

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

THIRD SECTION

CASE OF HAUSER v. SLOVAKIA

(Application no. 12583/09)

JUDGMENT

STRASBOURG

5 February 2013

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



In the case of Hauser v. Slovakia,

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

Luis López Guerra, *President,*
Ján Šikuta,
Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 12583/09) 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 Viliam Hauser ("the applicant"), on 19 February 2009.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 3 May 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970. He is serving a life term in the Leopoldov prison.

5. On 22 March 2004 the applicant claimed compensation before the Bratislava I District Court for damages allegedly caused by legal malpractice of his former lawyer.

6. On 31 August 2004 the District Court exempted the applicant from the obligation to pay the court fees.

7. Subsequently, between 22 October 2004 and 4 August 2008, the District Court appointed one-by-one four legal-aid lawyers for the applicant who appealed against the appointment or refused to take up the legal representation submitting that they were in a friendly relationship with the defendant or that their illness or business prevented them from providing legal aid to the applicant.

8. The Bratislava Regional Court, on the appeal of the appointed lawyers, twice quashed the District Court's decisions to appoint a legal-aid lawyer and remitted the matter for a new determination and in one instance it dismissed the attorney's appeal.

9. On 24 September 2008 the Constitutional Court dismissed the applicant's complaint about alleged delays before the District Court. It held that the District Court had been proceeding in a continuous manner and that short periods of inactivity of the court had not violated the applicant's right invoked. It further held that the lawyers' refusals to take up the legal representation were supported by reasonable grounds and therefore the delays caused by this fact could not be attributable to the District Court.

10. By a decision of 12 January 2009 the District Court appointed a fifth legal-aid lawyer and in March 2009 it requested the applicant to eliminate shortcomings in his action within ten days.

11. The applicant's legal-aid lawyer asked for extension of the given time-limit or alternatively the appointment of another legal-aid lawyer on account of her temporary illness presumably to last until the end of April 2009.

12. On 10 November 2009 the District Court repeatedly requested the lawyer to complete the petition.

13. On 15 March 2010 the lawyer requested that her appointment be quashed. The District Court dismissed her request and on 2 September 2010 again requested her to amend the petition.

14. The proceedings are still pending.

THE LAW

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

15. 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

16. The Government referred to the Constitutional Court's finding that there had been no violation of the applicant's right to a hearing within a reasonable time during the period covered by its decision of 24 September 2008. In their submission, his complaint in respect of that period was

therefore manifestly ill-founded. As to the subsequent period, the Government argued that the applicant should have sought redress by means of a fresh complaint to the Constitutional Court. Since he has failed to do so, he did not exhaust domestic remedies as required by Article 35 § 1 of the Convention.

17. The Court notes that the applicant claimed compensation before the District Court for damages allegedly caused by his former lawyer. It observes that at that time and during the whole proceedings the applicant was in prison and thus had limited possibilities to contact a lawyer willing to take up his case. The Court further observes that at the time of the Constitutional Court's judgment on the applicant's complaint the proceedings had been pending for four years and more than six months at two levels of jurisdiction. It notes in particular that during that period the courts, after having appointed the first legal-aid lawyer to represent the applicant, dealt exclusively with the appeals and correspondence of lawyers appointed as legal-aid representatives who had refused to represent him.

18. The Court has already held that in discharging its obligation to provide parties to proceedings with legal aid when it is provided by domestic law, the State must display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 of the Convention. The Court has also held that an adequate institutional framework should be in place so as to ensure effective legal representation for entitled persons and a sufficient level of protection of their interests (see, *mutatis mutandis*, *Bąkowska v. Poland*, no. 33539/02, §§ 46 and 47, 12 January 2010, with further references).

19. Having regard to the above, the Court considers that in the present case it was the State's responsibility to ensure that the legal aid was promptly and effectively safeguarded so as to secure the applicant's right to a hearing within a reasonable time.

20. In view of all the circumstances and bearing in mind that the Convention is intended to guarantee rights that are not theoretical or illusory, but rights that are practical and effective (see, for example, *Jakub v. Slovakia*, no. 2015/02, § 56, 28 February 2006), the Court considers that the Constitutional Court's assessment of the applicant's claim cannot be accepted.

21. Since the applicant was unable to obtain redress before the Constitutional Court, the Court concludes that, as to the period of the proceedings following the Constitutional Court's decision, he was not required, for the purposes of Article 35 § 1 of the Convention, to have again recourse to the remedy under Article 127 of the Constitution (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). The Government's objection must therefore be dismissed.

22. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. There are no other grounds for its inadmissibility. It must therefore be declared admissible.

B. Merits

23. The Court notes that the proceedings are still pending. Their overall duration has been so far approximately eight years and more than eight months at two levels of jurisdiction.

24. 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).

25. 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).

26. 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 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

27. 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

28. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested the claim.

30. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,200 under that head.

B. Costs and expenses

31. The applicant also claimed costs and expenses incurred before the domestic courts and for those incurred before the Court. However, he did not specify the amount and requested that a sum which the Court normally awards in similar cases be granted.

32. The Government contested the claim arguing that the applicant had failed to specify and support it with necessary documents.

33. 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 finds it appropriate to award the applicant, who was not represented before the Court by a lawyer, EUR 50 for postage and other out-of-pocket expenses which he incurred in the context of filing and pursuing his application.

C. Default interest

34. 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:
      (i) EUR 5,200 (five thousand and two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 50 (fifty euros), plus any tax that may be chargeable, 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 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	Luis López Guerra President