



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

FOURTH SECTION

**CASE OF TOMKOVÁ v. SLOVAKIA**

*(Application no. 51646/99)*

JUDGMENT

STRASBOURG

13 July 2004

**FINAL**

*13/10/2004*

*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 Tomková v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,  
Mrs V. STRÁŽNICKÁ,  
Mr J. CASADEVALL,  
Mr R. MARUSTE,  
Mr L. GARLICKI,  
Mrs E. FURA-SANDSTRÖM,  
Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 22 June 2004,

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

## PROCEDURE

1. The case originated in an application (no. 51646/99) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mrs Marcela Tomková ("the applicant"), on 3 February 1999.

2. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský to whom Mr P. Kresák succeeded on 1 April 2003.

3. On 1 October 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Trebišov.

5. The applicant was employed at the Mining Faculty of the Technical University in Košice. On 29 March 1993 she was given a notice concerning termination of her employment as, due to restructuring, her position had become redundant.

6. On 24 April 1993 the applicant challenged the dismissal before the Košice I District Court (*Okresný súd*).

7. On 28 July 1993 the District Court sent a copy of the action to the defendant – the applicant’s employer – and requested that it submit its observations in reply within ten days. The defendant did so on 3 August 1993.

8. On 3 September 1993 the District Court requested that the defendant submit documentary evidence within seven days. The defendant replied on 10 September 1993.

9. On 20 October 1993 the District Court requested that the defendant submit further documentary evidence within five days.

10. On 25 October 1993 the defendant informed the District Court that the applicant’s action was identical with another action before the same court and proposed that both actions be joined. On 2 November 1993 it replied to the District Court’s request of 20 October 1993.

11. On 31 January 1994 the President of the District Court assigned the case to another Chamber of that court.

12. A hearing listed for 12 January 1995 had to be adjourned as the applicant did not appear. A new hearing was called for 2 February 1995.

13. On 2 February 1995 the District Court held a hearing at which it heard the parties. It was adjourned until 23 March 1995. The parties were invited to submit documentary evidence and the District Court decided to call witnesses.

14. On 9 February 1995 the applicant extended the scope of her action in that she also claimed compensation for wages lost as a consequence of her dismissal.

15. On 22 March 1995 the defendant requested that the hearing listed for the following day be postponed as two of the witnesses who had been called and who were its employees could not attend. The hearing scheduled for 23 March 1995 was consequently adjourned *sine die*.

16. On 8 June 1995 the District Court held another hearing at which the parties and one witness were heard. Another witness who had apologised for being unable to attend did not appear. The hearing was adjourned until 28 September 1995 with a view to calling that witness.

17. On 28 September 1995 another hearing was held at which the District Court heard the above witness. It was adjourned until 23 November 1995 in order that the defendant might submit additional documentary evidence.

18. On 23 November 1995 the District Court held another hearing which the applicant did not attend. Following this hearing, on the same day, the District Court dismissed the action. It found that the procedural and material legal requirements for a dismissal had been satisfied in the applicant’s case. The judgment was served on the defendant on 12 January and on the applicant on 13 January 1996.

19. On 19 January 1996 the applicant lodged an appeal. She submitted the reasons for her appeal on 13 February 1996. She contested the District Court's judgment on the grounds that it was based on findings which, according to her, were not proven by the evidence submitted. In the event that the court of appeal upheld the District Court's judgment, the applicant requested that it grant her leave to appeal on points of law.

20. On 26 February 1996 the District Court invited the defendant to file its observations in reply to the appeal. The defendant replied on 11 March 1996.

21. On 12 March 1996 the applicant submitted further reasons for her appeal. In substance, she contested the District Court's judgment on the ground that, in her opinion, there was not enough evidence to prove that her dismissal had been in accordance with the relevant law.

22. On 2 April 1996 the District Court transmitted the case-file to the Košice Regional Court (*Krajský súd*) for a decision on the appeal.

23. In a letter of 23 May 1997 the applicant demanded that the Regional Court deal with her case promptly.

24. On 30 October 1997 the Regional Court held a hearing on the appeal at which the parties were heard. The hearing was adjourned and the Regional Court invited the defendant to submit further evidence within fifteen days. The defendant replied on 10 November 1997.

