

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

THIRD SECTION

CASE OF IVAN v. SLOVAKIA

(Application no. 57405/15)

JUDGMENT

STRASBOURG

27 June 2017

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



In the case of Ivan v. Slovakia,

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

Helen Keller, *President,*
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 June 2017,

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

PROCEDURE

1. The case originated in an application (no. 57405/15) 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 Tibor Ivan ("the applicant"), on 11 November 2015.

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

3. On 2 March 2016 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Martin.

6. On 20 October 2011 the applicant lodged a claim with the Martin District Court ("the District Court") (file no. 10 C 60/2012), seeking payment of his wages plus interest in connection with the termination of his employment.

7. On 17 February 2012 the District Court issued a payment order in summary proceedings. As the defendant challenged the order, the matter fell to be determined by the court in ordinary proceedings.

8. It took the District Court more than eight months to deal with an application by the applicant to change the particulars of claim.

9. In October 2014 the applicant lodged a complaint with the Constitutional Court under Article 127 of the Constitution, contesting the length of the proceedings before the District Court.

10. On 28 April 2015 the Constitutional Court rejected his complaint (file no. III. ÚS 172/20150), on the grounds that, prior to lodging his constitutional complaint, the applicant had failed to exhaust ordinary remedies, in particular lodging a complaint with the President of the District Court under the Courts Act (Law no. 757/2004 Coll.).

The Constitutional Court referred to the Court's previous case-law in *István and Ištvánová v. Slovakia* (no. 30189/07, 12 June 2012), and tried to distinguish that case from the applicant's case. It observed that the case of *István and Ištvánová* concerned proceedings lasting more than six years, which was substantially longer than the duration of the proceedings in the applicant's case (three years). The Constitutional Court further stated that only in cases where the length of proceedings was prima facie excessive at the time of lodging a constitutional complaint was it not necessary to lodge a complaint with the president of a court, and therefore the applicant should have lodged a complaint with the President of the District Court.

11. In the meantime, the District Court had appointed an expert in economics, accountancy and tax, and had ordered the applicant to pay fees in advance for the expert evidence. That order was challenged by the applicant before the Žilina Regional Court, but to no avail. The appointed expert then prepared her opinion between June and September 2015.

12. Subsequently, the District Court scheduled a hearing for 16 March 2016. On that date the District Court delivered a judgment by which it granted the applicant's claim in part and dismissed the remainder of the claim. A written judgment was delivered to the applicant two months later. However, in their submissions to the Court the parties failed to specify the exact date when the judgment was served on the applicant, and they did not provide appropriate evidence to confirm this. They also did not inform the Court about any possible further development in the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

13. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement. In this respect, he relied on Article 6 § 1 and Article 13 of the Convention, the relevant parts of which read:

Article 6 § 1

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

14. The Government disagreed. They referred to the Constitutional Court's finding that, before lodging his constitutional complaint, the applicant had failed to raise the issue of the length of the proceedings with the President of the District Court, in order to give the President a chance to remedy the situation. Since the length of the proceedings in the present case had been shorter than that of proceedings previously assessed by the Court (see, for example, *Ištván and Ištvánová*, cited above), the requirement to lodge a complaint with the President of the District Court prior to taking the case to the Constitutional Court had been justified.

Consequently, the Government, pointing out the difference between the previous case of *Ištván and Ištvánová* (cited above) and the applicant's case, sought guidance from the Court in order to clarify the issue.

15. The applicant disagreed. He reiterated that the length of the civil proceedings in his case had already been prima facie excessive at the time he had lodged his constitutional complaint. He further stated that the Constitutional Court's approach in differentiating between the specific lengths of proceedings also ran counter to the legal certainty principle, since the Constitutional Court was not unified on this subject. In addition, he pointed out that, for a remedy to be effective, it should offer redress for proceedings of any length – those lasting three years as well as those lasting twenty years, otherwise this was incompatible with the requirements of the very notion of effectiveness.

