



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

FOURTH SECTION

**CASE OF MATOUŠKOVÁ v. SLOVAKIA**

*(Application no. 39752/98)*

JUDGMENT

STRASBOURG

12 November 2002

**FINAL**

*12/02/2003*

*This judgment may be subject to editorial revision.*



**In the case of Matoušková v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 22 October 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 39752/98) 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, Mrs Helena Matoušková (“the applicant”), on 10 September 1997.

2. The Slovakian Government (“the Government”) were represented by their Agent, Mr P. Vršanský.

3. The applicant alleged, in particular, that the proceedings concerning her action for payment of a sum of money lasted unreasonably long.

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. By a decision of 5 April 2001 the Court declared the application partly admissible.

7. 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 (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Proceedings concerning the applicant's claim of 9 November 1994

9. On 9 November 1994 the applicant sued the co-operative Úsvit before the Bratislava II District Court (*Obvodný súd*). She claimed the payment of a sum of money to which she was entitled after she had ceased to be a member of the co-operative in 1993.

10. On 18 January 1995 the Bratislava II District Court adjourned the case as the defendant's representative did not appear.

11. On 20 February 1995 the District Court again adjourned the hearing because of the applicant's failure to appear.

12. A hearing scheduled for 22 March 1995 had to be adjourned due to the absence of both parties.

13. On 24 April 1995 the District Court adjourned the case on the ground that the defendant had not been duly served with a copy of the action.

14. On 29 May 1995 the District Court adjourned the case until 26 June 1995 as the applicant did not appear.

15. On 26 June 1995 the District Court established that it lacked jurisdiction to deal with the case and transferred it to the Bratislava City Court (*Mestský súd*).

16. On 13 October 1995 the Bratislava City Court invited the applicant to pay the court fees.

17. On 7 November 1995 the Bratislava City Court was notified that the applicant had paid the fees.

18. On 29 November 1995 the Bratislava City Court resolved that the applicant had to pay an additional amount in court fees.

19. On 12 April 1996 the applicant requested the Bratislava City Court to proceed with the case.

20. On 12 September 1996 the applicant complained about delays in the proceedings to the president of the City Court.

21. On 24 September 1996 the latter informed the applicant that the proceedings had been stayed on 18 September 1996 and that the relevant decision would be served later.

22. In its decision of 18 September 1996 the Bratislava City Court noted that the decision on the applicant's action depended on the assessment of the property of the co-operative concerned and that this preliminary issue was the subject matter of a different set of proceedings which were brought in 1992 and were still pending before it. The City Court therefore stayed the

proceedings concerning the applicant's claim pending the outcome of the other set of proceedings.

23. The applicant appealed on 25 September 1996. She maintained, with reference to the relevant provision of the Commercial Code as well as to the memorandum and articles of the co-operative, that the amount due to her was to be calculated on the basis of the co-operative's net business assets set out in its financial statement for the year when her membership in the co-operative had been terminated. The applicant argued that this information was available and that the outcome of the other set of the proceedings had no bearing on the determination of her claim.

24. On 12 December 1996 the applicant complained to the Ministry of Justice that her case was not being proceeded with.

25. On 27 January 1997 the Ministry of Justice admitted that the applicant's complaint about delays in the proceedings was justified. The letter stated that the case had been transferred to the Bratislava City Court on 29 September 1995 and that the latter, apart from requesting the applicant to pay the court fees, had not proceeded with the case effectively until 18 September 1996.

26. On 29 January 1997 the Supreme Court (*Najvyšší súd*) dismissed the applicant's appeal against the City Court's decision of 18 September 1996.

27. On 24 March 1999 the applicant complained to the Ministry of Justice about delays in the proceedings. The complaint was forwarded to the president of the Bratislava Regional Court (*Krajský súd* - the former Bratislava City Court). On 22 June 1999 the president of the Regional Court informed the applicant that the case could only be proceeded with after the preliminary issue had been determined by a final decision.