25. A hearing on the appeal scheduled for 17 November 1997 had to be adjourned as the applicant did not appear and it was not clear whether the summons had been duly served on her. The Regional Court however again requested the defendant to submit further evidence. The defendant replied on 28 November 1997.

26. Further hearings on the appeal which were fixed for 18 December 1997 and 29 January 1998 had to be cancelled as the applicant did not appear and, again, it was not clear whether the summons had been duly served on her.

27. On 22 April 1998 the Regional Court listed a hearing on the appeal for 28 May 1998. On 4 May 1998 the Regional Court requested that the summons for that hearing be served on the applicant by the Police. On 17 May 1998 the Košice – Staré mesto County Police Department informed the Regional Court that, despite several attempts, they had been unable to reach the applicant at her permanent residence.

28. On 28 May 1998 the Regional Court held further hearing on the appeal. The applicant did not attend. The Regional Court was however satisfied that the summons had been duly served on her by alternative means, i.e. that it had been deposited with the competent post office and the applicant had duly been given a written notice to that effect at the address of her permanent residence. Following this hearing, on the same day, the Regional Court upheld the judgment of the District Court. It found the latter's judgment factually and legally correct and considered the appeal

unfounded. The Regional Court did not address the applicant's request for leave to appeal on points of law. The judgment of the Regional Court was served on the defendant on 23 July 1998 and on the applicant on 5 August 1998. No appeal lay against it and, upon its service on the parties, it became final and binding.

29. On 24 August 1998 the applicant filed an appeal on points of law (*dovolanie*) arguing that the District Court and the Regional Court had assessed the evidence incorrectly and had drawn wrongful legal conclusions.

30. On 14 September 1998 the District Court instructed the applicant to appoint a lawyer within ten days as legal representation was mandatory in proceedings on appeals on points of law. On the same day, it sent a copy of this appeal to the defendant and invited the latter to present observations in reply within ten days. The defendant replied on 28 September 1998.

31. As it was not possible to serve the request of 14 September 1998 on the applicant by regular means, on 28 October 1998 the District Court requested that it be served by the Police. The County Police Department informed the District Court on 9 November 1998 that the request had not been served as the applicant was not staying at her permanent residence.

32. In the meantime, on 19 October 1998, the applicant's lawyer submitted further reasons for the appeal on points of law.

33. On 1 December 1998 the applicant's lawyer appeared before the District Court and confirmed that she was representing the applicant in the proceedings on her appeal on points of law. On 10 December 1998 the District Court submitted the case-file to the Supreme Court for a decision on that appeal.

34. On 17 December 1998 the Supreme Court declared the applicant's appeal on points of law inadmissible. By virtue of Article 242 (1) of the Code of Civil Procedure it examined *ex officio* whether the proceedings were not vitiated by the procedural flaws set out in Article 237 of that Code. It found no such flaws and observed that the appeal was neither admissible on any of the admissibility grounds pursuant to Article 238 of the Code. The Supreme Court thus did not examine the merits of the case. The decision was served on the defendant on 9 February and on the applicant's lawyer on 10 February 1999.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *The Code of Civil Procedure*

35. Part Four governs legal remedies. Appeals on points of law (*dovolanie*) are regulated in Head Three of that Part.

36. Under Article 236 an appeal on points of law lies against final and binding decisions of appellate courts if some of the statutory admissibility criterion are met.

37. The general admissibility criterion, i.e. those applicable to both judgments (*rozsudok*) and resolutions (*uznesenie*), are set out in Article 237. These comprise situations (a) where the courts decided in a matter outside their jurisdiction; (b) where a person who acted as a party to the proceedings lacked legal capacity to be a party to court proceedings; (c) where a party to the proceedings lacked capacity to act in court proceedings and was not duly represented; (d) where the courts decided in a matter which had been *res iudicata* or which had already been pending in another proceedings (*lis pendens*); (e) where the proceedings could only commence by way of an action and no such action was actually filed; (f) where the courts prevented a party to the proceedings from acting before them; and (g) where the case was decided upon by an excluded judge or where the composition of the court was incorrect.

