



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

FOURTH SECTION

CASE OF Z.M. AND K.P. v. SLOVAKIA

(Application no. 50232/99)

JUDGMENT

STRASBOURG

17 May 2005

FINAL

17/08/2005

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 Z.M. and K.P. v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr J. BORRERO BORRERO,
Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 26 April 2005,

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

PROCEDURE

1. The case originated in an application (no. 50232/99) 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 Mrs Z.M., the first applicant, and Ms K.P., the second applicant (together referred to as "the applicants") on 7 June 1999. The President of the Chamber acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court) and not to have publicly accessible the documents deposited with the Registry in connection with the application (Rule 33 of the Rules of Court).

2. The applicants were represented by Mr O.A.M., the husband of the first applicant, to whom the President of the Chamber gave leave to represent the applicants (Rule 36 § 4 (a) of the Rules of Court). The Slovakian Government ("the Government") were represented by their Agents, Mr P. Vršanský, succeeded by Mr P. Kresák as of 1 April 2003 and Mrs A. Poláčková as of February 2005.

3. The applicants alleged, in particular, violations of Articles 6, 8 and 13 of the Convention in connection with the length, course and outcome of the proceedings concerning the care and education of the second applicant and the proceedings to deprive the father of the second applicant of his parental rights in respect of her and the action for her adoption.

4. The application was allocated to the Fourth 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.

5. By a decision of 21 September 2004 the Court declared the application partially admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), and this case was allocated to the newly constituted fourth Section of the Court.

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

THE FACTS

8. The first applicant is the mother of the second applicant. The applicants were born in Slovakia in 1960 and 1981, respectively, and now live outside Slovakia. They both have Slovakian nationality and the nationality of the country of their permanent residence.

9. In 1985 the Bratislava 4 District Court (then *Obvodný súd*, at present *Okresný súd*) pronounced the first applicant's divorce from Mr P., the biological father of the second applicant. The second applicant was entrusted to the care and custody of the first applicant.

10. In 1993 the first applicant married Mr O.A.M. abroad and the applicants set up their permanent residence with him there.

11. On 8 January 1996 Mrs O., the mother of the first applicant, filed an action with the Dunajská Streda District Court claiming that she should be granted the right to educate the second applicant, her granddaughter. At that time the second applicant was fourteen years old and both applicants were in Slovakia on a temporary stay. Mr P. later joined the proceedings on the side of Mrs O.

12. On 14 February 1996 the District Court appointed the Veľký Meder District Office (*Okresný úrad*) to look after the second applicant's interests in the proceedings.

13. On 19 February 1996 the first applicant made several submissions to the District Court. She asserted that she and the second applicant were permanently residing outside Slovakia and that, in addition to Slovakian nationality, they also had the nationality of the country of their permanent residence. As they were staying in Slovakia only temporarily, the Slovakian courts had no jurisdiction to entertain the question of the education and care of the second applicant. The first applicant further expressed critical views as to the character of Mrs O. and Mr P. Finally, she lodged an appeal against the decision of 14 February 1996 arguing that officials of the District Office had previously failed to represent the second applicant's interests adequately and that they could not be expected to do so properly in the future.

14. In April and May 1996 the first applicant sought to disqualify the judge dealing with the case as well as all other judges of the District Court on grounds of bias. The hearing scheduled for 13 May 1996 had therefore to

be adjourned and the case-file was submitted to the Trnava Regional Court (*Krajský súd*) for a decision on the challenge.

15. On 27 May 1996 the first applicant filed a petition with the Bratislava Regional Court claiming that Mr P. should be deprived of his parental rights over the second applicant. According to the applicants, no decision has ever been taken in respect of this request.

16. On 31 May 1996 the District Office issued an interim measure ordering that the second applicant be temporarily placed in the care of Mrs O. The applicants claim that this measure was illegal and that it has never been served officially on them. The first applicant subsequently returned with the second applicant to their home abroad.

17. On 11 July 1996 the Trnava Regional Court sent the case-file back to the District Court instructing it to invite the first applicant to indicate which judges of the District Court she was challenging and why. Subsequently the police informed the District Court that the applicants had left Slovakia in June 1996.

18. On 26 August 1996 Mrs O. requested that the District Court issue an interim measure granting her the custody of the second applicant pending the outcome of the proceedings. The applicants have never been made officially aware of this request.

19. The case-file was again sent to the Trnava Regional Court in September 1996. The Regional Court decided that the District Court's judges were not biased and, on 18 October 1996, returned the case-file to the latter.