## **B. Proceedings concerning the preliminary issue**

28. In 1991 a production unit of the co-operative Úsvit became an independent legal person registered as Plastobal, VDI. On 14 March 1992 the latter claimed that a part of the property of the co-operative Úsvit should be assigned to it.

29. On 28 July 1992 the Bratislava City Court dismissed the plaintiff's request for waiver of the court fees. A hearing was held on 11 September 1992.

30. On 21 September 1992 the Bratislava City Court discontinued the proceedings on the ground that the plaintiff had not paid the fees. The plaintiff appealed and claimed that the fees had been paid in the meantime.

31. On 8 October 1992 the co-operative Úsvit filed an action with the Bratislava City Court claiming that Plastobal, VDI be liquidated.

32. On 3 November 1992 the City Court quashed its decision of 21 September 1992. A hearing was held on 18 December 1992. The defendant requested that the proceedings be stayed pending a decision on its

action of 8 October 1992. Another hearing was held on 27 January 1993. On 10 February 1993 the court appointed an expert and requested him to determine, within thirty days, the share of property of the co-operative Úsvit to which the plaintiff was entitled.

33. On 25 February 1992 the defendant claimed that the proceedings be stayed. The City Court dismissed the request on 26 June 1993. On 28 July 1993 the defendant appealed. On the same day the plaintiff requested that the court issue an interim measure.

34. In the meantime, on 17 July 1993 the Bratislava City Court appointed another expert who was to determine, within thirty days, the property share which was due to the plaintiff. On 29 September 1993 the defendant challenged the expert.

35. On 3 November 1993 the expert submitted comments on the defendant's request for her exclusion.

36. On 6 December 1993 the case file was submitted to the Supreme Court for a decision on the defendant's appeal against the City Court's decision of 26 June 1993. The Supreme Court dismissed the appeal as being inadmissible on 10 March 1994. The decision was transmitted to the City Court on 28 March 1994.

37. On 8 February 1994 the expert informed the City Court that representatives of the defendant company had not allowed her to consult the relevant documents on 21 September 1993.

38. On 28 June 1994 the defendant again challenged the expert. The judge heard the expert and informed the defendant, on 19 July 1994, that she had found no reason for excluding the expert. The defendant company was further informed that it could be fined under Article 53 (1) of the Code of Civil Procedure should its representatives prevent the expert from carrying out her duty.

39. On 10 August 1994 the defendant company again requested that the proceedings be stayed. On 29 September 1994 it challenged the judge dealing with the case.

40. On 7 October 1994 the expert informed the City Court that the defendant company had not allowed her to consult the relevant documents.

41. The case file was submitted to the Supreme Court on 11 October 1994. By a decision of 25 January 1995 the Supreme Court dismissed the defendant's request for exclusion of the City Court judge.

42. A hearing before the City Court was held on 10 April 1995.

43. On 19 April 1995 the judge urged the expert to submit the opinion. On 28 April 1995 the expert informed the court that she had a heavy workload. The City Court appointed a different expert on 22 May 1995 and asked him to submit his opinion within thirty days.

44. On 4 July 1995 the defendant company requested that the proceedings be stayed.

45. On 2 October 1995 the expert requested the City Court to order the parties to put the relevant documents at his disposal. He also requested an advance on his costs and an extension of the time-limit for submission of his opinion.

46. On 13 October 1995 the defendant company informed the City Court that the proceedings should be stayed and that, for that reason, it was irrelevant to take any further evidence in the case.

47. On 9 November 1995 the expert informed the Court that the representatives of the defendant company had refused him access to the relevant documents. On 16 November 1995 the City Court imposed a fine of 5,000 Slovakian korunas (SKK) on the defendant company, pursuant to Article 53 (1) of the Code of Civil Procedure, on the ground that it had refused to co-operate with the expert. The defendant company appealed on 28 November 1995.

48. The representatives of the defendant company failed to appear at a meeting with the expert and the plaintiff convoked by the City Court for 7 December 1995. As a result the expert could not obtain the relevant documents.

