



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

FOURTH SECTION

CASE OF A.B. v. SLOVAKIA

(Application no. 41784/98)

JUDGMENT

STRASBOURG

4 March 2003

FINAL

04/06/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.B. v. Slovakia,

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

Mr M. PELLONPÄÄ, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 February 2003,

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

PROCEDURE

1. The case originated in an application (no. 41784/98) against the Slovak Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, A.B. ("the applicant"), on 22 May 1998.

2. The Government of the Slovak Republic ("the Government") were represented by Mr P. Vršanský, their Agent. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that her right to a fair hearing was violated in that her requests for a lawyer to be appointed to represent her in the proceedings were not granted and that the case was decided upon in her absence, and also that she had no effective remedy at her disposal in this respect.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

7. By a decision of 12 March 2002 the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. In 1983 the applicant was found to be partially disabled. She continued working. On 2 November 1988 the applicant was obliged to sign an agreement with her employer according to which her contract of employment would expire on 30 June 1989.

10. On 4 September 1989 the Social Security Commission in Bratislava declared the applicant fully disabled as from 1 July 1989. A full invalidity pension was granted to the applicant.

11. On 1 October 1990 her former employer rehabilitated the applicant for the persecution to which she had been subjected in the past.

12. After the entry into force of the Extra-Judicial Rehabilitations Act (see "Relevant domestic law" below) the applicant claimed that her invalidity pension should be increased. She alleged, in particular, that the termination of her contract of employment in 1989 had been due to political persecution within the meaning of Section 21 of the Extra-Judicial Rehabilitations Act.

13. On 5 April 1993 the Social Security Administration dismissed the applicant's claim on the ground that she had failed to comply with the requirements set out in Sections 21 and 22 of the Extra-Judicial Rehabilitations Act.

14. On 21 March 1995 the Bratislava City Court upheld the decision. The City Court heard the parties and established that the applicant had failed to submit a certificate within the meaning of Section 22 of the Extra-Judicial Rehabilitations Act which was a prerequisite for granting her claim. The City Court noted that separate proceedings concerning this issue were pending before the Bratislava I District Court. It was further stated in the reasons for the judgment that the representative of the Social Security Administration had promised to adjust the applicant's pension upon the delivery of such a certificate.

15. On 26 March 1996 the Bratislava I District Court ordered the successor of the applicant's former employer to deliver a certificate pursuant to Section 22(1) of the Extra-Judicial Rehabilitations Act to the applicant. Prior to that the District Court appointed an advocate to represent

the applicant at the latter's request. The applicant received the certificate on 14 October 1996.

16. On 18 October 1996 the applicant again requested the Social Security Administration to adjust her invalidity pension pursuant to the Extra-Judicial Rehabilitations Act. The request was dismissed on 30 October 1996. The decision stated, with reference to Section 24(6) of the Extra-Judicial Rehabilitations Act, that the applicant's invalidity pension could not be adjusted as her contract of employment had been terminated in the course of the same year when she had acquired the right to an invalidity pension.

17. On 18 November 1996 the applicant challenged the decision before the Bratislava City Court. She also requested the City Court to appoint a lawyer to represent her in the proceedings. She referred to Article 30(1) of the Code of Civil Procedure and explained that her handicap prevented her from coming to the court in person. The applicant further stated that she was indigent and that the case might raise questions of law of a complex nature.

18. In a written submission of 13 January 1997 the Social Security Administration asked the court to uphold the decision challenged by the applicant. This submission was forwarded to the applicant who submitted a written reply on 14 February 1997. The applicant maintained, in particular, that the conclusion of the administrative authority was erroneous and contrary to the pledge which its representative had earlier made (see paragraph 14 above).

19. On 23 January 1997 the Bratislava Regional Court, which took over the case from the former City Court, summoned the applicant to a hearing scheduled for 25 February 1997. A type-written remark on the upper part of the summons read as follows:

“We hereby inform you that no compulsory defence is required in the proceedings and that the court cannot, therefore, appoint a defence counsel to assist you. In case that you wish to be represented by a lawyer, you should choose one yourself.”