20. The District Court held a hearing on 28 November 1996.

21. Following their arrival for another temporary stay in Slovakia, the District Court heard the first applicant and Mr O.A.M. on 5 December 1996 and the second applicant on 10 December 1996.

22. On 18 December 1996 the case was adjourned and on 19 December 1996 the District Court dismissed Mrs O.'s request of 26 August 1996 for an interim measure. The District Court did so observing that the applicants were living in Slovakia at that time and that, when questioned on 10 December 1996, the second applicant had expressed the wish to stay with the first applicant. The applicants maintain that at that time they were staying in Slovakia only temporarily.

23. On 14 January 1997 the first applicant filed a petition with the Dunajská Streda District Court in which she again claimed that Mr P. should be deprived of his parental rights over the second applicant.

24. On 16 January 1997 the District Court heard witnesses and on 30 January 1997 it appointed an expert in psychology to draw up a report on the second applicant. The latter filed an appeal against this decision.

25. On 3 February 1997 the District Court appointed the Dunajská Streda District Office to look after the second applicant's interests in the

proceedings. The applicants maintain that they have never been notified of the appointment.

26. On 13 February 1997 the expert informed the District Court that she was not in a position to produce the report because of a heavy workload.

27. The hearing called for 18 February 1997 had to be adjourned as the first applicant and Mr P. failed to appear. The District Court ordered that the District Office look into the upbringing environment of the second applicant and the personal and material situation of the first applicant and Mr P.

28. Mr P. requested that an interim measure be issued to prevent the second applicant from travelling abroad without his consent. On 21 February 1997 the District Court dismissed the request.

29. At a hearing held on 6 March 1997 the District Court heard the parties and a representative of the Dunajská Streda District Office. The first applicant was fined for disturbing the orderly conduct of the hearing by, as the applicants claim, objecting to the truthfulness of the testimony given by Mr P. The case was then adjourned and Mr P. was invited to submit documentary evidence.

30. On 7 March 1997 the first applicant filed an appeal “against all decisions” delivered by the District Court judge dealing with the case.

31. On 10 March 1997 Mr P. appealed against the decision of 21 February 1997. He also claimed that his right to meet the second applicant be determined by the court.

32. On 20 March 1997 the first applicant requested that further documentary evidence be taken.

33. On 27 March 1997 Mr O.A.M. lodged a request for adoption of the second applicant. It was his third request to this effect after he had withdrawn two similar requests made previously on 31 January and 19 February 1996.

34. 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 1996 the Regional Court returned the case-file to the District Court instructing it to ensure that the first applicant eliminated formal shortcomings in her appeal of 7 March 1997.

35. On 28 July 1997 the Trnava Regional Court dismissed the second applicant’s appeal against the decision of 30 January 1997 concerning the appointment of an expert and quashed the above District Court’s decision of 21 February 1997.

36. On 8 September and 6 October 1997 the District Court inquired of the first applicant’s father about the applicants’ whereabouts. On 15 September and 23 October 1997 he replied that the applicants were currently staying abroad where they had left on 6 May 1997. According to the applicants, they had left Slovakia on 23 April 1997 and were not present there until 6 May 1997.

37. From November 1997 to January 1998 the court attempted several times to establish the address of the applicants in the country of their residence. The police notified the address to the District Court on 29 January 1998.

38. On 24 February 1998, while both applicants were abroad, the District Court issued an interim measure prohibiting them *inter alia* from leaving Slovakia. On 25 March 1998 Mr O.A.M. appealed against this decision. The first applicant, Mrs O. and Mr P. also appealed.

39. On 14 April 1998 the case-file was submitted to the President of the Trnava Regional Court who returned the file on 7 May 1998.

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

41. On 26 August 1998 the Trnava Regional Court quashed the District Court's decision to the extent that it prohibited the applicants from travelling abroad and dismissed the request of Mr P. for an interim measure to this effect. The case-file was returned to the District Court on 4 September 1998. On 11 November 1998 and on 10 March 1999 the District Court judge arranged for service of the Regional Court's decision on the parties.

42. In the meantime, on 28 October 1998, the first applicant had requested that further evidence be taken.

43. The District Court judge dealing with the case was ill for a considerable period between August 1998 and January 1999 and also between March and May 1999.

44. On 21 April 1999, on the complaint of Mrs O., the Constitutional Court found that her constitutional right to a hearing without unjustified delay had been violated in the above proceedings. In its decision the Constitutional Court admitted that, to a certain extent, the length of the proceedings was due to the behaviour of the parties. 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 by failing to decide in a timely manner on the request for an interim measure restricting the applicants' travel abroad, thus bringing about the need for the assistance of foreign authorities. Furthermore, by the time of the Constitutional Court's decision the District Court judge had not yet prepared the request for assistance that was to be sent to these authorities.