38. In addition to the above general admissibility criteria, special admissibility criteria apply if the court of appeal decided in the form of a judgment. These are defined in Article 238. Its paragraph 1 provides for an appeal on points of law if the appellate court overturned the judgment of a first instance court. In accordance with its paragraph 2, an appeal on points of law also lies against a judgment of the appellate court in which the latter did not follow the binding legal view previously expressed in the same matter by the court of cassation. Under paragraph 3 (a), an appeal on points of law is also admissible against a judgment of an appellate court in which it upholds a judgment of a first instance court and, at the same time, it rules that such an appeal is admissible as the case concerns a matter of particular legal importance. Finally, under paragraph 3 (b), an appeal on points of law is also admissible against a second judgment of an appellate court in which it upholds a second judgment of a first instance court if, in the second round, the first instance court decided differently than in its first judgment (which had been quashed by the first decision of the court of appeal) because it was bound by the legal view expressed by the court of appeal in its first judgment. This rule applies also to the third and, as the case may be, subsequent judgments of the court of appeal.

39. Pursuant to Article 241 (1) a person who appeals on points of law must be legally represented.

40. In accordance with Article 242 (1) the scope of the examination of an appeal on points of law by the court of cassation is in principle limited to the grounds of appeal submitted by an appellant. Except for flaws listed under Article 237 and flaws that have resulted in an incorrect decision on the merits, the court of cassation does not review *ex officio* any procedural flaws that have not been complained of by an appellant.

## THE LAW

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

41. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

42. The Government accepted that the application was not manifestly ill-founded. They however asserted that the period under consideration did not comprise the proceedings on the applicant’s appeal on points of law. They pointed out that, in the applicant’s case, no appeal on points of law had actually been available. This was reflected in the finding of the Supreme Court in its inadmissibility decision of 17 December 1998. They concluded that the proceedings on this remedy could not be considered as involving a “determination of the applicant’s civil rights and obligations”. Consequently, they should not enjoy the protection of the Article invoked.

43. The applicant reiterated her complaint.

44. As to the period to be taken into consideration, the Court observes that it has not been disputed between the parties that this period commenced on 24 April 1993 when the applicant lodged her action. The Court sees no reason for reaching a different conclusion.

45. As regards the end of the period under consideration and the above argument of the respondent Government, the Court reiterates that for Article 6 § 1, in its “civil” limb, to be applicable there must be a dispute (*contestation*) over a “right” that 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. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

46. In the present case there was no dispute that the proceedings at issue as such fell within the purview of Article 6 of the Convention. The Government’s argument concerns solely the applicant’s appeal on points of law in these proceedings. The Court observes that the Code of the Civil Procedure, in its Part Four, Head Three, provides for such a remedy. The applicant filed it in context of an undoubtedly serious and genuine dispute over her dismissal from work. On this appeal, the Supreme Court examined, by virtue of Article 242 (1) of the Code of the Civil Procedure and *ex officio*

whether the proceedings were not vitiated by the procedural flaws set out in Article 237 of that Code. Having also examined the arguments put forward by the applicant, it concluded that the appeal was not admissible on any of the remaining admissibility grounds. However, had the Supreme Court found the appeal admissible, it would have examined the case on its merits. The outcome of such an examination might unquestionably have had a direct effect on the right claimed by the applicant. The fact that the Supreme Court ultimately found that the statutory requirements for its dealing with the merits of the case were not met does not prevent the Court from examining also the length of the proceedings before the court of cassation. The Government's argument can thus not be sustained.

47. The Court therefore finds that the period under consideration ended on 17 December 1998. It thus lasted 5 years, 7 months and 23 days.

#### **A. Admissibility**

48. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### **B. Merits**

49. The Government maintained that the case was not of a particular factual, procedural or legal complexity that would justify the overall length of the proceedings. They also accepted that the District Court had been inactive between 18 October 1993 and 14 December 1994 and the Regional Court between 2 April 1996 and 1 October 1997.