49. On 23 January 1996 the case file was submitted to the Supreme Court for a decision on the defendant's appeal against the procedural fine which had been imposed on it on 16 November 1995. The Supreme Court upheld the decision on the procedural fine on 28 March 1996. The case file was returned to the City Court on 7 May 1996.

50. On 19 September 1996 and on 16 December 1996 the judge asked the expert to inform her when the opinion would be submitted. On 7 February 1997 the judge invited the expert to specify which documents were necessary for drafting the opinion. On 26 February 1997 the expert informed the Bratislava Regional Court (which took over the agenda of the former Bratislava City Court) that the defendant had repeatedly refused to submit the relevant documents.

51. On 7 March 1997 the Regional Court requested the defendant company to submit the relevant documents. On 27 March 1997 the representative of the defendant company asked the court for further specification of the documents to be submitted. In the meantime, on 25 March 1997, the plaintiff submitted further evidence to the Regional Court. On 14 May 1997 the Regional Court received a proposal on delimitation of the property in question.

52. A hearing before the Regional Court was held on 11 June 1997. The Regional Court dismissed the defendant company's request that the proceedings be stayed. The defendant appealed on 19 June 1997. The Supreme Court dismissed the appeal on 24 November 1997. The Supreme Court's decision was transmitted to the Regional Court on 5 February 1998.

53. On 22 December 1997 the defendant company requested the court to proceed with the case and explained that the dispute affected its business activities.

54. On 16 March 1998 the Regional Court issued an interim measure, upon the request of the plaintiff of 28 January 1998, by which it prohibited the defendant company from alienating a part of its property.

55. A hearing before the Bratislava Regional Court was held on 25 March 1998.

56. On 2 April 1998 the defendant company appealed against the decision on the interim measure of 16 March 1998. The case file was transmitted to the Supreme Court which quashed the decision in question on 30 July 1998. The Supreme Court's decision was transmitted to the Regional Court on 26 August 1998. In the meantime, on 16 April 1998, the plaintiff submitted further evidence to the Regional Court.

57. On 17 September 1998 the Regional Court invited the defendant company to submit documents so that the value of the property could be determined. The defendant replied on 28 October 1998.

58. A hearing was held on 16 November 1998. An attempt to settle the case failed. The plaintiff amended its claim and the case was adjourned with a view to obtaining an expert opinion.

59. On 11, 15 and 26 January 1999 the defendant company submitted further evidence to the Regional Court.

60. On 24 May 1999 the Regional Court quashed its above decisions on the appointment of experts. It held, with reference to the correspondence included in the file, that it had been impossible to obtain an expert opinion. On the same day the Regional Court further delivered a judgment in which it granted the major part of the plaintiff's claims.

61. On 2 July 1999 the defendant appealed against the judgment. The case file was transmitted to the Supreme Court on 5 August 1999. The plaintiff submitted comments on the case on 2 September 1999. They were transmitted to the Supreme Court on 9 September 1999.

62. A hearing before the Supreme Court was held on 18 January 2000. The appellate court dismissed the defendant's request that the proceedings be stayed.

63. On 31 March 2000 the Supreme Court quashed the Regional Court's judgment of 24 May 1999. It noted that the assessment of the property in question on the basis of an auditor's report submitted by the defendant company was not sufficient, and instructed the first instance court to take further evidence and to appoint an expert to that effect. The decision was transmitted to the Regional Court on 23 May 2000.

64. On 12 September 2000 the representatives of the defendant company submitted further information to the Regional Court. A hearing was held on 28 September 2000 and the case was adjourned. On 13 October 2000 the

defendant company submitted its comments on the evidence before the court.

65. On 13 June 2001 the Regional Court ordered an expert opinion on the value of the property in question to be submitted before 30 September 2001. On 25 September 2001 the expert asked for an extension of the time-limit until 30 November 2001 on the ground that the relevant documents no longer existed.

