings had been pending for 3 years and more than 7 months before the District Court. Since the Constitutional Court's judgment the proceedings continued before the District Court for 2 years and more than 1 month. During that period one substantial delay of approximately 6 months occurred (between May and November 2005) owing to the District Court's lack of diligence.

34. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

36. Relying on Article 14 of the Convention, the applicant complained that he had been discriminated against as the amount of just satisfaction he had obtained was disproportionately low in comparison with the legal costs reimbursed to his representative.

37. However, in the light of all the material 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.

38. 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

39. 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

40. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

41. The Government contested the claim in respect of pecuniary damage due to the lack of a causal link between the claimed pecuniary damage and the alleged violation. As to non-pecuniary damage the Government considered the claim exaggerated and left the matter to the Court's discretion.

42. 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 awards the applicant, who obtained partial redress at domestic level, EUR 1,760 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant also claimed a lump sum, without specifying the amount, for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

44. The Government had no objection to the award of a sum which had been incurred in order to prevent or obtain redress for the alleged violation.

45. 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 100 for the applicant's out-of-pocket expenses incurred in the proceedings before the Court.

C. Default interest

46. 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 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 1,760 (one thousand seven hundred and sixty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicant, 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 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 2 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President