20. On 14 February 1997 the applicant again requested the Regional Court that a lawyer be appointed to represent her in the proceedings. She explained, in particular, that her health did not allow her to attend the hearing, that her only income consisted of a modest invalidity pension and that she met the requirements for the appointment of a lawyer under the relevant provisions of the Code of Civil Procedure. She asked the court to notify her of its position on her request “by means and within a period corresponding to the relevant legal rules”. The applicant further requested that the hearing be adjourned as, in her view, the court's proceeding with the case in her absence would be contrary to her fundamental rights.

21. On 24 March 1997 the applicant informed the Regional Court that her health did not allow her to appear at the hearing scheduled for 1 April 1997. In the letter the applicant stated that a lawyer should be appointed to

represent her and complained that her requests to this effect of 18 November 1996 and of 14 February 1997 had not been dealt with.

22. On 1 April 1997 the Bratislava Regional Court upheld the Social Security Administration's decision of 30 October 1996. The Regional Court noted that the applicant's contract of employment had been terminated by 30 June 1989 and that she had been declared fully disabled and granted an invalidity pension with effect from 1 July 1989, that is the day following the termination of her employment. The court concluded that her invalidity pension could not be adjusted pursuant to Section 24(6) of the Extra-Judicial Rehabilitations Act.

23. On 24 April 1997 the applicant appealed. She alleged that the Regional Court had decided arbitrarily and that it had disregarded the pledge to grant her claim after the delivery of the certificate made by the representative of the Social Security Administration in the proceedings leading to the City Court's judgment of 21 March 1995. The applicant further argued that the Regional Court had failed to establish the relevant facts correctly. On 16 June 1997 the applicant submitted further documentary evidence to the appellate court.

24. On 29 September 1997 the Supreme Court upheld the first instance judgment. The Supreme Court reiterated that the applicant had been granted a full invalidity pension as from 1 July 1989, that is the day following the termination of her contract of employment. It therefore considered that the applicant had not suffered any damage which could be compensated pursuant to Section 24(6) of the Extra-Judicial Rehabilitations Act. The Supreme Court pointed out that the representative of the defendant had apparently overlooked the above fact when she had stated that the claim would be granted upon the delivery of the relevant certificate to the applicant. However, that statement had been made in a different set of proceedings and it could not affect the decision on the applicant's claim in the proceedings under the consideration. The appellate court decided *in camera*.

25. On 27 November 1997 the applicant lodged an appeal on points of law. She complained, *inter alia*, that the appellate court had not held a hearing in the case and had thus prevented her from submitting her arguments. On the same day the applicant requested the Bratislava Regional Court to appoint a representative to her in the proceedings on her appeal on points of law. She explained that the case was complex, that her handicap prevented her from acceding to the court room and that her only income was an invalidity pension amounting to 4,093 Slovakian korunas. The applicant also maintained that her constitutional right to legal protection had been violated in that her request for a lawyer to be appointed had not been processed in due manner.

26. On 27 January 1998 a different chamber of the Supreme Court dismissed the applicant's appeal on points of law. The Supreme Court found

that the applicant had been duly summoned to the hearing before the Bratislava Regional Court held on 1 April 1997 and that she had failed to appear without an excuse. As to the appellate proceedings, the Supreme Court recalled that Articles 250f and 250s of the Code of Civil Procedure permitted the appellate court to decide on the case without hearing the parties. Furthermore, in the course of the proceedings the applicant made proposals as regards the evidence to be taken, she made comments on the case and submitted her arguments to the courts.

27. The Supreme Court further noted that the applicant “had been free to choose a legal representative and to apply for free legal representation”. Since the applicant did not lack legal capacity to act, the courts were not obliged to appoint a lawyer *ex officio*. The Supreme Court examined the applicant’s appeal on points of law in camera with reference to Article 250s (2) of the Code of Civil Procedure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Civil Procedure

28. Article 30(1) provides that courts may appoint a representative at the request of a party who meets the requirements for waiver of court fees when it is necessary for the protection of that party’s interests. Pursuant to paragraph 2 of Article 30, the president of the court’s chamber shall appoint an advocate to represent a party in circumstances set out in the first paragraph when the protection of that party’s interests so requires.

29. Under Article 138(1), the presiding judge may grant a party’s request for waiver of court fees where it is justified by the situation of such a party and provided that the claim at issue is neither frivolous nor clearly devoid of any prospect of success.

