



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

FOURTH SECTION

CASE OF E.O. and V.P. v. SLOVAKIA

(Applications nos. 56193/00 and 57581/00)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

27/07/2004

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 E.O. and V.P. v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 30 March 2004,

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

PROCEDURE

1. The case originated in two applications (nos. 56193/00 and 57581/00) 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 Ms E.O., a Slovakian national ("the first applicant") and Mr V.P., a Czech national ("the second applicant"), on 3 December 1999 and 11 May 2000 respectively.

2. The applicants were represented by Mr I. Gažík, a lawyer practising in Prievidza. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák as from 1 April 2003.

3. The applicants alleged, in particular, that their rights under Articles 6 § 1, 8 and 13 had been violated in the context of proceedings concerning the right to educate a child of whom the first applicant is the grand-mother and who is the daughter of the second applicant.

4. The applications were 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 cases (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). These cases were assigned to the newly composed Fourth Section (Rule 52 § 1).

6. The Chamber decided to join the proceedings in the applications (Rule 42 § 1).

7. By a decision of 16 September 2003, the Court declared the applications partly admissible.

8. On 9 October 2003 the President of the Chamber granted leave to Ms Z.M., the mother of the child whose education was at stake in the proceedings under consideration, to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3, as in force at the relevant time).

9. On 8 December 2003, after having consulted the applicants, the President of the Chamber acceded to the request of Ms Z.M. that the identity of the applicants and the members of the child's family should not be disclosed to the public (Rule 47 § 3). At the same time the President of the Chamber made a ruling under Rule 33 § 1 to the effect that the relevant documents included in the file should remain confidential.

10. The applicants and the Government each filed observations on the merits (Rule 59 § 1). In addition, third-party comments were received from Ms Z.M.. The applicants replied to those comments (Rule 44 § 5).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. On 8 January 1996 the first applicant filed an action claiming that she should be granted the right to educate her granddaughter of whom the second applicant is the father.

12. The girl, who had been born to the first applicant's daughter, was then fourteen years old. The marriage of the second applicant and the first applicant's daughter had been terminated by a decision which had become final on 18 July 1985. The decision granted the custody of the child to the mother. In 1993 the mother married abroad and established her and her daughter's permanent residence there. At the time when the first applicant brought her action, the child and the mother were on a temporary stay in Slovakia.

13. In her action of 8 January 1996 the first applicant relied on Section 45 of the Family Act and explained that her daughter had failed to take proper care of the girl. She further submitted that the second applicant was in agreement with her proposal. She also claimed that the parents be ordered to contribute to the child's maintenance.

14. In January and February 1996 the Dunajská Streda District Court took several procedural steps. On 14 February 1996 the District Court appointed the Veľký Meder District Office to represent the interests of the child in the context of the proceedings. On 19 February 1996 the child's mother appealed against this decision. She claimed that the child's father

was in arrears with payment of maintenance and that the officials of the District Office had failed to take appropriate action in that respect.

15. The District Court had also before it a request for adoption of the child lodged by the husband of the child's mother. The request was later withdrawn and the proceedings discontinued.

16. A hearing scheduled for 28 February 1996 had to be adjourned as the child's mother was ill.

17. The court heard the parties on 15 April 1996. On that date the second applicant joined the proceedings and claimed that the first applicant's action be granted.

18. In April and May 1996 the child's mother sought to disqualify the judge dealing with the case as well as the entire bench of the District Court. For this reason the hearing scheduled for 13 May 1996 was adjourned. The case file was submitted to the Trnava Regional Court for a decision on the request for disqualification of the judges.

19. Subsequently the girl was placed in a psychiatric hospital.

20. On 31 May 1996 the District Office in Veľký Meder issued an interim measure ordering that the child was to be temporarily placed in the first applicant's care. Reference was made to the conclusions of a psychiatrist who treated the child. The decision stated that the child's mother had married abroad in 1993 and that since then the relations between the child and the mother had deteriorated. According to the decision, the girl had expressed the wish to live with her grandparents.

21. The child's mother refused to comply with the order. Upon the child's release from the psychiatric hospital the mother and the girl went abroad to where their place of permanent residence was.

22. On 4 July 1996 the Dunajská Streda District Prosecutor joined the proceedings.

23. On 11 July 1996 the Regional Court sent the file back to the District Court and instructed it to invite the child's mother to specify her objection to the District Court judges. Subsequently the police informed the District Court that the child and her mother had left Slovakia in June 1996.

