



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

FOURTH SECTION

CASE OF HEFKOVÁ v. SLOVAKIA

(Application no. 57237/00)

JUDGMENT

STRASBOURG

31 May 2005

FINAL

31/08/2005

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 Hefková 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 K. TRAJA,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 10 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 57237/00) 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 a Slovakian national, Ms Marcela Hefková ("the applicant"), on 18 February 2000.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Kresák, succeeded by Ms A. Poláčková.

3. On 19 July 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE***1. The paternity proceedings*

4. The applicant was born in 1970 and lives in Snina.

5. On 9 January 1997 the applicant gave birth to a girl. She stated to the authorities that the father of the child was a Yugoslav national living in Switzerland.

6. On 18 April 1997 the Humenné District Court heard the applicant on the issue of the paternity of her child.

7. On 22 December 1997 the Prešov District Court appointed the Snina District Office as guardian to the child for the purpose of bringing paternity proceedings on her behalf and representing her in such proceedings. The decision stated that it had been taken as the applicant had not filed a paternity action. The District Office received the decision on 23 December 1997, but it did not bring paternity proceedings. On 3 June 1999 the Prešov Regional Office admitted, in reply to the applicant's complaint, that the Snina District Office by its failure to file an action had delayed the case.

8. On 17 August 1998 paternity proceedings were instituted, at the applicant's request, before the Prešov District Court. On 17 September 1998 the applicant paid the court fee.

9. On 25 January 1999 the Prešov District Court heard the applicant and decided to transfer the case to the Humenné District Court for reasons of jurisdiction. The file was submitted to the latter court on 8 March 1999.

10. A hearing before the Humenné District Court was held on 28 June 1999.

11. On 6 October 1999 the case was assigned to a different judge.

12. On 1 December 2000 the District Court ordered an official translation of the relevant documents as it was necessary to seek the assistance of Swiss authorities. The request for assistance was sent to the competent Swiss court on 21 January 2001.

13. The District Court received the reply from the Swiss court on 26 March 2001. According to it, the defendant had denied the paternity of the applicant's child. He declared himself ready to undergo a DNA test. The defendant had also explained that he had been granted asylum in Switzerland and that he could not travel abroad.

14. On 23 May 2001 the District Court held a hearing at which the applicant maintained her claim. On the same day the District Court appointed an expert in genetics. On 9 July 2001 the expert informed the applicant that he had not yet made a blood analysis of her daughter as the District Court had failed to pay an advance on his costs. The letter further stated that the expert had informed the District Court how to obtain a blood sample from the alleged father in Switzerland. The District Court sent the relevant request to the Swiss court on 29 June 2001.

15. On 31 January 2002 the expert informed the District Court that he had not yet received the blood sample from his Swiss counter-part. On 6 December 2002 the District Court informed the applicant that the Swiss authorities had not yet obtained a blood sample from the alleged father of the child.

16. After having made an inquiry from the expert on 11 February 2003, the District Court again requested the Swiss authorities for assistance on 13 March 2003. In a reply delivered on 14 April 2003 the competent Swiss court informed the Humenné District Court that the files relating to its

request had already been sent to it. The Swiss court enclosed copies of those documents to its reply. It was later established that the original mail from the Swiss court had been lost prior to its delivery.

17. On 18 June 2003 the District Court scheduled a hearing for 10 September 2003. It unsuccessfully attempted to have the defendant summoned. On 10 September 2003 the case was adjourned as the defendant's whereabouts were unknown.

18. On 16 September 2003 the Humenné District Court again requested the competent Swiss court for assistance in establishing the defendant's whereabouts and in obtaining a blood sample from him. It further authorised the expert to proceed with the analysis of samples from the applicant and the child.

19. On 27 October 2003 the District Court received information about the new address of the defendant.

20. On 9 December 2003 the District Court again asked the Swiss court for assistance in obtaining a blood sample as well as further information about the defendant's situation.

