



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

FOURTH SECTION

CASE OF BUBLÁKOVÁ v. SLOVAKIA

(Application no. 17763/07)

JUDGMENT

STRASBOURG

15 February 2011

FINAL

15/05/2011

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

In the case of Bubláková v. Slovakia,

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

Nicolas Bratza, *President*,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 17763/07) 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 Beáta Bubláková (“the applicant”), on 19 April 2007.

2. The applicant was represented by Ms I. Rajtáková, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 4 February 2010 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and lives in Košice.

5. On 30 January 2002 the applicant initiated divorce proceedings and asked the Košice II District Court to determine her and her husband's rights and duties in respect of their minor daughters.

6. On 7 April 2006 the District Court adopted a judgment in the case.

7. On 19 April 2006 the applicant lodged a length of proceedings complaint with the Constitutional Court.

8. The District Court's judgment was served on the applicant on 12 May 2006 and, in the absence of an appeal, it became final on 4 July 2006.

9. On 13 September 2006 the Constitutional Court declared the complaint inadmissible as being manifestly ill-founded. It held that the District Court, by adopting the judgment and delivering it to the parties, had taken all required steps in order to eliminate the state of the applicant's legal uncertainty. This role of the District Court had ended by adopting the decision on the merits, that is before the complaint was lodged with the Constitutional Court. This decision became final on 4 July 2006 and the District Court could not deal with the merits of the case after the initiation of the constitutional proceedings. It was the Constitutional Court's practice to protect one's right to a hearing without unjustified delay only if the length of proceedings complaint was lodged at a time when the alleged violation still persisted. The decision was served on the applicant's lawyer on 19 October 2006.

THE LAW

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

10. 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...”

A. Admissibility

11. The Government relied on the Constitutional Court's decision. They argued that the applicant had not exhausted the available remedies, as she had failed to seek redress before the Constitutional Court in accordance with the Constitutional Court's practice. More specifically, she had lodged her complaint after the state of her legal uncertainty had been eliminated, that is after the District Court had no longer been dealing with the merits of the case. They noted that it had been the Constitutional Court's practice to examine the length of proceedings complaints only when the proceedings were still pending at the moment when the complaints were lodged with the Constitutional Court. They further stated that such practice had also been accepted by the Court.

12. They admitted that, as the proceedings had lasted four years and five months at one level of jurisdiction and concerned matters which required special diligence, the complaint about the length of the proceedings was not manifestly ill-founded.

13. The applicant argued that the proceedings had lasted an unreasonably long time. She disagreed with the Constitutional Court's decision and stated that she had no other domestic remedy to obtain redress.

14. As regards applications against Slovakia concerning the length of proceedings the Court has held that a complaint under Article 127 of the Constitution is, in principle, an effective remedy which applicants are required to use for the purpose of Article 35 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002). It has also held that applicants should formulate their complaints in a manner permitting the Constitutional Court to examine the overall duration of the proceedings (see *Obluk v. Slovakia*, no. 69484/01, § 62, 20 June 2006).

15. The Court notes that domestic law stipulates a two-month time-limit for submitting complaints under Article 127 of the Constitution. However, the practice of the Constitutional Court has been not to apply this time-limit to length of proceedings complaints and to examine only those complaints which were lodged before the proceedings complained of had ended. This practice has been accepted by the Court (see *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009).

16. In the case of *Mazurek* (cited above), the applicant lodged his constitutional complaint after the proceedings had ended by a final decision. This is not the case in the present application. The applicant lodged her complaint with the Constitutional Court after the District Court had adopted a judgment, but before that judgment was served on her and became final.

17. Even though the Constitutional Court, when rejecting the applicant's complaint, relied on the principle of legal certainty, the Court is of the opinion that the state of legal uncertainty in the context of judicial or administrative proceedings can be eliminated only when such proceedings end. In line with that it has been the Court's practice to examine the duration of proceedings as a whole, that is until they have ended by a final decision (see, among many others, *Kocianová (no. 2) v. Slovakia*, no. 45167/06, § 12, 18 May 2010).

