

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

THIRD SECTION

CASE OF MASÁR v. SLOVAKIA

(Application no. 66882/09)

JUDGMENT

STRASBOURG

3 May 2012

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



In the case of Masár v. Slovakia,

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

Nona Tsotsoria, *President,*
Ján Šikuta,
Mihai Poalelungi, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 66882/09) 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 Jozef Masár ("the applicant"), on 8 December 2009.

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

3. On 7 July 2011 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Martin.

5. A person whom the applicant operated on vertebrae after a traffic accident alleged that her health was permanently damaged due to malpractice in the course of the surgery.

6. The police opened criminal proceedings in that respect on 27 October 2004. In the course of 2005 the police investigator heard several witnesses and obtained the opinion of an expert.

7. On 30 December 2005 the investigator accused the applicant of having damaged the patient's health. On 23 February 2006 a public prosecutor dismissed the applicant's complaint against that decision.

8. Between 11 May 2006 and 6 June 2006 three institutions informed the investigator that they were not in a position to review the expert's opinion for various reasons. On 13 June 2006 the investigator heard three witnesses.

9. On 28 August 2006 the investigator appointed a different institution with a view to obtaining a second expert opinion.

10. On 16 February 2007 the injured party submitted the opinion of an expert elaborated in the context of civil proceedings concerning her claim for damages.

11. On 21 May 2007 the institution appointed to submit an opinion on 28 August 2006 informed the investigator that all its experts considered themselves biased as they knew the applicant as a physician.

12. On 1 June 2007 a different expert was appointed who submitted his opinion on 9 July 2007.

13. After having taken further evidence the investigator proposed that the proceedings be discontinued on 28 August 2007. On 28 November 2007 a public prosecutor from the District Prosecutor's Office in Martin discontinued the proceedings.

14. The injured party filed a complaint on 31 December 2007. On 21 March 2008 a prosecutor of the Regional Prosecutor's Office in Žilina quashed the decision to discontinue the proceedings. The case was returned to the police investigator on 4 April 2008.

15. In May 2008 the investigator heard the experts and a witness. On 27 May 2008 it appointed an institution in the Czech Republic with a view to obtaining a counter-opinion. Upon the investigator's request a public prosecutor transmitted the relevant documents, on 27 October 2008, to his Czech counter-part with a view to having them delivered to the institution concerned. The latter submitted the counter-opinion on 22 October 2009.

16. On 25 November 2009 the Constitutional Court dismissed the applicant's complaint about the length of the proceedings. It held that their duration was due to difficulties of an objective nature in obtaining relevant expert evidence.

17. On 12 February 2010 the District Prosecutor's Office in Martin discontinued the proceedings on the ground that the facts imputed to the applicant had not occurred.

18. On 2 June 2010 a public prosecutor of the Regional Prosecutor's Office in Žilina quashed the decision and then discontinued the proceedings on a different ground, namely that the facts in issue do not constitute a criminal offence.

THE LAW

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

19. 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 ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

20. The Government contested that argument while mainly relying on the reasons for the Constitutional Court's decision of 25 November 2009.

21. The period to be taken into consideration began on 30 December 2005 and ended on 2 June 2010. It thus lasted 4 years and more than 5 months. During that period the case was dealt with by police investigators and public prosecutors in the context of pre-trial proceedings.

A. Admissibility

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

24. In the present case the Court observes that the national authorities' handling of the case did not facilitate and unjustifiably prolonged its timely completion. In particular, the Court notes that it took nearly fourteen months to obtain a second expert opinion in Slovakia and that one of the institutions addressed in that context took almost nine months to inform the investigator that its experts considered themselves biased (see paragraphs 8, 9, 11 and 12 above). Another five months elapsed before the relevant documents were transferred to the Czech authorities (see paragraph 15 above). At that time the criminal proceedings against the applicant had already lasted almost three years at pre-trial stage.

25. Having regard to all the information before it and to its case-law on the subject (see *Pélissier and Sassi*, cited above), the Court considers that in the instant case the length of the proceedings complained of was excessive and failed to meet the "reasonable time" requirement.

26. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (a) OF THE CONVENTION

27. The applicant further complained that the authorities involved had failed to explain why they considered the accusation against him justified in disregard of the evidence available. He relied on Article 6 § 3 (a) of the Convention.

28. The criminal proceedings were discontinued on the ground that the facts in issue did not constitute a criminal offence. The applicant cannot, therefore, be considered as a victim, within the meaning of Article 34 of the Convention, of the alleged breach of his right under Article 6 § 3 (a).

29. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

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 1,100 euros (EUR) in respect of pecuniary damage and EUR 37,000 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. On the other hand, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

34. The applicant also claimed EUR 2,079.74 for the costs and expenses incurred before the domestic authorities and EUR 252.56 for those incurred before the Court.

35. The Government contested the sum claimed to the extent that it concerned the costs of the applicant's defence in the criminal proceedings.

36. 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 750 covering costs under all heads.

C. Default interest

37. 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, 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 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	Nona Tsotsoria President