



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

FOURTH SECTION

**CASE OF SOŇA ŠIMKOVÁ v. SLOVAKIA**

*(Application no. 77706/01)*

JUDGMENT

STRASBOURG

27 September 2005

**FINAL**

***27/12/2005***

*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 Soňa Šimková v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,  
Mr G. BONELLO,  
Mr K. TRAJA,  
Mr S. PAVLOVSKI,  
Mr L. GARLICKI,  
Ms L. MIJOVIĆ,  
Mr J. ŠIKUTA, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 6 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 77706/01) 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 Soňa Šimková (“the applicant”), on 20 August 2001.

2. The applicant was represented by Mrs R. Záhoráková, a lawyer practising in Bratislava. 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. On 4 October 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**

4. The applicant was born in 1963 and lives in Prešov.

5. In 1994 the applicant married Mr Š. with whom, in 1995, she had a daughter. Since October 1995 the applicant and Mr Š. had not lived in a common household.

6. On 18 September 1996 the Prešov District Court (*Okresný súd*) pronounced the dissolution of the applicant's marriage, entrusted the child into the applicant's care and ordered Mr Š. To contribute to the child's maintenance. The judgment became final and binding on 25 August 1997.

*1. The proceedings concerning the applicant's marital maintenance*

7. On 22 March 1996 the applicant lodged an action against Mr Š. with the District Court. She sought a judicial order that he contribute to her maintenance as his spouse pursuant to Articles 91 et seq. of the Family Code (Low no. 94/1963 Coll., as amended).

8. On 29 April 1996, following a hearing held on the same day, the District Court granted the action. Mr Š. subsequently lodged an appeal.

9. On 18 February 1997, following a hearing on the appeal held on the same day, the Prešov Regional Court (*Krajský súd*) upheld the District Court's judgment of 29 April 1996 in so far as it related to the period from 22 March to 31 May 1996. As to the following period, the Regional Court quashed the relevant part of the District Court's judgment and remitted the case to the latter for a re-examination.

10. The District Court held 3 hearings between October 1997 and August 1998.

11. On 17 September 1998, following a hearing held on the same day, the District Court dismissed the action as regards the outstanding period, i.e. from 1 June 1996 to 25 August 1997, when the applicant's divorce had become legally binding.

12. On 30 April 1999, on the applicant's appeal, the Regional Court quashed the judgment of 17 September 1998 and remitted the case to the District Court instructing it to take further evidence.

13. On 13 March 2002 the District Court ruled that, in the relevant period, Mr Š. had been obliged to contribute to the applicant's maintenance. It further determined the amount payable and ordered that he pay the amount due in instalments as from 1 April 2002. The District Court also ordered reimbursement of the applicant's legal costs.

14. On 11 September 2002 the Regional Court dismissed both parties' appeals.

*2. The proceedings concerning contributions to the applicant's maintenance after the divorce*

15. On 30 October 1997 the applicant lodged an action with the District Court. She sought a judicial order that her ex-husband pay her, on a monthly basis, an amount of money by way of contribution to her maintenance after divorce, pursuant to Articles 92 et seq. of the Family Code, as she was unable to provide for herself alone.

16. The District Court held hearings on 16 February and 30 March 1998.

17. On 30 April 1998 the District Court took a decision in the action. On 30 April 1999 the Regional Court quashed the District Court's judgment on an appeal.

18. On 16 June 1999 the District Court held a hearing.

19. On 16 March 2000, following a hearing held on the same day, the District Court dismissed the action.

20. On 24 January 2001, on the applicant's appeal, the Regional Court quashed the District Court's judgment of 16 March 2000 and remitted the case to the latter for re-examination. The Regional Court found that, despite having been instructed to do so in the decision of 30 April 1999, the District Court had failed to examine the material situation of the defendant adequately.

21. On 31 October 2002 the District Court ruled that the defendant had been obliged to contribute to the applicant's maintenance from 30 October 1997 onwards. The District Court further determined the amount payable each month and allowed the defendant to pay the arrears for the period from 30 October 1997 to 31 October 2002 in monthly instalments in addition to the ordinary monthly payments.

22. On 23 June 2003, on the defendant's appeal, the Regional Court modified the judgment of 30 October 2002 by making a new detailed determination of the amounts which the defendant was to pay to the applicant in respect of the various periods. The judgment became final and binding on 29 July 2003.