21. On 19 December 2003 the expert submitted a DNA analysis of the applicant and her daughter.

22. On 6 July 2004 the District Court received a reply from the Swiss court. It stated that the Swiss court had heard the defendant on 15 March 2004 who had agreed to an analysis of his blood. However, the defendant subsequently had not complied with repeated requests to this effect and had failed to appear for a sample to be taken from him. Under Swiss law the defendant could not be obliged to submit a blood sample without his consent. According to the letter, the Swiss court could take no further action in that respect. The Humenné District Court obtained a translation of the above reply on 31 August 2004.

23. A hearing before the District Court was scheduled for 1 December 2004.

2. Proceedings before the Constitutional Court

24. On 25 September 2002 the applicant complained about the length of the paternity proceedings before the Constitutional Court.

25. On 2 July 2003 the Constitutional Court dismissed the complaint as being manifestly ill-founded. The decision stated that the complaint concerned the proceedings before the Humenné District Court. The Constitutional Court found undue delays in the proceedings between November 1999 and November 2000. However, after that period the District Court had proceeded with the case in an appropriate manner. In particular, it had sent several requests to a court in Switzerland on 29 January 2001, 19 June 2001, 12 June 2002 and on 13 March 2003. It had further ordered an expert opinion, sent a request for a blood sample to be obtained from the defendant and had the documentary evidence translated. In addition, it had

encountered difficulties resulting from the loss of files abroad and the fact that summonses could not be served on the defendant.

26. The Constitutional Court concluded that the overall length of the proceedings could not be imputed to the District Court as its proceeding with the case had depended on co-operation with the Swiss authorities.

THE LAW

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

27. 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...”

28. The Government contested that argument.

29. The period to be taken into consideration began on 17 August 1998 when the applicant formally brought the proceedings in question. It has not yet ended. The period under consideration has thus lasted 6 years and more than 8 months. During this period the case was dealt with by two Slovakian courts at a single level of jurisdiction and the assistance of a Swiss court was required.

A. Admissibility

30. The Court notes that 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

31. The Government contended that the length of the proceedings was mainly due to the necessity to obtain evidence with the assistance of a Swiss court and the presumed father’s refusal to co-operate. There were no particular delays in the proceedings which could be imputed to the Humenné District Court.

32. The applicant disagreed.

33. 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). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

34. The Court notes that the subject-matter of the proceedings in issue, namely the determination whether the defendant is the father of the applicant's child, calls for special diligence. It concurs with the Government that the overall length of the proceedings is mainly due to the fact that the presumed father of the applicant's child lives abroad and that he has not co-operated with Swiss and Slovakian authorities with a view to establishing facts relevant for a decision in the case.

35. However, the Court also notes that at the initial stage the Slovakian courts involved failed to display appropriate diligence when proceeding with the case. In particular, the Prešov District Court took more than 5 months, after the applicant had paid the fees, to transfer the file to the Humenné District Court on 8 March 1999. The latter court held a hearing on 28 June 1999, and it only ordered a translation of the relevant documents with a view to obtaining evidence from abroad on 1 December 2000, that is after 17 months.

36. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's right to a hearing within a "reasonable time" has not been respected.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 289,271¹ Slovakian korunas (SKK) in respect of pecuniary damage and SKK 210,000² in respect of non-pecuniary damage.

39. The Government contested these claims.

40. 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, it awards the applicant, having regard to the delay for which the respondent Government is responsible, EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant also claimed SKK 1,661³ for the costs and expenses incurred.

42. The Government left the matter to the Court's discretion.

43. The Court notes that the applicant was not represented by a lawyer and awards her the sum of EUR 50 under this head which approximately corresponds to her claim.

C. Default interest

44. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

¹ Approximately 7,500 euros.

² Approximately 5,450 euros.

³ Approximately 43 euros.

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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses, these sums to be converted into the currency of the respondent State 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President