30. Pursuant to Article 167(1), courts deliver a formal decision (“*uznesenie*”) unless the law otherwise provides. Decisions have to be delivered, *inter alia*, on issues relating to the conditions for proceeding with a case and also to matters relating to the conduct of proceedings.

31. Article 250f entitled courts to deliver a judgment without prior oral hearing in simple cases, in particular when there was no doubt that the administrative authority had established the facts correctly and the point at issue was a question of law. In its finding PL.ÚS 14/98 of 22 June 1998 the Constitutional Court found that Section 250f of the Code of Civil Procedure was contrary to the Constitution and also to Section 6 § 1 of the Convention. As a result, this provision ceased to be effective.

32. Pursuant to Article 250s (2), in cases concerning social security claims an appeal to the Supreme Court is available against the Regional Court’s decision. The appellate court’s decision may be challenged by

means of an appeal on points of law before a different chamber of the Supreme Court. In appellate proceedings and in proceedings on appeal on points of law the Supreme Court is not required to hold a hearing.

B. The Extra-Judicial Rehabilitations Act of 1991

33. The aim of the Extra-Judicial Rehabilitations Act (*Zákon o mimosúdnych rehabilitáciach*) is to redress certain infringements of property and social rights which occurred between 25 February 1948 and 1 January 1990. The following provisions are relevant in the present case.

34. Pursuant to Section 21(1), legal actions terminating a person's contract of employment for reasons of political persecution or in violation of generally recognised human rights and freedoms are to be considered void.

35. Section 22(1) provides that the former employer or its successor shall issue, at the request of the person concerned, a certificate that the latter's contract of employment was terminated for reasons mentioned in Section 21(1). Paragraph 3 of Section 22 entitles the person concerned to claim the determination of this issue by a court when the certificate is not delivered within three months.

36. Under Section 24(1), when the termination of employment is considered void within the meaning of Section 21, the period between the termination of the contract of employment and the date when the person concerned acquired a right to old-age pension or invalidity pension is to be considered as the period of employment for the determination of that person's pension rights.

37. Section 24(6) provides that, when adjusting the pensions of persons covered by Section 24(1), their average monthly salary is to be determined on the basis of their actual salary in the calendar year preceding the termination of their employment. The general wages increase must thereby be taken into account.

38. Pursuant to Section 26, pensions which were granted prior to the entry into force of the Extra-Judicial Rehabilitations Act are to be adjusted in accordance with Section 24 upon the request of the person concerned.

C. The Bar Act of 1990

39. Section 15(1) guarantees the right to legal assistance and entitles everybody to ask for it any advocate. Under paragraph 2 of Section 15 advocates may refuse legal assistance to a person only where there are serious grounds to believe that he or she cannot do so in an appropriate manner. Advocates must give reasons for such a refusal and the Bar Association is entitled to determine whether it was justified. Paragraph 3 of

Section 15 provides that persons who were refused legal assistance can ask the Bar Association to assign an advocate to them.

D. The relevant practice and academic views

40. In its decision No. 7/1990 of 12 September 1990 the governing body (*predsedníctvo*) of the Slovak Bar Association held that advocates are authorised to provide legal assistance free of charge or at reduced fees where the average monthly income of the person concerned does not exceed the statutory minimum wage and provided that such a person does not own property other than that which is indispensable for meeting the needs of everyday life. Advocates are also authorised to provide legal assistance free of charge or for reduced fees where it is justified by exceptional circumstances enumerated in the decision.

41. The representatives of the Slovak Bar Association have expressed the view that even in cases where the Bar Association appoints an advocate to represent a person it is not entitled to order that the advocate should do so free of charge. It is up to advocates to decide whether they will provide a person with legal assistance free of charge or for reduced fees. In this respect advocates shall guide themselves by decision No. 7/1990 delivered by the governing body of the Slovak Bar Association.