24. On 26 August 1996 the first applicant requested the District Court to issue an interim measure granting her the custody of the child pending the outcome of the proceedings.

25. The case file was again sent to the Regional Court in September 1996. On 18 October 1996 the Regional Court returned the file to the District Court after having decided that the latter's judges were not biased.

26. A hearing before the District Court was held on 28 November 1996. Following their arrival for another temporary stay in Slovakia, the District Court heard the mother and her husband on 5 December 1996. It also heard the girl on 10 December 1996.

27. On 18 December 1996 the case was adjourned and on 19 December 1996 the District Court dismissed the first applicant's request

for an interim measure to be issued. The decision stated that at that time the mother and the child lived in Slovakia. The court noted that the girl had stated before it, on 10 December 1996, that she wished to stay with her mother.

28. On 16 January 1997 the court heard witnesses.

29. On 30 January 1997 the court appointed an expert with a view to obtaining an opinion on the child.

30. On 13 February 1997 the expert informed the District Court that she was not in a position to submit an opinion because of a heavy workload.

31. The second applicant requested that his daughter be prevented from travelling abroad without his consent. On 21 February 1997 the District Court dismissed the request.

32. Hearings were scheduled for 18 February 1997 and 6 March 1997. On the latter date the District Court heard the parties. The case was adjourned as the court considered it necessary to obtain an expert opinion.

33. On 7 March 1997 the child's mother filed an appeal "against all decisions" delivered by the judge dealing with the case.

34. On 10 March 1997 the second applicant appealed against the District Court's decision of 21 February 1997. He also claimed that his right to meet his daughter should be determined by the court.

35. On 20 March 1997 the mother of the child requested that further documentary evidence be taken.

36. On 1 April 1997 the case was assigned to a different judge.

37. On the same day the second applicant's daughter informed the court in writing that she did not wish to meet her father and that she lived abroad where she was undergoing treatment.

38. On 13 May 1997 the District Court submitted the case file to the Trnava Regional Court for a decision on the appeals filed by the parties. On 23 June 1997 the Regional Court returned the file to the District Court and asked the latter to ensure that formal shortcomings in the mother's appeal of 7 March 1997 be eliminated. It further dismissed the child's appeal against the decision on appointment of an expert and quashed the above District Court's decision of 21 February 1997.

39. On 4 July and on 5 August 1997 the judge asked the mother of the child to eliminate shortcomings in her submissions.

40. On 15 September 1997 the grandfather of the child informed the court that his daughter and granddaughter were staying abroad.

41. On 24 October 1997 the second applicant informed the court that his former wife had left Slovakia, together with their daughter, on 6 May 1997.

42. In November 1997 and in January 1998 the court attempted to establish the address of the child and her mother. The information was submitted to it by the police on 29 January 1998.

43. On 24 February 1998 the District Court issued an interim measure in which, *inter alia*, it prohibited the mother and the child from travelling

abroad. At that time both the mother and the child were abroad. On 25 March 1998 the husband of the child's mother appealed against this decision. The applicants and the child's mother also appealed.

44. On 14 April 1998 the case file was submitted to the President of the Trnava Regional Court. He returned the file to the District Court on 7 May 1998.

45. On 8 July 1998, after having taken several procedural steps, the District Court re-submitted the file to the Regional Court for a decision on the appeals against the decision of 24 February 1998.

46. On 26 August 1998 the Trnava Regional Court quashed the District Court's decision to the extent that it prohibited the mother and the child from travelling abroad. The case file was returned to the District Court on 4 September 1998. On 11 November 1998 and on 10 March 1999 the judge arranged for the Regional Court's decision to be served on the parties.

47. On 28 October 1998 the child's mother requested that further evidence be taken. On 10 December 1998 she informed the District Court that she had withdrawn the authority of her husband to represent her in the proceedings.

48. The District Court judge dealing with the case was ill for considerable periods of time between August 1998 and January 1999 and also between March and May 1999.

49. On 21 April 1999 the Constitutional Court found that the first applicant's constitutional right to a hearing without undue delays had been violated. In its decision the Constitutional Court admitted that the length of the proceedings was due, to a certain extent, to the behaviour of the child's mother and her husband. However, the case was not particularly complex and what was at stake in the proceedings called for particular diligence. The Constitutional Court further noted that the District Court had caused undue delays in the proceedings in that, by failing to issue in time an interim measure restricting the mother's and the child's right to travel abroad, it had brought about the need to ask foreign authorities for assistance. Furthermore, by the time the Constitutional Court decided on the case, the District Court judge had not yet arranged for such a request to be sent to the authorities concerned.