50. The Government asserted that, however, some delays in the proceedings had also been caused by the parties. In particular, due to the parties' failure to appear at some of the hearings, these hearings had to be adjourned. The Government further pointed out that there had been difficulties in delivering official mail to the applicant.

51. The Government finally expressed regret that the applicant had rejected their proposal to settle the matter.

52. The applicant maintained that she had several places of residence and that she was often travelling from one to another. She could not take part in the hearings on her appeal of December 1997 and January and May 1998 as she had never actually received any summons to them. In so far as the postal service left any notices in her mailbox, they might have been taken away by unauthorised persons as she never found any.

53. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the 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*, cited above, § 43).

54. The Court considers that, as acknowledged by the Government, the case was not particularly difficult to determine.

55. As to the applicant's conduct, the Court observes that she failed to attend the hearings held before the District Court on 12 January and 23 November 1995 and the hearings held/listed before the Regional Court on/for 17 November and 18 December 1997 and 29 January and 28 May 1998. The Court would note that, pursuant to the Police reports of 17 May and 9 November 1998, it was not possible to find the applicant at the place of her official permanent residence. As to the applicant's argument that she had several places of residence between which she was often travelling, the Court observes that the applicant did not appoint a representative to receive official communications nor did she take any other measures to facilitate communication with the courts.

56. As regards the conduct of the authorities, the Court observes that the case went once through courts at three levels of jurisdiction. As accepted by the Government, the court of first instance took no procedural steps from October 1993 to January 1995 (1 year and some 2 months). Afterwards it held four hearings (2 February, 8 June, 28 September and 23 November 1995) and another two (12 January and 23 March 1995) had to be adjourned due to absence of the applicant and a witness. Between the hearing held on 8 June 1995 and the following hearing held on 28 September 1995, 3 months and 20 days passed without any procedural acts on the part of the District Court.

57. After the case-file had been transmitted to the Regional Court in April 1996 for a decision on the appeal, the latter remained inactive until October 1997 (1 year and some 6 months). The Regional Court then held two hearings (30 October 1997 and 28 May 1998) and another three (17 November and 18 December 1997 and 29 January 1998) had to be adjourned due to problems with summoning the applicant.

58. Noting that the applicant's case concerned her employment as a source of her income, the Court is of the opinion that her situation and what was at stake for her in the proceedings called for special expedition.

59. Although the applicant herself contributed to the overall length of the proceedings to some extent, the foregoing considerations and, in particular, the importance of the subject-matter of the proceedings for the applicant are sufficient to enable the Court to conclude that her case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

### 60. 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

61. In respect of pecuniary damage, the applicant claimed 970,157<sup>1</sup> Slovakian korunas (SKK) as compensation for wages lost due to her dismissal. She also claimed an increase of her old-age pension in an amount of approx. SKK 1,500<sup>2</sup> per month as compensation for the loss of pension due to her dismissal and the consequent loss of wages. Without quantification, the applicant also claimed compensation in respect of non-pecuniary damage. Asserting that she had been prevented from carrying out skilled labour in her field of expertise, the applicant alleged that she had suffered distress which resulted in a deterioration in her health.

62. The Government invited the Court to dismiss the applicant’s claim in respect of pecuniary damage. They pointed out that the applicant’s dismissal was considered lawful by the domestic courts and that the applicant’s complaint of unfairness of the proceedings before them was rejected as being manifestly ill-founded. They finally asserted that there was no causal link between the non-pecuniary damage the applicant alleged to have suffered and the length of the proceedings which she complained of.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, on an equitable basis, it awards the applicant 2,500<sup>3</sup> euros (EUR) in respect of non-pecuniary damage.

### B. Default interest

64. 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.

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<sup>1</sup> SKK 970,157 is an equivalent of approximately EUR 24,000

<sup>2</sup> SKK 1,500 is an equivalent of approximately EUR 40

<sup>3</sup> EUR 2,500 is an equivalent of approximately SKK 101,000

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) to be converted into Slovakian korunas at the rate applicable at the date of settlement in respect of non-pecuniary damage, plus 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 13 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President