18. As to the circumstances of the present case in particular, and despite the Government's arguments, the subsequent developments in the proceedings in issue could not be predicted at the moment when the applicant lodged her constitutional complaint. It was possible to appeal against the judgment, and the proceedings might well have continued even in the later period. Even though the District Court was not dealing with the merits of the case after the adoption of the judgment, it still had to carry out several procedural steps. Delays could have theoretically occurred also in

that period of the proceedings, for example, as regards the delivery of the judgment to the parties. The Court considers relevant that, at the moment when the applicant lodged her constitutional complaint, the merits of the case had not yet been determined by a final decision. The fact that the judgment had been served on the parties and had become final by the time the Constitutional Court decided on the applicant's complaint cannot change that position.

19. In these circumstances, the manner in which the applicant's complaint was dealt with by the Constitutional Court failed to meet the purpose of protection of her right under Article 6 § 1 of the Convention to a hearing within a reasonable time, as interpreted and applied by the Court. Such approach is susceptible of depriving the remedy under Article 127 of the Constitution of its requisite effectiveness (see also *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV).

20. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be dismissed.

21. The proceedings complained of lasted four years and five months at one level of jurisdiction.

22. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. 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). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

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 materials 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 13 OF THE CONVENTION

26. The applicant complained that she had not had an effective remedy at her disposal for her complaint about the length of the proceedings. She relied on Article 13, which reads as follows:

“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

27. The Government argued that the applicant had an effective remedy at their disposal, namely a complaint under Article 127 of the Constitution, but she had not lodged it in accordance with the formal requirements and the Constitutional Court's practice.

28. The applicant disagreed and argued that pursuant to section 53 (3) of the Constitutional Court Act a complaint under Article 127 can be lodged within a period of two months from the date on which the decision in question has become final and binding or on which a measure has been notified or other interference has been given. As she complied with that time limit, the Constitutional Court's rejection of her complaint had no legal basis.

29. The Court notes that the complaint concerning absence of an effective remedy for the alleged breach of the applicant's right to a hearing within a reasonable time is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The Court reiterates that the remedy under Article 127 of the Constitution is likely to provide appropriate and sufficient redress to applicants where it allows for examination of the length proceedings complained of (see *Kudła v. Poland* [GC], no. 30210/96, §§ 158 and 159, ECHR 2000-XI, and *Andrášik and Others v. Slovakia*, cited above).

31. The applicant lodged a complaint with the Constitutional Court. Even though she did so at a time when the proceedings had not yet been

concluded by a final decision, the Constitutional Court refused to examine it. As established in § 18 above, the manner in which the applicant's complaint was dealt with by the Constitutional Court failed to meet the purpose of protection of her right under Article 6 § 1 of the Convention to a hearing within a reasonable time in a similar manner as interpreted and applied by the Court. The Court, therefore, considers that the applicant's right to an effective remedy has not been respected (see *mutatis mutandis*, *A. R., spol. s r. o. v. Slovakia*, no. 13960/06, §§ 59-60, 9 February 2010).

32. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. In a letter of 11 June 2010 the Registry of the Court invited the applicant's lawyer to submit by 23 July 2010 any claims for just satisfaction, together with supporting documents. On Monday, 9 August 2010 the lawyer submitted the applicant's claims for just satisfaction. She apologised for the failure to observe the time-limit on the ground that she had been on a sick leave from 21 July until Friday 6 August 2010 inclusive. She submitted a relevant medical certificate.

35. The applicant claimed 6,700 euros (EUR) in respect of non-pecuniary damage.

36. The Government argued that the applicant had failed to introduce it within the time-limit set and contested the claim.

37. The Court notes that the lawyer failed to submit the claims within the given time-limit. However, it observes that the lawyer was on sick leave, which had started before the expiry of the time-limit. It also observes that the lawyer contacted the Court on the first working day after the end of her sick leave. In these circumstances it will take the just satisfaction claims into consideration.

38. It finds that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,300 under that head.

B. Costs and expenses

39. In her submission of 9 August 2010 the applicant also claimed EUR 553 for the legal costs incurred before the Court. She included two invoices totalling EUR 570 together with her submission of 22 November 2010.

40. The Government contested the claim and argued that the applicant had failed to introduce it within the time-limit set and had not supported it with relevant documents.

41. As mentioned above (see paragraph 37), the Court will take the present claim into consideration. It awards the applicant EUR 570 under this head.

C. Default interest

42. The Court considers it appropriate that the default interest 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 complaints under Articles 6 § 1 and 13 of the Convention 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;
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 4,300 (four thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 570 (five hundred and seventy euros), plus any tax that may be chargeable to the applicant;
 - (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 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President