50. The Constitutional Court's decision stated that the District Court had not proceeded with the case efficiently in that it had failed to take evidence, including an expert opinion, required for a decision on the case. Delays in the proceedings had also arisen as a result of the ordinary courts' failure to decide on the requests for an interim measure to be issued within the statutory time-limit. Finally, the Constitutional Court noted that the District Court had failed to take any effective action in the case since 4 September 1998.

51. On 3 September 1999 the District Court judge prepared a request for assistance which was to be submitted to foreign authorities through the Ministry of Justice.

52. By two decisions delivered on 21 January 2000 the Dunajská Streda District Court discontinued both the proceedings on the first applicant's claim of 8 January 1996 and on the second applicant's claim of 10 March 1997. The decisions stated that the second applicant's daughter had reached her majority at the end of 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

53. Article 16(1) guarantees to everyone the respect for his or her privacy.

54. Pursuant to Article 19(1), everybody has the right to protection of human dignity, personal honour as well as of good reputation and name. Paragraph 2 of Article 19 provides that everybody has the right to protection against unjustified interference with his or her private and family life. Paragraph 3 of Article 19 guarantees the right to protection against unjustified collection, publication or other misuse of data about his or her person.

55. Article 48(2) provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

56. Pursuant to Article 130(3), as in force until 30 June 2001, the Constitutional Court could commence proceedings upon a petition ("*podnet*") presented by any individual or a corporation claiming that their rights had been violated. According to its case-law under the former Article 130(3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48(2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

57. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127. Under this provision the Constitutional Court has the power, in the event that it finds a violation of Article 48(2) of the Constitution, to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to the person whose constitutional rights have been violated as a result of excessive length of proceedings (for further

details see, e.g., *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002).

B. The Civil Code

58. According to Article 11, every natural person has the right to protection of his or her personality, in particular of his or her life and health, civil and human dignity, privacy, name and personal characteristics.

59. Pursuant to Article 13(1), every natural person has the right to request that an unjustified infringement of his or her personal rights should be stopped and the consequences of such infringement eliminated, and to obtain appropriate satisfaction.

60. Article 13(2) provides that in cases where the satisfaction obtained under Article 13(1) is insufficient, in particular because a person's dignity and position in society has been considerably diminished, the injured person is entitled to compensation for non-pecuniary damage. According to paragraph 3 of Article 13, when determining the amount of such compensation the courts have to take into account the seriousness of the prejudice suffered by the person concerned and also the circumstances under which the violation of that person's rights occurred.

C. The Family Act

61. Pursuant to Section 45(1), a court may empower a person other than parents to educate a child when the interests of the child so require and provided that such a person offers the guarantee of educating the child in an appropriate manner. In doing so the court shall determine the scope of rights and obligations such a person shall have in respect of the child.

D. The Code of Civil Procedure

62. Under Section 176, courts shall ensure that parents or guardians take proper care of persons under age. They shall examine information and respond to petitions submitted by citizens or legal persons which concern the education of a minor and take appropriate measures in that respect.

E. The relevant domestic practice and legal opinions

63. In decision No. II. ÚS 47/97 of 27 October 1997 the Constitutional Court found, in proceedings under Article 130(3) of the Constitution, a violation of provisions of the Convention on the Rights of the Child in conjunction with Article 19(2) of the Constitution. The decision stated that a

social care authority had failed to take appropriate action with a view to preventing a minor from repeated attacks by other children from the neighbourhood. Prior to addressing herself to the Constitutional Court the child's mother sought redress with the police and with a public prosecutor. In the proceedings before the Constitutional Court the administrative authority concerned unsuccessfully argued that the case fell within the jurisdiction of the ordinary courts.

64. In decision No. I. ÚS 22/01 of 10 July 2002 the Constitutional Court found a violation of Article 19(2) of the Constitution on the ground that an administrative authority had included a minor's name on the register of juvenile delinquents and that the police and a public prosecutor had acted erroneously in that context. In deciding on the case the Constitutional Court also had regard to the Court's case-law under Article 8 of the Convention. Prior to bringing the case to the Constitutional Court the persons concerned did not seek redress before the ordinary courts.

