

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

THIRD SECTION

CASE OF KUCEJOVÁ v. SLOVAKIA

(Application no. 74550/12)

JUDGMENT

STRASBOURG

26 November 2013

FINAL

26/02/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Kucejová v. Slovakia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 74550/12) 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 Mária Kucejová ("the applicant"), on 11 November 2012.

2. The applicant was represented by Mr R. Cibulka, a lawyer practising in Trnava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 18 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1928 and lives in Púchov.

5. On 17 November 1998 the applicant's sister initiated civil proceedings before the District Court in Trnava claiming that real property in issue belonged to the estate of her late parents. On 22 September 1999 the District Court dismissed the claim. On 23 November 2001 the Trnava Regional Court quashed the first-instance judgment.

6. On 5 February 2003 the District Court allowed the applicant to join the proceedings as one of the plaintiffs.

7. On 2 October 2007 the District Court stayed the proceedings. On 30 January 2009 the Regional Court quashed that decision in part and ordered the District Court to proceed with the case in respect of one of the defendants.

8. On 16 April 2012 the applicant complained about the duration of the proceedings to the Constitutional Court. She claimed 3,000 euros (EUR) as just satisfaction and EUR 318.84 in reimbursement of her legal costs.

9. On 3 October 2012 the Constitutional Court found that the District Court had breached the applicant's right to a hearing within a reasonable time. There was no justification for the overall duration of the proceedings.

10. The Constitutional Court dismissed the applicant's claim for just satisfaction and legal costs. It noted that, between 28 May 2009 and 4 April 2012, it had delivered four judgments in which it had found a breach of the right to a hearing within a reasonable time in respect of nine other persons who were in the same position as the applicant in the above proceedings before the Trnava District Court (see paragraphs 14-15 below). In those four judgments, the Constitutional Court had granted the plaintiffs, who had been represented by the same lawyer as the applicant, the overall sum of EUR 18,000 as just satisfaction and EUR 1,609.85 for their legal costs.

11. The Constitutional Court expressed the view that the legal representative of the plaintiffs had chosen to submit separate complaints in order to earn money. Had all the persons concerned submitted a single constitutional complaint, the overall just satisfaction award would have certainly not attained the amount of EUR 18,000, and the costs granted would have been lower than the above sum. As a result, the share in just satisfaction to which the applicant might be entitled as one of the multiple parties to the proceedings had been "granted to and consumed by" the precedent successful plaintiffs before the Constitutional Court.

12. Subsequently the District Court took further evidence and heard the parties. A hearing scheduled for 6 March 2013 was adjourned to 15 July 2013 as the case had been assigned to a different judge. The documents submitted to the Court indicate that the proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. Article 127 of the Constitution reads as follows:

> "1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act and shall quash that decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or

freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from violating the fundamental rights and freedoms... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to the person whose rights under paragraph 1 have been violated." (...)

14. On 28 May 2009 the Constitutional Court found that in the same proceeding of which the applicant complains the District Court had breached the right of the applicant's sister to a hearing within a reasonable time. It ordered the District Court to avoid further delays and granted EUR 3,000 to the plaintiff as just satisfaction (file no. IV. ÚS 120/09).

15. In three other judgments delivered on 21 September 2010, 19 October 2011 and 4 April 2012 (file numbers III. ÚS 348/09, IV. ÚS 359/2010 and IV. ÚS 62/2010) the Constitutional Court found a breach of the right to a hearing within the reasonable time in respect of eight other applicant's co-plaintiffs. It granted each plaintiff EUR 1,500 (in proceedings file number III. ÚS 348/09) or EUR 2,000 (in the other two sets of proceedings) as just satisfaction and ordered the District Court to reimburse their costs. The Constitutional Court also referred to the fact that it had already ordered the District Court to avoid further delays in its judgment of 28 May 2009.

THE LAW

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

16. 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..."

17. The Government did not contest that argument. However, they considered it questionable whether the applicant could still claim to be a victim within the meaning of Article 34 of the Convention in view of the Constitutional Court's judgment.

18. The proceedings complained of were initiated in 1998. However, the period to be taken into consideration began on 5 February 2003 when the applicant joined the proceedings. It has not yet ended. It has thus lasted more than ten years and eight months. During that period the merits of the case have been dealt with by a court at a single level of jurisdiction.

A. Admissibility

19. Whether the redress afforded at domestic level to an applicant was adequate and sufficient falls to be determined in the light of the principles established under the Court's case-law (see, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-V; and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V). These include, most notably, the amount of the compensation awarded to the applicant and the effectiveness of the preventive measure applied (see also *Sika v. Slovakia* (no. 3), no. 26840/02, § 54, 23 October 2007).

20. In the present case the Constitutional Court granted no just satisfaction to the applicant notwithstanding its finding as to the clearly excessive overall duration of the proceedings. That conclusion was reached more than three years after it had delivered a judgment to the same effect in respect of a different plaintiff and after it had ordered the District Court to avoid further delays (see paragraph 14 above).

21. Having regard to the principles established in its case-law (see also *Mošať v. Slovakia*, no. 27452/05, §§ 10 and 17-18, 21 September 2010) and the circumstances of the case, the Court considers that the applicant did not lose her status as a victim within the meaning of Article 34 of the Convention.

22. The Court notes that this complaint 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

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; and *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 82, 28 July 2009).

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 *Gažíková v. Slovakia*, no. 66083/01, §§ 35-36, 13 June 2006).

25. 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. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1

26. The applicant complained that the Constitutional Court had discriminated against her in the enjoyment of her right to a hearing within a reasonable time. She alleged a breach of Article 14 of the Convention which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

27. With reference to the reasons for the Constitutional Court's decision on the applicant's complaint the Government left it to the Court to determine whether the applicant had suffered discrimination in breach of Article 14.

28. The Court considers that this complaint is closely linked to the applicant's complaint under Article 6 § 1 and must therefore likewise be declared admissible. It further considers that it is not necessary to determine whether there has been a violation of Article 14 in conjunction with Article 6 § 1, having regard to its conclusion that the facts of the case disclose a breach of the latter provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage. That claim comprised EUR 6,000 in respect of her complaint under Article 6 § 1 and EUR 2,000 in respect of the alleged breach of Article 14.

31. The Government objected to these claims as being excessive.

32. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the above breach of her right under Article 6 § 1. It awards her the full sum claimed in that respect, namely EUR 6,000.

B. Costs and expenses

33. With reference to the Ministry of Justice Regulation No. 655/2004 which governs lawyers' fees the applicant also claimed EUR 318.84 for the costs and expenses incurred before the Constitutional Court and EUR 600 for those incurred before the Court.

34. The Government contested these claims as unsubstantiated.

35. 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 are reasonable as to quantum. In the present case, regard being had to the fact that the applicant was legally represented both before the Constitutional Court and in the proceedings under the Convention, the Court considers it reasonable to award the sum claimed rounded down to EUR 918 covering costs under all heads.

C. Default interest

36. 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 no separate examination is necessary of the applicant's complaint under Article 14 of the Convention, taken together with Article 6 § 1 of the Convention;

4. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 918 (nine hundred and eighteen 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 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President