

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

THIRD SECTION

CASE OF LAUFIK v. SLOVAKIA

(Application no. 5718/10)

JUDGMENT

STRASBOURG

5 March 2013

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



In the case of Laufik 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 12 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 5718/10) 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 František Laufik ("the applicant"), on 8 January 2010.

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

3. On 14 March 2011 the application was communicated to the Government. In accordance with Protocol No. 14 the application was allocated to a Committee of three judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Bratislava.

5. On 14 March 2001 the applicant being a shareholder of a limited liability company sought determination of his right to consult the company's accounting documents before the Bratislava Regional Court.

6. On 5 November 2002 the Regional Court granted the action in that it ordered the defendant to afford the applicant the opportunity to consult the company's documents for the years 2000 and 2001.

7. On 8 June 2004 the Supreme Court, on the defendant's appeal, dismissed the judgment concerning the applicant's claim to consult the company's documents for 2001. It further quashed the remaining part of the judgment and returned the case to the Regional Court for a new determination. The applicant appealed on points of law.

8. On 27 April 2006 a cassation chamber of the Supreme Court dismissed the appeal on points of law.

9. On 7 November 2008 the Regional Court by a decision of a chamber in a changed composition stayed the proceedings pending the outcome of a different set of proceedings related to the applicant's expulsion from the company. The applicant appealed against the decision.

10. On 28 April 2009 the Supreme Court dismissed the appeal.

11. On 30 June 2009 the applicant turned to the Constitutional Court complaining about the length of the proceedings before both the Regional Court and the Supreme Court concerning his action. It further alleged that the proceedings leading to the Regional Court's decision to stay them had been unfair and that he had been deprived of his right to a hearing before a tribunal established by law. Finally, he complained of a violation of his right to peaceful enjoyment of his possessions.

12. On 10 September 2009 the Constitutional Court rejected the applicant's complaint. The Constitutional Court, examining separately the length of proceedings before the Regional Court and the Supreme Court, held that the Regional Court's inactivity following its decision to stay the proceedings could not be considered as unjustified delays. As to the period before the decision to stay of the proceeding, it did not find any indication of a violation of the applicant's right to a hearing within a reasonable time. As far as the proceedings before the Supreme Court were concerned, the Constitutional Court observed that at the time of lodging of the constitutional complaint the proceedings had been stayed by the final decision and their duration was in any event less than six months. It therefore rejected the complaint of the length of the proceedings as being manifestly ill-founded. It also rejected the remaining complaints on the same ground.

13. On 20 April 2011 the Regional Court issued a judgment in the other set of proceedings which became final on 16 December 2011.

14. On 4 April 2012 the Regional Court again stayed the proceedings pending the outcome of the proceedings on the appeal on points of law concerning the above judgment of 16 December 2011.

15. The applicant appealed against the decision. The proceedings are pending.

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 fair ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

17. The Government relied on the Constitutional Court's finding of 10 September 2009 and argued that the application, in respect of the complaint considered by the Constitutional Court, was 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 and 4 of the Convention.

18. The Court notes at the outset that the Constitutional Court, despite holding that the proceedings had been stayed, examined their length both before the Regional Court and the Supreme Court and found that the courts' conduct could not be considered as resulting in unjustified delays.

19. The Court further notes that at the time of the Constitutional Court's decision the proceedings lasted eight years and six months at three levels of jurisdiction including the proceedings before the Constitutional Court which had examined the applicant's complaint against the courts' decision to stay the proceedings.

20. The Court observes that the proceedings were stayed for more than two and a half years pending the outcome of different set of proceedings in which a preliminary issue was to be determined and which are still pending (see paragraphs 9-13). Since the applicant used all remedies available against the decision to stay the proceedings, the Court will also take into account the duration of the other set of proceedings in order to establish whether the overall length of the proceedings complained of was reasonable.

21. Accordingly, the period to be taken into consideration in the present case has exceeded to date eleven years and nine months for three levels of jurisdiction.

22. Since the applicant was unable to obtain redress before the Constitutional Court in respect of a substantial part of the proceedings, the Court concludes that, as regards the length of the proceedings which

followed the Constitutional Court's decision, the applicant 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 objections must therefore be dismissed.

23. 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

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 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. Under Article 6 § 1 of the Convention the applicant also complained that the proceedings concerning his claim had been unfair and that his right of access to a court had been violated. He further argued that the change in composition of the chamber of the Regional Court had amounted to a violation of his right to a hearing by a tribunal established by law. Lastly, he complained that the facts of his case had amounted to a violation of his rights under Article 13 of the Convention and Article 1 of Protocol No. 1.

28. 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.

29. 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

30. 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

31. The applicant claimed 92,170.50 euros (EUR) in respect of pecuniary damage and EUR 30,000 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 7,800 under that head.

B. Costs and expenses

34. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and for those incurred before the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

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 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, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Luis López Guerra
Deputy Registrar	President