65. In decision No. I. ÚS 9/00 of 22 March 2000 the Constitutional Court expressed the view that ordinary courts are obliged, in the context of civil proceedings, to interpret and to apply the relevant laws in accordance with the Constitution and with an international treaty. According to the decision, ordinary courts are therefore primarily responsible for respecting rights and fundamental freedoms guaranteed by the Constitution or an international treaty.

66. In decision No. I. ÚS 2/00 of 5 January 2000 the Constitutional Court declared inadmissible a petition in which the plaintiff alleged a violation of Article 19 of the Constitution in that public authorities systematically requested that he should submit his higher education diploma to them. The decision stated that the plaintiff should have sought the protection of the alleged violation of his rights under Article 19(1) of the Constitution by means of an action for protection of his personal rights pursuant to Article 11 et seq. of the Civil Code.

67. In decision No. II. ÚS 23/00 of 23 March 2000 the Constitutional Court rejected, for lack of jurisdiction, a petition in which the plaintiff had complained about a violation of his rights under Article 19(2) and (3) of the Constitution on the ground that the Minister of Justice had asked him to submit, as president of a District Court, information about his material situation. The Constitutional Court held that the issue fell within the jurisdiction of the ordinary courts which had power to deal with it under Articles 11 et seq. of the Civil Code.

68. In decision No. II. ÚS 94/95 of 13 December 1995 the Constitutional Court held that the purpose of the right to privacy under Article 16 of the Constitution was not only to protect rights guaranteed by Articles 11 et seq. of the Civil Code, but also to prevent unjustified interference by public authorities with individuals' private lives. The purpose of the constitutional right to privacy corresponded to, *inter alia*, Article 8 of the Convention.

69. In this context a former constitutional judge expressed the view that the constitutional right to privacy was not identical with the right to privacy guaranteed by the Civil Code. The latter was a part of the former. However, other legal provisions, such as those included in the Family Act, were also relevant for compliance with the constitutional right of privacy (see J. Drgonec - *Základné práva a slobody podľa Ústavy Slovenskej republiky*, 1997).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

70. The Government contended, as they did at the admissibility stage, that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention as they had not sought redress by means of an action under Article 11 et seq. of the Civil Code as regards the alleged violation of Article 8 of the Convention. In the Government's view, that remedy was effective within the meaning of the Court's case-law as it gave the applicants the opportunity to have the unjustified interference with their personal rights stopped and also to obtain financial compensation for any non-pecuniary damage which they may have suffered. That remedy was thus also capable of remedying the negative consequences of the protracted length of the proceedings complained of.

71. The Government pointed out that the Constitutional Court also required the exhaustion of that remedy prior to entertaining complaints under Article 19 of the Constitution which guarantees, *inter alia*, the right to respect for one's private and family life. They referred, in particular, to the Constitutional Court's decisions No. I. ÚS 2/00, No. I. ÚS 9/00 and No. II. ÚS 23/00.

72. The applicants contended that an action under Article 11 et seq. of the Civil Code had not offered reasonable prospects of success to them. The relevant provisions did not mention the right to one's family life as an object of its protection and there existed no practice of ordinary courts showing that the remedy was effective in such cases. The Constitutional Court's decisions invoked by the Government concerned, according to the applicants, different subject-matters related to an active interference by public authorities with the petitioner's right to privacy.

73. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The

existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, pp. 2275-76, §§ 51-52, and the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

74. As regards the Constitutional Court's practice on which the Government relied, the Court notes that decision No. I. ÚS 2/00 was given on 5 January 2000, that is shortly before the proceedings under consideration were discontinued on 21 January 2000, and that decisions No. II. ÚS 23/00 and No. I. ÚS 9/2000 were given thereafter, in March 2000. In the relevant proceedings the plaintiffs alleged, either explicitly or in substance, principally a violation of their right to respect for their private life. In case No. I. ÚS 2/00 the plaintiff complained that public authorities systematically requested him to submit his higher education diploma to them. In case No. II. ÚS 23/00, the plaintiff complained about a violation of his rights under Article 19(2) and (3) of the Constitution on the ground that the Minister of Justice had asked him to submit, as president of a District Court, information about his material situation. In both cases the Constitutional Court held that the issue fell within the jurisdiction of the ordinary courts which had power to deal with it under Articles 11 et seq. of the Civil Code (see paragraphs 65-67 above).

