



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

FOURTH SECTION

**CASE OF ADRIANA ŠIMKOVÁ v. SLOVAKIA**

*(Application no. 77708/01)*

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 Adriana 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. ELEN-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. 77708/01) 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 Adriana Šimková ("the applicant"), on 22 November 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 1995 and lives in Prešov.

5. On 18 September 1996 the Prešov District Court (*Okresný súd*) pronounced the dissolution of the marriage of the applicant's parents. The applicant who suffers from serious health problems which necessitate constant care was entrusted to her mother. The father was ordered to contribute financially to the applicant's maintenance. The judgment became final and binding on 25 August 1997.

*1. The enforcement proceedings*

6. On 18 March 1998 the applicant, acting through her mother, lodged a petition with the District Court. She sought judicial enforcement of a claim against her father to an amount of money which was due by way of contribution to her maintenance.

7. On 14 April 1998 the District Court ordered the enforcement.

8. On 21 January 2002 the District Court discontinued the enforcement as regards a part of the claim as the defendant had paid it voluntarily.

9. On 22 April 2002, on the applicant's appeal, the Prešov Regional Court (*Krajský súd*) quashed the decision of 21 January 2002 finding that the District Court had erred in the ruling on the costs of the enforcement.

10. On 10 June 2003 the District Court again discontinued the enforcement as the defendant had paid his debt. The decision became final and binding on 3 July 2003.

*2. The proceedings concerning the amount of contributions to the applicant's maintenance*

11. On 9 August 1999 the applicant, acting through her mother, lodged a request with the District Court that the amount of contributions to her maintenance which her father had been ordered to pay in the above judgment of 18 September 1996 be increased.

12. On 2 February 2001 the District Court held a hearing at which the applicant's mother claimed an increase in the amount.

13. On 23 May 2002 the District Court increased the amount of the monthly contributions and decided that it should apply from 1 July 1999 onwards. The District Court authorised the defendant to pay the arrears for the period from 1 July 1999 to 31 May 2002 in monthly instalments in addition to the ordinary monthly payments. In so far as the applicant was claiming contributions of a higher amount, the District Court dismissed the remainder of her claim. Both parties appealed to the Regional Court.

14. On 26 September 2002 the Regional Court upheld the part of the District Court's judgment of 23 May 2002 in which it had granted the applicant's action. At the same time, the Regional Court quashed the part of the District Court's judgment in which it had dismissed the remainder of the action, considering that such a dismissal was superfluous. The ruling became final, binding and enforceable on 23 October 2002.

15. On 13 November 2002 the applicant, through her mother, filed a petition for enforcement of the judgments of 23 May and 26 September 2002.

16. On 3 December 2002 the District Court ordered the enforcement. It is still pending.

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

17. On 28 August 2000 the applicant's mother, on behalf of the applicant, 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 enforcement and judicial proceedings and also in two other sets of proceedings.

18. 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 both cases. The subject-matters of those proceedings were not of a particular legal or factual complexity. The applicant's conduct did not give rise to any delay and her situation called for special diligence. All the proceedings under review were too lengthy in their entirety. However, at that time, the Constitutional Court lacked jurisdiction to draw any legal consequences from its 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 had already reviewed in a previous decision.

## THE LAW

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

19. The applicant complained that the length of the above 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...”

20. 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.

21. The period to be taken into consideration in respect of the first set of proceedings began on 18 March 1998 and ended on 10 June 2003. It thus lasted 5 years and almost 3 months for two levels of jurisdiction. The period to be taken into consideration in respect of the second set of proceedings began on 9 August 1999. The main proceedings were followed by the enforcement proceedings which are still pending and which must also be taken into consideration (see *Hornsby v. Greece*, no. 18357/91, § 40, ECHR 1997-II). The total period in question has thus to date lasted slightly

over 6 years for two levels of jurisdiction in the main proceedings and one level in the enforcement proceedings.

### **A. Admissibility**

22. 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**

23. 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).

24. 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).

25. 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 proceedings 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**

26. 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.

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

28. 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

29. 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*

30. The applicant claimed 1,000,000<sup>1</sup> Slovakian korunas (SKK) in respect of non-pecuniary damage. She argued that, as a result of the excessive length of her proceedings in which she was taking part thorough the intermediary of her mother, she was deprived of her presence and care and of adequate medical care in general.

31. The Government contested the claim.

32. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her 4,000 euros (EUR) under that head.

##### 2. *Pecuniary damage*

33. The applicant further claimed SKK 8,557<sup>2</sup> and SKK 60,143<sup>3</sup> in respect of financial losses which she allegedly suffered due to the long-lasting litigation in the above two cases respectively.

34. The Government contested the claim.

35. 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

36. Lastly, the applicant also claimed SKK 40,000<sup>4</sup> for her legal costs in the proceedings before the constitutional court and SKK 1,536<sup>5</sup> for postage and other out-of-pocket expenses.

37. The Government contested these claims.

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<sup>1</sup> SKK 1,000,000 is an equivalent of approximately EUR 26,000

<sup>2</sup> SKK 8,557 is an equivalent of approximately EUR 220

<sup>3</sup> SKK 60,143 is an equivalent of approximately EUR 1,550

<sup>4</sup> SKK 40,000 is an equivalent of approximately EUR 1,050

<sup>5</sup> SKK 1,536 is an equivalent of approximately EUR 40

38. 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 17 and 18 above), the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

### **C. Default interest**

39. 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;
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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 500 (five 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