

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

THIRD SECTION

CASE OF TRESA v. SLOVAKIA

(Application no. 209/10)

JUDGMENT

STRASBOURG

2 October 2012

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



In the case of Tresa v. Slovakia,

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

Ineta Ziemele, *President,*
Ján Šikuta,
Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 209/10) 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 Ondrej Tresa ("the applicant"), on 10 December 2009.

2. The applicant was represented by Ms Ľ. Višňovská, a lawyer practising in Košice. The Slovak Government ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 17 October 2011 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Šarišské Bohdanovce.

5. On 3 October 1994 the applicant and twenty-three other persons instituted civil proceedings before the Košice I District Court which concerned the use of a plot of land which they owned.

6. By judgment of 7 August 2008 and a decision of 24 November 2008 the Košice I District Court granted an easement to the defendant who owns the sport facility on the plaintiffs' land (proceedings file no. 15 C 792/94). It decided to determine the compensation which the defendant was to pay to the plaintiffs in a separate set of proceedings. On 20 April 2009 the Košice Regional Court upheld the above first-instance judgment and decision. They became final on 19 May 2009.

7. On 25 June 2009 the applicant complained to the President of the Košice I District Court about delays in the proceedings. The complaint indicated that, after the judgment of 7 August 2008, the issue of compensation still remained to be determined in a different set of proceedings.

8. In a reply dated 25 August 2009 and delivered on 31 August 2009 the President of the Košice I District Court informed the applicant that the issue of compensation for easement could be effectively dealt with only after the final effect of the judgment of 7 August 2008. Measures were being taken with a view to determining the issue in the separate set of proceedings.

9. In the meantime, on 7 August 2009, the applicant filed a complaint to the Constitutional Court. He alleged that in proceedings file no. 15 C 792/94 the Košice I District Court had breached his right to a hearing within a reasonable time. In his complaint the applicant indicated that, after the appeal court's judgment of 20 April 2009, compensation for the easement remained to be determined. He further submitted that the case was still being dealt with under file no. 15 C 792/94 and that he had received no reply to his complaint of 25 June 2009 addressed to the President of the District Court.

10. On 2 September 2009 the Constitutional Court rejected the applicant's complaint. It held that the proceedings complained of, namely those concerning the Košice I District Court file no. 15 C 792/94, had ended with final effect on 19 May 2009. The complaint in that respect had been filed belatedly.

11. The Constitutional Court noted the applicant's argument that the compensation issue remained to be determined in a separate set of proceedings. However, the applicant had failed to comply with the formal requirements in that respect as he had not indicated the file number of those proceedings. It was not for the Constitutional Court to remedy such shortcomings as the applicant was represented by a lawyer.

12. The proceedings concerning the outstanding issue were entered in the Košice I District Court's electronic registration system under file no. 23 C 221/2009 and assigned to a judge on 14 October 2009. They are pending.

THE LAW

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

13. 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..."

14. The Government did not contest that argument but considered that the application was inadmissible for the reasons set out below.

15. The proceedings complained of started on 3 October 1994 and, in their course, the courts decided to deal with one of the points in issue in a separate set of proceedings. The Court finds that, in the circumstances of the case, both the original proceedings and those which concern the outstanding issue should be treated as a single dispute over the claim introduced in 1994 (see also *Komanický v. Slovakia (no. 2)*, no. 56161/00, § 118, 2 October 2007, with further references).

16. Accordingly, the period to be taken into consideration began on 3 October 1994 and has not yet ended. It has thus lasted seventeen years and more than eleven months for two levels of jurisdiction.

A. Admissibility

17. The Government objected that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention as he had not complained about the duration of the proceedings file no. 15 C 792/94 before the Košice I District Court prior to their termination with final effect, and since he had not submitted his complaint in respect of the ensuing proceedings on the outstanding claim in accordance with the formal requirements.

18. The applicant disagreed. He argued that, at the time of his complaint to the Constitutional Court, no separate file number had been assigned to the proceedings in which the outstanding issue remained to be determined. In his view, the overall duration of the proceedings should be taken into account as the separate proceedings concern an issue which involves the same parties and the same subject-matter as the initial claim of 3 October 1994.

19. The Court notes that the Constitutional Court considered it appropriate to separately examine proceedings file no. 15 C 792/94 and those concerning the outstanding issue. Such approach differs from the Court's practice in similar cases (see also paragraph 15 above). As a result, the Constitutional Court excluded from its review a substantial part of the period under consideration.

20. In addition, as to the second set of proceedings, the applicant's constitutional complaint was rejected as not complying with formal requirements as the applicant had not indicated the file number of those proceedings. However, the documents before the Court indicate that, at the time of the Constitutional Court's decision, those proceedings had not yet been registered separately (see paragraphs 10 and 12 above).

21. Since the applicant formulated his complaint in a manner permitting the Constitutional Court to examine the overall duration of the proceedings before the Košice I District Court and the Constitutional Court took a different approach from that of the Court when examining similar cases, the application cannot be rejected for the applicant's failure to exhaust domestic remedies (see also *Obluk v. Slovakia*, no. 69484/01, § 60, 20 June 2006; and *Kocianová v. Slovakia*, no. 21692/06, §§ 15-18, 18 May 2010, with further references). The Government's objection must therefore be dismissed.

22. The Court notes that the application 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).

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. 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

26. 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

27. The applicant claimed 8,300 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that it should award the full sum claimed.

B. Costs and expenses

30. The applicant also claimed EUR 1,134.59 for the costs and expenses incurred both before the Constitutional Court and in the proceedings before the Court.

31. The Government requested the Court to grant an award in accordance with its practice.

32. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the sum claimed, which is to be rounded up to EUR 1,135.

C. Default interest

33. 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, the following amounts:

(i) EUR 8,300 (eight thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,135 (one thousand one hundred and thirty-five 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.

Done in English, and notified in writing on 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ineta Ziemele
Deputy Registrar	President