

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

THIRD SECTION

CASE OF FRANC v. SLOVAKIA

(Application no. 20986/10)

JUDGMENT

STRASBOURG

31 May 2012

This judgment is final but it may be subject to editorial revision.



In the case of Franc v. Slovakia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Ineta Ziemele, *President,*
Ján Šikuta,
Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 20986/10) 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 Jaroslav Franc ("the applicant"), on 29 March 2010.

2. The applicant was represented by Ms I. Rajtáková, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 15 September 2011 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Košice.

5. On 13 September 1999 the applicant lodged an action with the Košice I District Court in which he claimed distribution of marital property.

6. On 3 November 2006 the Constitutional Court found that the District Court had breached the applicant's right to a hearing within a reasonable time. It granted 60,000 Slovak korunas (that sum was equivalent to 1,650 euros (EUR) at that time) to the applicant as just satisfaction, ordered the District Court to avoid further delays in the proceedings and to reimburse the applicant's costs.

7. On 20 January 2010 the Constitutional Court found that the District Court had again breached the applicant's right to a hearing within a reasonable time in the period subsequent to the first judgment of the Constitutional Court. It granted the applicant EUR 1,500 as just satisfaction

and ordered the District Court to reimburse the applicant's costs. The Constitutional Court confirmed the validity of its order of 3 November 2006 that further delays in the proceedings should be avoided.

8. On 10 March 2010 the District Court heard an expert. On 15 April 2010 it asked a different expert for additional opinion. It was submitted on 11 October 2010. Between 20 April 2011 and 19 August 2011 the District Court held three hearings and obtained additional evidence. On the last mentioned day the court orally delivered a judgment. On 11 November 2011 the judge instructed the District Court's registry to have the judgment with reasons served on the parties. On 15 November 2011 the District Court delivered a decision rectifying the judgment of 19 August 2011.

9. According to the information submitted by the applicant on 24 February 2012 both parties lodged an appeal and the proceedings are pending.

THE LAW

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

10. 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 ..."

11. The Government admitted that the complaint was not manifestly ill-founded. They argued, however, that the applicant had lost his status as a victim in view of the Constitutional Court's judgments. Furthermore, in respect of the period subsequent to the second judgment of the Constitutional Court the applicant could have sought redress by means of a fresh constitutional complaint.

12. The period to be taken into consideration began on 13 September 1999 and it exceeded twelve years in respect of the proceedings at first-instance. The proceedings have been pending before the court of appeal for few months only, and the Court notes that the applicant has made no complaint in respect of the duration of the appeal proceedings.

A. Admissibility

13. The Court notes that the District Court did not comply with the Constitutional Court's order of 3 November 2006 that further delays in the proceedings should be avoided. The applicant was therefore obliged to file

his second constitutional complaint. Considering the amount of just satisfaction granted by the two judgments of the Constitutional Court in the light of its own practice in similar cases, and the absence of acceleratory effect of the Constitutional Court's order, the Court concludes that the applicant did not obtain appropriate redress following his two complaints to the Constitutional Court. He was therefore not required to file a third complaint in respect of the period subsequent to the second judgment of the Constitutional Court (see also *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007, with further references). Accordingly, the Government's objection must be dismissed.

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. 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).

16. 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).

17. Having examined all the material 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, in line with the Constitutional Court's conclusions, 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. 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 10,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government contested that claim.

21. The Court notes that the applicant obtained partial redress from the Constitutional Court. Ruling on an equitable basis, it awards him EUR 2,500 under this head.

B. Costs and expenses

22. Submitting supporting documents, the applicant also claimed EUR 773.50 for the costs and expenses incurred before the Court.

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

24. The Court considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 750 under this head.

C. Default interest

25. The Court considers it appropriate that the default interest rate 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*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 750 (seven hundred and fifty 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 31 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ineta Ziemele
Deputy Registrar	President