16. At the outset, the Court observes that it is unclear from the Government's submission on which inadmissibility ground of the Convention they wished to rely. However, it also notes that they referred to the Constitutional Court's inadmissibility decision which principally dealt with the applicant's having made use of the constitutional remedy in accordance with the applicable rules, in particular the rule of exhaustion of ordinary remedies (see paragraphs 10 and 14 above). Therefore, the Court is of the view that the Government's objection in fact concerned the requirement to exhaust domestic remedies under Article 35 § 1 of the Convention.

17. In this connection, the Court recalls that in *Ištván and Ištvánová* (cited above, §§ 77–91), in respect of the applicants' length-of-proceedings complaint, it thoroughly examined their compliance with the exhaustion requirement under Article 35 § 1 of the Convention. It also reiterated those principles in detail in a recent judgment (see *Grešáková v. Slovakia* (dec.) [Committee], no. 77164/12, §§ 16-20, 22 November 2016), and sees no need to repeat them.

18. Turning to the facts of the present case, the Court considers that the applicant's situation is similar to that of Mr Ištván and Ms Ištvánová and Ms Grešáková from the point of view of exhaustion requirement under Article 35 § 1 of the Convention. This is so because his access to the Constitutional Court under Article 127 of the Constitution became dependent on his exhaustion of a complaint to the President of the District Court under the Courts Act.

19. Thus, in so far as the Government's objection of non-exhaustion of domestic remedies in the present case has been substantiated, the Court finds no relevant distinction between this case and other cases, such as *Ištván and Ištvánová* and *Grešáková*. Accordingly, their objection must be dismissed.

20. Having regard to its established case-law on this subject, the Court finds that the Article 6 § 1 complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that no other grounds for declaring it inadmissible have been established. Accordingly, it must be declared admissible.

21. The Court considers that the complaint under Article 13 of the Convention, which is linked to the complaint under Article 6 § 1, must likewise be declared admissible.

B. Merits

22. The parties have not made any separate observations on the merits.

23. 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).

24. 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).

25. In the present case, the period to be taken into consideration began on 20 October 2011 and ended on 16 March 2016, when the District Court delivered its judgment (see paragraph 12 above). It thus lasted four years, four months and twenty-seven days at one level of jurisdiction.

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.

Accordingly, there has been a breach of Article 6 § 1.

27. Furthermore, the Court notes that the Government have submitted no observations at all in respect of the Article 13 complaint. In view of the conclusions reached above as regards the exhaustion of domestic remedies in respect of the complaint under Article 6 § 1 of the Convention, the Court finds, as it has previously in similar circumstances (see *Ištván and Ištvánová*, cited above, § 113), that the applicant did not have an effective remedy in respect of his complaint regarding the length of the proceedings.

Accordingly, there has also been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant requested to be awarded pecuniary damage of 2,500 euros (EUR) consisting of lost wages and associated claims. He also claimed EUR 30,000 in respect of non-pecuniary damage.

30. The Government contended that there was no causal link between the pecuniary damage alleged by the applicant and the alleged breach of Article 6 § 1 of the Convention. They further submitted that the claim in respect of non-pecuniary damage was overstated.

31. The Court observes that the applicant has not shown the existence of a causal link between the violation found and the pecuniary damage alleged. It therefore dismisses this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,600 under that head.

B. Costs and expenses

32. The applicant also claimed EUR 1,540.90 for costs and expenses incurred before the Constitutional Court and before the Court. He supported his claim by providing contracts for legal assistance.

33. The Government requested that the Court only grant the applicant compensation for reasonably incurred costs and expenses which were supported by relevant documents.

34. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,540 to cover costs under all heads.

C. Default interest

35. 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* that there has been a violation of Article 13 of the Convention, in conjunction with Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,540 (one thousand five hundred and forty 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Helen Keller
Deputy Registrar	President