75. The Court further notes that the Constitutional Court has not taken the same approach to cases in which, as in the present one, the point at issue was maladministration affecting the rights of minors and of their close relatives. In particular, in decision No. II. ÚS 47/97 delivered on 27 October 1997 that is when the proceedings under consideration were still pending it found a violation of, *inter alia*, Article 19(2) of the Constitution on the ground that a social care authority had failed to take appropriate action with a view to preventing a minor from repeated attacks by other children. The Constitutional Court did not refer the plaintiff to proceedings before ordinary courts despite the defendant authority's argument to that effect.

76. Similarly, in decision No. I. ÚS 22/01 of 10 July 2002 the Constitutional Court found a violation of Article 19(2) of the Constitution on the ground that an administrative authority had included a minor's name on the register of juvenile delinquents and that the police and a public prosecutor had acted erroneously in that context. The Constitutional Court dealt with the merits of the case without requiring that the plaintiffs should have sought redress under Article 11 et seq. of the Civil Code.

77. In these circumstances, and in the absence of any indication that, at the relevant time, it has been the ordinary courts' practice to provide effective redress to plaintiffs in cases similar to the present one in the context of proceedings under Article 11 et seq. of the Civil Code, the Court is not satisfied that the remedy invoked by the Government offered the applicants any reasonable prospect of success.

78. The Government's objection must therefore be dismissed.

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

79. The applicants complained that the length of the proceedings was excessive and that their right of access to a court had been violated in that the domestic courts had failed to determine the merits of their action. They relied on Article 6 § 1 of the Convention the relevant part of which provides:

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

80. The Government admitted undue delays in the proceedings but considered that the case only raised an issue under Article 8 of the Convention and that a separate examination of the complaints under Article 6 § 1 was not called for.

81. The applicants disagreed and maintained that the Court should entertain their complaints under Article 6 § 1. They contended that their right to access to a court and to a hearing within a reasonable time had been violated.

82. The Court notes that in its decision on the admissibility of the applications it declared admissible, *inter alia*, the applicants' complaints under Article 6 § 1. It therefore will determine those complaints.

A. As regards the length of the proceedings

83. The proceedings on the first applicant's claim started on 8 January 1996 and ended on 21 January 2000. The period under consideration in respect of the first applicant therefore lasted 4 years and 13 days. The second applicant joined the proceedings on 15 April 1996. The period under consideration in respect of his complaint therefore lasted 3 years, 9 months and 6 days.

84. The Court recalls 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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).

85. The applicants' action was prompted by their concern about the education of their granddaughter and daughter respectively. What was at stake in the case therefore called for particular diligence. The Court notes that no particular delays in the proceedings can be imputed to the applicants. It concurs with the Constitutional Court's finding of 21 April 1999 that the way in which the Dunajská Streda District Court had dealt with the case had unduly and in a substantial manner delayed the proceedings (see paragraphs 49 and 50 above). This was not contested by the Government.

86. The foregoing considerations are sufficient to enable the Court to conclude that the applicants' case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. As regards the right of access to a court

87. The Court notes that, unlike in the case of *W. v. the United Kingdom* (no. 97492/82, judgment of 8 July 1987, Series A no. 121, § 82) the applicants in the present case do not complain that the scope of Slovakian courts' jurisdiction to examine their action was insufficient. Their complaint about a violation of their right of access to a court concerns the domestic courts' failure to determine the merits of their action. That failure was due to the fact that the proceedings had to be discontinued, after approximately four years, as the child whose custody was in issue had reached the age of majority.

88. In these circumstances, and in view of the above finding that there has been a violation of Article 6 § 1 of the Convention as a result of excessive length of the proceedings, the Court does not consider it necessary to examine separately this complaint.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

89. The applicants complained that the District Court's failure to proceed with the case in an appropriate manner resulted in a violation of their right to respect for their private and family life. They relied on Article 8 of the Convention the relevant part of which provides:

“1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

90. The Government referred to the Court's judgment in the case of *W. v. the United Kingdom* (cited above) and expressed the view that Article 8 of the Convention had been violated as a result of delays in the proceedings.

91. The applicants submitted that by their action they had sought to protect the health of the child and to ensure appropriate family environment to her. They submitted that the child's mother had had psychological problems as a result of which her behaviour had been unpredictable and unstable.

The first applicant provided psychological and material support to her granddaughter and they had very good personal relations when they were able to meet. The second applicant, who did not have sufficient means and was often on travel due to his professional obligations, joined the first applicant in her claim with a view to providing appropriate care to his daughter.

The applicants concluded that their rights under Article 8 had been violated as a result of the domestic courts' failure to determine their action.