42. In accordance with academic opinion, courts are obliged to appoint a representative to a party under Article 30 of the Code of Civil Procedure where (i) the party concerned filed a request to this effect, (ii) that party meets the requirements for waiver of court fees laid down in Article 138 of the Code of Civil Procedure (it is thereby irrelevant whether or not the proceedings in question are exempted from court fees) and (iii) it is objectively justified by the need of a better protection of the interests of such a party having regard, in particular, to his or her situation and the subject-matter of the proceedings. A measure under Article 30 of the Code of Civil Procedure should take the form of a decision (*uznesenie*) which can be challenged by means of an appeal (see, e.g., *Občianske právo s vysvetlivkami*, 2. zväzok, Iura Edition, 1996, p. 58 and also *Občiansky súdny poriadok*, JUDr. A. Bajcura, CSc. a kol., I. diel, Komentár, Eurounion, Bratislava 1996, p. 77).

THE LAW

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

43. The applicant complained that her right to a fair hearing had been violated in that her requests for a lawyer to be appointed to represent her in the proceedings had not been granted, that the courts had decided on her claim in her absence and that their decisions were arbitrary. She alleged a violation of Article 6 § 1 of the Convention which provides, so far as relevant, as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by a ... tribunal...”

A. Applicability of Article 6 § 1

44. In the Government’s view, the applicant’s claim was devoid of any prospect of success from the very beginning. They argued that the applicant had obtained invalidity pension the day following the termination of her employment and that she had therefore suffered no harm which could be compensated pursuant to Section 24 of the Extra-Judicial Rehabilitations Act. They concluded that the proceedings did not concern the applicant’s “civil rights” recognised in domestic law and that Article 6 § 1 was inapplicable.

45. The applicant disagreed with the Government.

46. The Court recalls that for Article 6 § 1 to be applicable under its “civil” head, the proceedings at issue must concern a “dispute” over “civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law. The “dispute” must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question (see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43 with further references, ECHR 2000).

47. In the present case the applicant claimed an adjustment of her invalidity pension to which she considered herself entitled under Sections 24 and 26 of the Extra-Judicial Rehabilitations Act. In a separate set of proceedings the applicant sought to obtain a certificate within the meaning of Section 22 of the Extra-Judicial Rehabilitations Act which was a prerequisite for granting her claim. In its judgment of 21 March 1995 the Bratislava City Court noted that separate proceedings concerning the delivery of such a certificate were pending before the Bratislava I District Court, and that the representative of the Social Security Administration had

promised to adjust the applicant's pension upon the delivery of such a certificate (see paragraph 14 above).

48. In these circumstances, the Court is satisfied that the proceedings complained of concerned the applicant's civil right which was recognised, at least on arguable grounds, in Slovakian law. The fact that the domestic courts ultimately found that the applicant's claim could not be granted in the particular circumstances of the case cannot affect this position. Accordingly, Article 6 § 1 is applicable.

B. Alleged unfairness resulting from the courts' failure to appoint a representative to the applicant and their proceeding with the case in the applicant's absence

1. The arguments before the Court

49. The Government argued that the applicant had had no enforceable right to have a lawyer appointed to represent her in the proceedings. The text included in the summons to the hearing scheduled for 25 February 1997 clearly indicated that the Regional Court had not intended to accede to her request for the appointment of a lawyer. In those circumstances it was open to the applicant to appoint a lawyer of her own choice and to claim free legal representation. In any event, as the applicant's action lacked any prospect of success, the courts' failure to appoint a lawyer to represent her in the proceedings was not contrary to Article 6 § 1 of the Convention.

50. As to the applicant's complaint that the courts decided in her absence, the Government maintained that the Bratislava Regional Court had held a public hearing in the case. The applicant neither appeared at the hearing nor did she excuse her absence. The fact that no public hearing was held in the proceedings before the appellate court and the court of cassation was compatible with the requirements of Article 6 § 1 in the particular circumstances of the case.

51. The applicant contended that she could not attend the hearing before the Regional Court in person as her handicap had prevented her from acceding to the court room. The judge dealing with the case was aware of this fact as she had been involved in another set of proceedings concerning the applicant's disability.

52. The applicant argued that the Regional Court had not examined whether it was necessary to appoint a representative to her in accordance with Article 30 of the Code of Civil Procedure and that it had not decided in due form on her request to that effect. With reference to Article 167(1) of the Code of Civil Procedure the applicant maintained that the Bratislava Regional Court should have delivered a formal decision (*uznesenie*) on that request prior to proceeding with the merits of the case.