45. The Constitutional Court further observed that the District Court had not proceeded with the case effectively 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 interim measures 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.

46. The applicants were not informed of the above proceedings before the Constitutional Court, did not take part in them and only learned of their outcome once the proceedings were completed.

47. On 3 September 1999 the District Court judge prepared a request for assistance which was to be submitted through the Slovakian Ministry of Justice to the competent authorities in the country of the applicants' residence. In particular, the District Court sought that information be obtained from the first applicant and Mr O.A.M. as regards the care and education of the second applicant, Mr P.'s parental and visiting rights in respect of the second applicant and the second applicant's adoption. The District Court also sought an inquiry into the general upbringing environment of the second applicant and the personal, social and material situation of the first applicant and Mr O.A.M.

48. In a letter of 26 November 1999 the Ministry of Justice invited the District Court to complete the request for assistance by submitting further information and copies of the relevant documents.

49. On 21 January 2000 the District Court took three separate decisions to discontinue the proceedings concerning, respectively, the education and care of the second applicant, the deprivation of Mr P. of his parental rights over her and her adoption by Mr O.A.M. The decisions stated that the second applicant had reached the age of majority in 1999 and that, therefore, the said matters could no longer be determined on the merits.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. As to the scope of the case

50. As at the admissibility stage, the Government maintained first of all that the complaints of lack of access to court and the length of the proceedings which the applicants had made under Article 6 § 1 of the Convention should be examined together with and in context of the complaint which they had made under Article 8 of the Convention and that they should be examined under the latter Article alone. They referred to the Court's decisions in the cases of *W v. the United Kingdom* (judgment of 8 July 1987, Series A no. 121, p. 29, § 65) and *Sylvester v. Austria* (nos. 36812/97 and 40104/98, § 69, 24 April 2003), the Government

considered that the case only raised issues under Article 8 of the Convention and that a separate examination of the complaints under Article 6 § 1 of the Convention was not called for.

51. The applicants argued that the cases of *W.* (cited above) and *Sylvester* (cited above) were of no relevance in the instant case and that the Court should also entertain their complaints under Article 6 § 1 of the Convention.

52. The Court notes that in its final decision on the admissibility of the present application it declared admissible, *inter alia*, the applicants' complaints under Article 6 § 1 and Article 8 of the Convention concerning the length of the proceedings, the alleged lack of access to court and the alleged violation of the applicants' right to respect for their family life, respectively. It will accordingly examine these complaints.

B. As to the exhaustion of domestic remedies

53. The Government further asserted that, if the complaints made under Article 6 § 1 and Article 8 of the Convention were to be considered together under Article 8 of the Convention alone, the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention in that they had not sought redress before the ordinary courts by way of an action for protection of personal integrity under Article 11 et seq. of the Civil Code. In line with the Court's decision of 31 August 2001 in the case of *Babjak and Others v. Slovakia* (73693/01), this action was an effective remedy in the Convention sense and the applicants ought to have resorted to it in order to comply with the rule of exhaustion of domestic remedies.

54. The applicants argued that the admissibility of their complaints under Article 6 § 1 and Article 8 of the Convention had already been examined and there was no reason to reconsider this matter. According to them, the situation in the case of *Babjak and Others* (cited above) was substantially different from their case. The applicants also emphasised that the Government had been unable to show a single final judicial decision confirming their argument that the action for protection of personal integrity was an effective remedy in a situation comparable to theirs.

55. The Court recalls that it had already examined the question of effectiveness from the point of view of Article 35 § 1 of the Convention of the action for protection of personal integrity under Article 11 et seq. of the Civil Code in the present case at the admissibility stage and also in another case which had been lodged by Mrs O. and Mr P. and which, in the relevant aspects, was substantially the same as the present one (see *E.O. and V.P. v. Slovakia*, nos. 56193/00 and 57581/00, §§ 70 - 77, 27 April 2004). It concluded that, at the relevant time, this remedy had not offered reasonable prospects of success to the applicants. It finds nothing to justify reaching a different conclusion now.

56. The Government's preliminary objections must therefore be dismissed.

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

57. The applicants complained that the length of the proceedings concerning the care and education of the second applicant had exceeded a "reasonable time". The applicants also complained that they had had no access to court in that the actions of 27 May 1996 and 14 January 1997 to deprive Mr P. of his parental rights over the second applicant and the action of 27 March 1997 for the second applicant's adoption had never been determined on their merits. They alleged a violation of Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. As regards the length of the proceedings

58. The applicants complained that the length of the proceedings concerning the second applicant's care and education had been excessive.