66. On 28 September 2001 the Regional Court instructed the expert to suspend the elaboration of the opinion pending an informative hearing of the parties which was scheduled for 11 October 2001. On 15 October 2001 the Regional Court decided that the parties were to pay an advance on the expert's fees and costs. It further instructed the expert to proceed with the opinion. On 25 October 2001 the defendant company challenged both the expert and the above decision on the expert's fees and costs.

67. On 10 January 2002 the expert informed the Regional Court that the elaboration of the opinion had been impaired by the defendant's conduct. On 16 January 2002 the Regional Court urged the expert to submit the opinion. It was submitted on 31 January 2002. On 5 and 6 February 2002 respectively the parties were invited to submit their comments on it within ten days.

68. On 4 February 2002 the Regional Court asked the Regional archive in Bratislava for information about archiving of documents. The latter replied on 4 March 2002. In the meantime, on 21 February 2002, the defendant submitted comments on the expert opinion.

69. On 15 April 2002 the Regional Court heard the parties. The case was adjourned until 27 May 2002 as it was necessary to obtain further evidence. In this context, thirty-one witnesses were summoned.

70. On 19 April 2002 the Regional Court decided on the expert's fees. The proceedings are pending.

## II. RELEVANT DOMESTIC LAW

71. Under Article 53 (1) of the Code of Civil Procedure, the presiding judge may impose a procedural fine up to SKK 5,000 on persons who seriously hamper the progress of the proceedings by, for instance, disobeying a court's order.

## THE LAW

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

72. The applicant alleged that the proceedings concerning her claim against the co-operative Úsvit had not been concluded within a reasonable time as required by Article 6 § 1 of the Convention, the relevant part of which reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

#### A. Period to be taken into consideration

73. The proceedings started on 9 November 1994. They have been stayed since 18 September 1996, pending the outcome of a different set of proceedings in which a preliminary issue is to be determined and which are still pending. Since the documents at the Court's disposal indicate that the outcome of the latter set of proceedings is directly decisive for the determination of the applicant's civil claim (see paragraphs 22 and 27 above), those proceedings must also be taken into account in order to establish whether the overall length of the proceedings complained of was reasonable (see, *mutatis mutandis*, *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, §§ 46, 48 and 52, with further references). Accordingly, the period to be taken into consideration has exceeded seven years and eleven months.

#### B. Compliance with Article 6 § 1 of the Convention

##### 1. *Applicable criteria*

74. The Court recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999, § 67, and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

## 2. *The parties' submissions*

75. The Government maintained that the proceedings concerning the applicant's claim were complex and that the applicant contributed to their length in that she had failed to appear at the hearings scheduled for 20 February 1995, 22 March 1995 and 29 May 1995. They admitted that there had been a period of inactivity in the proceedings imputable to the domestic courts between 6 February 1996 and 18 September 1996.

76. As to the proceedings concerning the preliminary issue, the Government submitted that they were complex and that their length was mainly due to the above behaviour of the representatives of the defendant company. Furthermore, the plaintiff company also contributed to the length of the proceedings in that it had not paid the court fees in time. In the Government's view, there were no delays in the proceedings concerning the preliminary issue which could be imputed to the domestic authorities.

77. The applicant disagreed. She maintained that the decision to stay the proceedings concerning her case pending the outcome of the proceedings opposing Plastobal, VDI and the co-operative Úsvit was erroneous as those proceedings had no bearing on her claim.

## 3. *The Court's assessment*

78. As regards the proceedings concerning the applicant's claim filed on 9 November 1994, the Court notes that the delay caused by the applicant's failure to appear at hearings scheduled for 20 February 1995, 22 March 1995 and 29 May 1995 is not significant when considering the overall length of the period in question. Furthermore, the domestic authorities acknowledged that the former Bratislava City Court had failed to proceed with the case effectively between 29 September 1995 and 18 September 1996, that is for more than eleven months, as during that period it had only requested the applicant to pay the court fees (see paragraph 25 above).