53. The applicant further submitted that, as a result, she had been placed at a disadvantage *vis-à-vis* the defendant whose representative had the possibility of consulting the case-file and submitting the arguments orally to the Regional Court. She concluded that her rights under Article 6 § 1 of the Convention had not been respected.

2. *The Court's assessment*

(a) **The relevant principles**

54. The key principle governing the application of Article 6 is fairness. The right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting the guarantees of Article 6 § 1 of the Convention restrictively (see, *mutatis mutandis*, *Moreira de Azevedo v. Portugal*, judgment of 23 October 1990, Series A no. 189, § 66).

55. The principle of equality of arms – one of the elements of the broader concept of fair trial – requires that each party should be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, p. 19, § 33; *Ankerl v. Switzerland*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, pp. 1567-68, § 38). In this context, importance is to be attached to, *inter alia*, the appearance of the fair administration of justice. Here, as in other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, 16 July 2002).

56. Finally, from the Convention standpoint, a hearing may be held “unfair” and in breach of Article 6 even in the absence of proof of actual prejudice (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, § 35).

(b) **Application of the above principles to the instant case**

57. The Court notes that at the relevant time Article 250f of the Code of Civil Procedure permitted the courts to decide in similar cases without a prior oral hearing, in particular when there was no doubt that the administrative authority had established the facts correctly and the point at issue was a question of law. However, such was apparently not the case in the proceedings under consideration as the Regional Court scheduled a hearing and considered it appropriate to hear the parties prior to deciding on the case.

58. In her submissions to the Bratislava City Court and to the Bratislava Regional Court, which took over the case from the former, the applicant requested that a lawyer be appointed to represent her. On 23 January 1997

the Bratislava Regional Court summoned the applicant to a hearing scheduled for 25 February 1997. By a remark typed on the upper part of the summons the judge informed the applicant that a lawyer could not be appointed to her as there was no compulsory legal representation of the parties in the case. There is no indication that the Regional Court examined whether the requirements for acceding to the applicant's request under Article 30 of the Code of Civil Procedure were met (see paragraphs 28 and 42 above).

59. On 14 February 1997 and on 24 March 1997 the applicant again requested the Regional Court that a lawyer be appointed to represent her. She asked the Regional Court to entertain her request in the normal manner and to notify her of its position in the form prescribed by law. These requests remained unanswered, and the Regional Court dismissed the applicant's claim, after having held a hearing in her absence, on 1 April 1997.

60. In the Court's view, the applicant rightfully expected and urged the Regional Court to give a formal response to her request since the information available indicates that the Regional Court was required to deliver a formal and reasoned decision (*uznesenie*) in this respect. Such a decision could be challenged by means of an appeal before a higher court. It is only where her request to have a lawyer appointed was formally dismissed by the courts competent to decide on it that the applicant could reasonably be expected to seek free legal representation from an advocate under the relevant provisions of the Bar Act of 1990. The Court therefore cannot attach decisive importance to the Government's argument according to which it was open to the applicant to appoint a lawyer of her own choice and to claim free legal representation.

61. Thus by proceeding with the case in the applicant's absence and by failing, prior to that, to take a formal decision on her request for the appointment of a lawyer the Bratislava Regional Court deprived the applicant of the opportunity to present her case under conditions of equality *vis-à-vis* the defendant. The Court does not consider it necessary to determine whether or not the applicant suffered actual prejudice in this respect as such a conduct was, in the circumstances of the case, incompatible with the fair administration of justice.

62. Since the appellate court and the court of cassation subsequently approved of the way in which the Regional Court had proceeded and since they decided on the case *in camera*, the above shortcoming cannot be said to have been remedied in the proceedings before the higher courts.

63. There has therefore been a violation of Article 6 § 1 of the Convention.

C. Alleged unfairness resulting from the dismissal of the applicant's claim

64. The Government maintained that at the hearing before the Bratislava Regional Court the defendant had submitted no additional evidence or arguments, and that prior to that hearing the applicant had been given the possibility of submitting all her arguments to the court and to make comments on the observations submitted by the defendant. In the Government's view, the decision to dismiss the applicant's action was not arbitrary and the applicant's right to a fair hearing was respected.