92. Ms Z.M., the child's mother, submitted that the first applicant had had a reckless attitude towards her own marriage and family and that she had abused the child whose education was at stake physically and emotionally. Following such abuses in 1996, the child exhibited aggressive and self-destructive behaviour and was in need of medical attention.

In respect of the second applicant, Ms Z.M. alleged that he had not paid in full the maintenance in respect of their child and that he had abused her in the past, even in the presence of the child.

Finally, Ms Z.M. argued that she provided adequate care and education to her daughter who lived with her since her birth and concluded that no genuine need had existed for placing the child in other person's custody.

93. Having regard to the circumstances of the case and to its above finding on the applicants' complaint under Article 6 § 1 relating to the length of the proceedings (see paragraph 86 above), the Court considers that it is not necessary to examine the issues raised under Article 8 of the Convention (see, among other authorities, *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

94. The applicants complained that they had no effective remedy at their disposal in respect of their complaint about the length of the proceedings. They invoked Article 13 of the Convention which provides:

“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.”

95. The Government maintained that the applicants had an effective remedy at their disposal, namely an action for protection of their personality rights under Article 11 et seq. of the Civil Code.

96. The applicants refuted the Government's argument. They pointed out that the Constitution had been amended, with effect from 1 January 2002, as a result of which the Constitutional Court was entitled to grant compensation for damage of a non-pecuniary nature to successful plaintiffs. In their view, had an action under Article 11 et seq. of the Civil Code been an effective remedy as argued by the Government, such an amendment would not have been necessary and the Constitutional Court would have rejected their complaint filed under Article 130(3) of the Constitution for failure to exhaust the remedy invoked by the Government.

97. The Court has examined this complaint in conjunction with the applicants' complaint under Article 6 § 1 about the length of the proceedings. It has found above that the remedy on which the Government relied did not offer reasonable prospects of success to the applicants. Furthermore, it has held earlier that prior to a constitutional amendment which entered into force on 1 January 2002 there existed no effective remedy in Slovakia in respect of complaints about excessive length of proceedings (see *Číž v. Slovakia*, no. 66142/01, §§ 74 and 75, 14 October 2003, with further references).

98. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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.”

100. The applicants claimed compensation for non-pecuniary damage and for costs and expenses.

A. Damage

101. The first and the second applicant claimed 1,000,000 [The equivalent of approximately 24,700 euros] and 600,000 [The equivalent of approximately 14,820 euros] Slovakian korunas (SKK) respectively in

compensation for non-pecuniary damage which they had suffered as a result of the alleged violations of their Convention rights.

102. The Government considered the sums claimed to be excessive.

103. The Court considers it appropriate to award 3,200 euros (EUR) to the first applicant and EUR 3,000 to the second applicant in compensation for non-pecuniary damage.

B. Costs and expenses

104. The first applicant claimed SKK 270,000 [The equivalent of approximately 6,670 euros] for the costs and expenses incurred before the domestic courts and SKK 250,000 for those incurred before the Court. The second applicant claimed SKK 50,000 [The equivalent of approximately 1,235 euros] in respect of the proceedings before the Dunajská Streda District Court and SKK 100,000 in respect of the proceedings before the Court.

105. The Government contended that the applicants had not incurred, before the domestic courts, any extra costs because of the alleged violation of their Convention rights. The Government further argued that the sums claimed in respect of the proceedings before the Court were not reasonable as to the quantum and that the applicants had not shown that those sums had been necessarily incurred by them.

106. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court accepts that the first applicant incurred costs and expenses in respect of the proceedings before the Constitutional Court in which she complained about the length of the proceedings. As to the proceedings before it, the Court notes that the applications concern the same subject-matter and that the applicants were represented by the same lawyer.

In view of these considerations and regard being had to the information in its possession, the Court considers it reasonable to award the global sum of EUR 2,000 covering costs under all heads.

C. Default interest

107. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings;
3. *Holds* that it is unnecessary to examine separately the applicants' complaint under Article 6 § 1 of the Convention that their right of access to a court was violated;
4. *Holds* that it is unnecessary to examine the complaint under Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Slovakian korunas at the rate applicable at the date of settlement:
 - (i) EUR 3,200 (three thousand two hundred euros) to the first applicant in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) to the second applicant in respect of non-pecuniary damage;
 - (iii) the global sum of EUR 2,000 (two thousand euros) in respect of costs and expenses incurred by both applicants;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President