59. The Government did not address the merits of this complaint.

60. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

61. The Court observes that on 21 April 1999 the Constitutional Court found a violation of the right of Mrs O., the plaintiff in the proceedings at issue, to a hearing without undue delay. The Court further recalls that it had already examined the length of these proceedings and had found a violation of the right of Mrs O. and Mr P. to a hearing within a reasonable time in them (see *E.O. and V.P.*, cited above, §§ 83-86).

62. The above consideration is sufficient for the Court to conclude that in the proceedings concerning the care and education of the second applicant the applicants in the present case did not have a hearing within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention on that account.

B. As regards the right of access to court

63. The Court observes that, unlike in the case of *W.* (cited above) the applicants in the present case do not complain that the scope of Slovakian

courts' jurisdiction to examine the action to deprive Mr P. of his parental rights over the second applicant and the action relating to her adoption was insufficient. Their complaint concerns the domestic courts' failure to determine the merits of the said actions. That failure was due to the fact that the proceedings had to be discontinued as the second applicant had reached the age of majority.

64. The Court further observes that the issues of deprivation of parental rights and adoption were closely interrelated with the issue of the care and education of the second applicant. They were, formally speaking, dealt with in a single set of proceedings and their determination necessitated the taking and assessing of overlapping evidence.

65. In these circumstances, and in view of the finding that there has been a violation of Article 6 § 1 of the Convention as a result of the excessive length of the proceedings concerning the care and education of the second applicant (see paragraph 62 above), the Court does not consider it necessary to examine separately this complaint.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicants also complained that the way in which the domestic courts had dealt with the actions of 27 May 1996 and 14 January 1997 for the deprivation of Mr P.'s parental rights over the second applicant and the action of 27 March 1997 relating to the second applicant's adoption and, in particular, their failure to decide on the merits of these actions amounted to a violation of their right to respect for their family life. They alleged a violation of Article 8 of the Convention which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his ... 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.”

67. Apart from the position expressed in their preliminary objection, the Government accepted that this complaint was not manifestly ill-founded.

68. The applicants maintained that since 1993 they had their permanent residence abroad where they lived with Mr O.A.M. The bond that had developed between him and the second applicant amounted to a *de facto* adoption. On the other hand, Mr P. had a long history of dishonouring his parental responsibilities and abusing his parental rights in respect of the second applicant who no longer considered him to be her father.

69. The applicants further submitted that the aim of the action for deprivation of parental rights and the action for adoption was to establish a legal situation that would correspond to the actual state of affairs. The domestic courts' failure to determine these actions rendered it forever impossible for the second applicant to have the question of who was her father legally settled. Unlike in the cases of *W.* (cited above) and *Sylvester* (cited above), the mere passage of time did not bring any solution to the applicants and was of no relevance for them.

70. The Court observes that, in the light of the alleged repercussions of the facts of the present case on the applicants' family life, it must be differentiated from that of *Laino v. Italy* (judgment of 18 February 1999, no. 33158/96, §§ 22 and 25, ECHR 1999-I) in which the length of the reviewed domestic proceedings was the principal issue and the fact that the applicant's "family life" was at stake in those proceedings was considered only as a factor in determining the reasonableness of their length and did not call for a separate examination under Article 8 of the Convention. The Court will accordingly examine the relevant part of the application under Article 8 of the Convention.

71. The Court observes that since the applicants' departure from Slovakia and the first applicant's marriage to Mr O.A.M. they have had a common household in which they have lived together as a family in the country of their permanent residence. There is no indication that the relevant facts of this part of the present application gave rise to a *de facto* interference with their right to respect for their family life. The Court further observes that Mr O.A.M., the husband of the first applicant, lodged his petition for the second applicant's adoption three times and withdrew two of these petitions. Noting that the applicants as well as Mr O.A.M. have the citizenship of the country of their permanent residence, the Court furthermore observes that the applicants have not shown that it was not possible for Mr O.A. M. to obtain an adoption order from the competent authorities of that country.

72. In the light of the above and in so far as the application has been substantiated, the Court finds that the facts of the present case disclose no interference with the applicants' rights protected under Article 8 of the Convention. There has accordingly been no violation of that Article.

IV. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

73. The applicant's finally complained that they had no effective remedy at their disposal in respect of their complaint under Article 6 § 1 of the Convention about the length of the proceedings concerning the care and education of the second applicant. They invoked Article 13 of the Convention which provides that:

“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.”