65. The applicant contended that her claim had been dismissed arbitrarily in disregard of the pledge made by the representative of the Social Security Administration and mentioned in the Bratislava City Court's judgment of 21 March 1995.

66. The Court recalls that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *mutatis mutandis*, *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 46; *Borgers v. Belgium*, judgment of 30 October 1991, Series A no. 214-B, p. 31, § 24 and *Garcia Ruiz v. Spain*, judgment of 21 January 1999, *Reports* 1999-I, pp. 98-99, § 28).

67. Having regard to its conclusion that there was an infringement of the applicant's right to a fair hearing for the reasons stated above and considering that it has only limited powers to deal with errors of fact or law allegedly committed by national courts, the Court finds that there has been no separate violation of Article 6 § 1 of the Convention on account of the alleged arbitrariness of the dismissal of the applicant's claim.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

68. The applicant complained that she did not have an effective remedy at her disposal as regards the alleged violations of her rights mentioned above. She invoked Article 13 of the Convention which provides 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.”

69. The Government maintained, with reference to their arguments concerning the applicant's complaints under Article 6 § 1 of the Convention, that there had been no violation of Article 13.

70. The applicant disagreed and maintained that she had no effective remedy at her disposal.

71. Having regard to its above conclusion that there has been a violation of Article 6 § 1, the Court holds that it is not necessary also to examine the case under Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 1,000,000 Slovakian korunas (SKK) on account of the financial loss resulting from the dismissal of her claim for adjustment of her disablement pension.

74. The Government maintained that there was no causal link between the alleged breach of the applicant’s right to a fair trial and the pecuniary damage claimed by the applicant.

75. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found. In particular, it is not for the Court to speculate what the outcome of the proceedings would have been if they had been in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Accordingly, this claim must be dismissed.

76. The applicant also claimed SKK 2,200,000 in compensation for non-pecuniary damage. She alleged that her disablement pension was insufficient for living decently and that, as a result, she was exposed to both mental and physical suffering.

77. The Government objected that in this respect the applicant could have sought compensation under Section 18 of the State Liability Act of 1969 and under Regulation No. 32/1965. In any event, a possible finding of a violation of the Convention would in itself constitute sufficient just satisfaction in the particular circumstances of the case.

78. As to the Government’s objection based on the State Liability Act of 1969 and Regulation No. 32/1965, the Court reiterates that Article 41 of the Convention does not require applicants to exhaust domestic remedies a second time in order to obtain just satisfaction if they have already done so in vain in respect of the substantive complaints (see *De Wilde, Ooms and Versyp v. Belgium*, judgment (just satisfaction) of 10 March 1972, Series A no. 14, § 16).

79. The Court is further of the view that the applicant has failed to demonstrate that her health was affected as a result of the violation found. However, it considers that the applicant suffered some non-pecuniary damage on account of the unfairness of the proceedings in her case which is not sufficiently compensated by the finding of a violation of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant 1,000 euros (EUR).

B. Costs and expenses

80. The applicant sought SKK 300,500 for her costs and expenses. She explained that this sum comprised, *inter alia*, SKK 130,000 as compensation for time spent by her on seeking redress before both the domestic authorities and the Court, SKK 2,100 in compensation for postage and other material expenses relating to her correspondence with the Court and also compensation for material expenses in the context of domestic proceedings which she was not in a position to substantiate.

81. The Government objected that the amount claimed was excessive.

82. The Court notes that neither in the domestic proceedings complained of nor in the proceedings before the Convention organs was the applicant legally represented. Considering that the applicant failed to substantiate the amount claimed and making its assessment on an equitable basis, the Court finds it reasonable to award the applicant the amount of EUR 100 for her costs and expenses.

C. Default interest

83. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the procedure followed by the national courts when examining the applicant's claim;
2. *Holds* that there has been no additional violation of Article 6 § 1 of the Convention on account of the alleged arbitrariness of the dismissal of the applicant's claim;

3. *Holds* that it is not necessary to rule on the complaint under 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 according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, to be converted into Slovakian korunas at the rate applicable at the date of settlement, together with any tax that may be chargeable;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President