79. The Court is not in a position to determine whether the Slovakian courts applied the law correctly when they decided to stay the proceedings concerning the applicant's claim pending the outcome of the proceedings concerning the dispute between the two co-operatives (see, e.g., *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). However, it will take those proceedings into account in order to establish whether the overall length of the proceedings complained of was reasonable (see paragraph 73 above).

80. The proceedings concerning the preliminary issue were brought on 14 March 1992 and they are still pending. They have thus lasted more than ten years and seven months. The length of those proceedings is imputable to a considerable extent to the behaviour of the representatives of the defendant company. In particular, delays in the proceedings resulted from the fact that the experts were denied access to the relevant documents which

were in the possession of the defendant company. While the behaviour of the representatives of the defendant company cannot, as such, be held against the respondent Government, Article 53 (1) of the Code of Civil Procedure provided the domestic courts with a means of exercising pressure on the defendant company so that its representatives co-operated with the experts. The first instance court availed itself of such a possibility only once, namely in November 1995.

81. As regards the period after 18 September 1996, that is after the proceedings concerning the applicant's action were stayed pending the outcome of the proceedings concerning the preliminary issue, the Court notes that the representatives of the defendant company in the latter set of proceedings started co-operating with the Regional Court as the dispute affected the business activities of the co-operative.

82. On 24 May 1999 the Regional Court quashed its earlier decision on the appointment of experts and decided on the basis of the evidence available. The judgment was appealed against on 2 July 1999. The appellate court quashed the first instance judgment on 31 March 2000, that is more than eight months after the appeal had been filed, and during this period only one hearing was held in the case. The Supreme Court's decision was transmitted to the Regional Court on 23 May 2000, that is almost two months after its delivery. The Supreme Court instructed the Regional Court to take further evidence and to appoint an expert for this purpose.

83. The Regional Court held a hearing on 28 September 2000, and it received further evidence from the defendant company on 13 October 2000. An expert opinion concerning the value of the property in question was ordered on 13 June 2001, that is more than fourteen months after the Supreme Court had quashed the first judgment delivered by the Regional Court and had instructed the latter to appoint an expert. The Court notes that this delay occurred during a period when the proceedings had been pending for more than eight years.

84. In view of the foregoing, the Court considers that there were delays in the proceedings concerning the preliminary issue which are imputable to the conduct of the domestic courts, in particular during the period following the delivery of the Regional Court's judgment of 24 May 1999.

85. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court finds that the overall duration of the period under consideration cannot be regarded as reasonable. There has accordingly been a violation of Article 6 §1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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. Pecuniary damage

87. The applicant sought an award of SKK 265,270 to compensate her for the financial loss which she had allegedly suffered on account of the unreasonable length of the proceedings concerning her claim. She explained that the sum claimed corresponded to the statutory default interest in respect of the sum which the co-operative in question owed her.

88. The Government contended that there had been no violation of Article 6 § 1 in the present case and that, in any event, there was no ground for any award under this head as the proceedings were still pending.

89. The Court considers 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 be if they were in conformity with the reasonable time requirement laid down in Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

### B. Non-pecuniary damage

90. The applicant submitted that she was not in a position to quantify the non-pecuniary damage resulting from the protracted length of the proceedings concerning her case.

91. The Government submitted no comments.

92. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by her. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant 3,000 euros (EUR).

### C. Costs and expenses

93. The applicant claimed reimbursement of SKK 10,000 which she had paid as court fees in the domestic proceedings.

94. The Government contended that the applicant failed to show that the sum had been incurred with a view to preventing the alleged violation of the Convention.

95. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum (see, among other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001, unpublished). In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court observes that there is no element in the file suggesting that the applicant has incurred, before the domestic courts, any extra costs and expenses because of the length of the proceedings. The Court accordingly dismisses the claim.

### D. Default interest

96. 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 (see the case of *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;
2. *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 3,000 (three thousand euros) in respect of non-pecuniary damage, 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 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;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President