74. Referring to their position expressed in the preliminary objection the Government maintained that this complaint was manifestly ill-founded.

75. The applicants disagreed and reiterated their complaint.

76. The Court has found earlier that the remedy on which the Government relied did not offer reasonable prospects of success to the applicants (see *E.O. and V.P.*, cited above, §§ 70 - 77). The Court has also found earlier that neither a petition under Article 130 § 3 of the Constitution, as in force at the relevant time, nor a claim for damages under the State Liability Act of 1969 were capable of effectively redressing alleged violations of the right to a hearing within a reasonable time (see, for example, *Bánošová v. the Slovak Republic* (dec.), no. 38798/98, 27 April 2000, *Žiačik v. Slovakia*, no. 43377/98, § 33, 7 January 2003, *Číž v. Slovakia*, no. 66142/01, §§ 74 and 75, 14 October 2003 and *Macková v. Slovakia*, 51543/99, §§ 61 and 62, 29 March 2005).

77. 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 an effective remedy in respect of the applicant’s complaint under Article 6 § 1 about the length of the proceedings.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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.”

79. The applicants claimed just satisfaction in respect of non-pecuniary damage and compensation for costs and expenses.

A. Damage

80. The applicants claimed 6,000 euros (EUR) each in respect of non-pecuniary damage in connection with their complaints under Article 6 § 1 and Article 13 of the Convention. Under this head they further claimed EUR 20,000 in connection with their complaint under Article 8 of the Convention.

81. The Government considered first of all that the amount claimed was unacceptable, overstated and not supported by any evidence. They further maintained that, in any event, these claims had no connection to the alleged violations of the Convention. The Government concluded that the entire claim under this head had to be dismissed and considered that, if the Court

were to find a violation of the applicants' Convention rights, the finding itself was a sufficient just satisfaction for the applicants.

82. The Court observes that, as a result of the violations found above, the applicants suffered damage of a non-pecuniary nature, such as distress and uncertainty resulting from the protracted length of the proceedings in their case and the lack of an effective remedy in respect of it. Making an assessment on an equitable basis and having regard to the circumstances of the case, the Court awards each of the applicants EUR 4,000 under this head.

B. Costs and expenses

83. The applicants claimed an equivalent of approximately EUR 300 for their various expenses and EUR 2,000 for the legal fees in connection with pursuing the application before the Court. The applicants further claimed an equivalent of approximately EUR 90 for their expenses in connection with other applications under the Convention. The applicant finally claimed an equivalent of approximately EUR 1,400 and 92,353¹ Slovakian korunas (SKK) for various expenses and EUR 2,000 for fees in respect of their legal representation in the domestic proceedings.

84. The Government maintained that the claim was unacceptable as it was overstated and not supported by evidence. They argued that no compensation could be claimed in connection with applications under the Convention other than the present one. The Government asserted that there could be compensation only for costs and expenses which were incurred actually and necessarily in order to prevent or rectify a violation of the Convention and were reasonable as to the quantum (see, among many other authorities, *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001 and *Záborský and Šmáriková v. Slovakia*, no. 58172/00, § 46, 16 December 2003). Relying on the Court's judgement of 18 October 1982 in the case of *Young, James and Webster v. the United Kingdom* ((former Article 50) Series A no. 55, § 15), the Government finally took the view that there was a need for human rights lawyers to charge moderate fees.

85. The Court observes first of all that compensation may only be awarded in respect of costs and expenses incurred in connection with the violation of the Convention found. It does not discern any link between the violations found (see paragraphs 62 and 77 above) and the costs and expenses which the applicants seek to have compensated in connection with the domestic proceedings. The Court further observes that in the proceedings before the Court the applicants were only partially successful and that they had no separate outside legal representation. In view of the above quoted principles and having regard to all the information in its

¹ SKK 92,353 in an equivalent of approximately EUR 2,300

possession, the Court finds it appropriate to award the applicants EUR 500 under this head.

C. Default interest

86. 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 on account of the length of the proceedings concerning the care and education of the second applicant;
3. *Holds* that it is unnecessary to examine separately the applicants' complaint under Article 6 § 1 of the Convention of the alleged lack of access to court;
4. *Holds* that there has been no violation of Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention on account of the lack of an effective remedy in respect of the length of the proceedings concerning the care and education of the second applicant;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to each of the applicants in respect of non-pecuniary damage; and EUR 500 (five hundred euros) to the applicants jointly in respect of costs and expenses, to be converted into Slovakian korunas at the rate applicable at the date of settlement, 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 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 17 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President