### *3. The proceedings before the Constitutional Court*

23. On 28 August 2000 the applicant, who was represented by a lawyer, lodged a petition (*podnet*) under Article 130 § 3 of the Constitution, as then in force, with the Constitutional Court (*Ústavný súd*). She complained of the undue delays in the above two sets of proceedings and also in two other sets of proceedings.

24. On 17 May 2001 the Constitutional Court found, *inter alia*, that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay in her above actions of 1996 and 1997. The subject-matters of those proceedings were not of a particular legal or factual complexity. The applicant's conduct was active and cooperative. The District Court had not dealt with the cases effectively. Both sets of proceedings under review were too lengthy in their entirety. However, at that time, the Constitutional Court lacked jurisdiction to draw any legal consequences from the finding. In accordance with its established practice, when deciding on a fresh constitutional complaint (*sťažnosť*) under Article 127 of the Constitution, as amended from January 2002, the Constitutional Court refrains from examining again delays in court proceedings which occurred in the period which the Constitutional Court has already reviewed in a previous decision.

## THE LAW

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

25. The applicant complained that the length of the above two sets of 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...”

26. The Government admitted, with reference to the Constitutional Court's finding of 17 May 2001, that the applicant's right to a hearing within a reasonable time had been violated.

27. The period to be taken into consideration in respect of the first set of proceedings began on 22 March 1996 and ended on 11 September 2002. It thus lasted 6 years and almost 6 months for two levels of jurisdiction. The period to be taken into consideration in respect of the second set of proceedings began on 30 October 1997 and ended on 23 June 2003. It thus lasted 5 years and nearly 8 months for two levels of jurisdiction.

#### A. Admissibility

28. The Court notes that this complaint 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

29. 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).

30. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

31. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the above mentioned admission by the Government, the Court considers that in the instant case the length of the two sets of proceedings complained of was excessive and failed to meet

the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. Lastly, the applicant complained that she had no effective remedy at her disposal in respect of her complaint about the length of the proceedings. She relied on 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.”

33. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

34. In the light of its above finding under Article 6 of the Convention and having regard to the fact that a new remedy under Article 127 of the Constitution has been available in Slovakia since 1 January 2002, the Court finds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention (see, *mutatis mutandis*, *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003 and *Beňačková v. Slovakia*, no. 53376/99, § 34, 17 June 2003).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

#### 1. *Non-pecuniary damage*

36. The applicant claimed 500,000<sup>1</sup> Slovakian korunas (SKK) in respect of non-pecuniary damage.

37. The Government contested the claim.

38. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her 5,400 euros (EUR) under that head.

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<sup>1</sup> SKK 500,000 is an equivalent of approximately EUR 13,000

## 2. *Pecuniary damage*

39. The applicant further claimed SKK 57,892.50<sup>1</sup>, SKK 83,895<sup>2</sup> and SKK 470,000<sup>3</sup> in respect of pecuniary damage. The former two amounts correspond to the financial losses which the applicant allegedly suffered due to the long-lasting litigation. The latter amount represents the loss which she allegedly suffered as a result of being forced, by the protracted length of the proceedings, to sell her flat and later to buy a new one later at a market price which had risen in the meantime.

40. The Government contested these claims.

41. In so far as these claims have been substantiated, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims.

## **B. Costs and expenses**

42. Lastly, the applicant also claimed SKK 150,000<sup>4</sup> for her legal costs in the proceedings before ordinary courts, SKK 40,000<sup>5</sup> for her legal costs in the proceedings before the constitutional court and compensation in an unspecified amount for postage and other out-of-pocket expenses incurred in the context of the domestic proceedings and the proceedings before the Court.

43. The Government contested these claims.

44. 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, regard being had to the above criteria and the information in its possession and, in particular, to the fact that the applicant's constitutional petition of 28 August 2000 only partially concerned the proceedings complained of in the present application (see paragraphs 23 and 24 above), the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads.

## **C. Default interest**

45. 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 57,892.50 is an equivalent of approximately EUR 1,500

<sup>2</sup> SKK 83,895 is an equivalent of approximately EUR 2,200

<sup>3</sup> SKK 470,000 is an equivalent of approximately EUR 12,200

<sup>4</sup> SKK 150,000 is an equivalent of approximately EUR 3,900

<sup>5</sup> SKK 40,000 is an equivalent of approximately EUR 1,050

## 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 in the both sets of proceedings;
3. *Holds* that it is not necessary to examine the applicant's complaint under Article 13 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,400 (five thousand four hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.]

Done in English, and notified in writing on 27 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President