CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MIKULOVÁ v. SLOVAKIA

(Application no. 64001/00)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Mikulová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 64001/00) 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, Mrs Eva Mikulová ("the applicant"), on 14 September 2000.

2. The applicant, who had been granted legal aid, was represented by Mr P. Kerecman, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. On 10 November 2004 the Court decided to communicate the complaint concerning the applicant's right of access to a court 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 1952 and lives in Prešov.

A. Proceedings concerning the applicant's contract of employment

5. In 1993 the applicant was dismissed from her job. On 16 November 1995 the Prešov District Court found that the dismissal had been unlawful. On 20 November 1995 it issued a supplementary judgment in which, *inter alia*, it dismissed the applicant's claim that her employment with the defendant still continued. The parties did not appeal against this conclusion and it thus became final.

6. On 18 August 1997 the Prešov District Court delivered a decision approving a settlement agreement under which the defendant undertook to pay compensation to the applicant for the above unlawful termination of her employment. The period for which compensation was to be paid ended by the date on which the judgment of 16 November 1995 had become final, that is 3 June 1997.

7. On 10 October 1997 the employer asked the applicant to sign a document indicating that she was being compensated for lost income in the context of the above judicial decisions and the subsequent settlement agreement. The document further indicated that the applicant had refused to resume her job, agreed to the termination of her employment with effect from 31 May 1997, and waived any further claims in this respect.

8. On 22 November 1997 the applicant challenged the second termination of her employment before the Prešov District Court. She alleged that she had been obliged to sign the above document.

9. In the course of 1998 the District Court held six hearings, and on 10 September 1998 it found that the termination of the applicant's employment as from 31 May 1997 had been unlawful. The court heard witnesses and took further evidence. It established that the applicant had not agreed to the termination of her employment of her own free will as the relevant document had been typed in advance and the payment of compensation under the earlier judicial decisions was made subject to the applicant's agreement to the termination of her employment.

10. On 29 October 1998 the defendant appealed. On 13 November 1998 the applicant submitted her observations in reply.

11. On 28 June 1999 the Prešov Regional Court overturned the first instance judgment and dismissed the applicant's action. It noted that in the first set of proceedings terminated by the Prešov District Court's judgments of 16 and 20 November 1995, the applicant's claim concerning the duration

of her contract employment had been dismissed as the applicant had expressly stated at a hearing that she did not wish to return to her job. That decision had become final. As a result, the applicant's contract of employment had been terminated in accordance with the relevant law. The Regional Court concluded that, when the above document had been signed on 10 October 1997, the applicant had no longer been entitled to be employed by the defendant.

12. The appellate court's judgment was to be served on the parties through the intermediary of the District Court. It was sent by registered mail and the delivery slip indicates that the post officer unsuccessfully attempted to serve the document at the address of the applicant's advocate on 3 and 4 August 1999. The delivery slip further indicates that the envelope was deposited at the post office on the latter date.

13. The advocate representing the applicant was on leave abroad between 30 July 1999 and 14 August 1999. The employee authorised to receive mail addressed to the advocate fell ill on 30 July 1999. A medical certificate indicates that she was on sick leave until 13 August 1999. A different employee of the advocate was on leave from 2 to 6 August 1999. She came back to work on 9 August 1999. On that day the advocate's employee received the appellate courts' judgment and signed the delivery slip to that effect.

The applicant's advocate explained that other employees had been present in the premises on 3 and 4 August 1999. However, they were assigned to work in the context of bankruptcy proceedings entrusted to the advocate and they were not authorised to receive mail on his behalf.

14. On 23 August 1999 the District Court's Registry put a stamp on the appeal judgment indicating that it had become final on 13 August 1999.

15. On 8 September 1999 the applicant filed an appeal on points of law against the Regional Court's judgment. She argued that the appellate court had failed to establish the relevant facts and that its decision was arbitrary.

16. The Prešov District Court submitted the appeal on points of law to the Supreme Court on 15 November 1999. The accompanying letter stated that the appellate court's judgment had become final on 13 August 1999 and that the appeal on points of law had been filed within one month from that date as required by the law.

17. On 22 February 2000 the Supreme Court rejected the appeal on points of law as having been lodged belatedly. The Supreme Court, with reference to the file, held that an attempt to serve the Regional Court's judgment on the parties' lawyers had been made on 3 August 1999. However, the addressees could not be reached at their respective address. A second attempt to serve the judgment on 4 August 1999 had failed notwithstanding that the addressees had been staying at the places of service. The envelopes with the judgment had therefore been deposited at the post office and the addressees had been notified thereof. As the

addressees had not withdrawn the mail at the post office within three days from the moment of its deposit there, the third day of this period, that is 7 August 1999, was to be considered as the date of service in accordance with Article 47(2) of the Code of Civil Procedure. The one-month time-limit for filing an appeal on points of law had therefore expired on 7 September 1999.

18. On 4 April 2000 the applicant requested the Prosecutor General to file an extra-ordinary appeal on points of law on her behalf. She argued that the Supreme Court had proceeded arbitrarily when concluding that the appeal on points of law had not been filed in time. In particular, the applicant submitted that her lawyer had been abroad on leave from 30 July 1999 to 14 August 1999 and that his employee authorised to receive the mail had been on sick leave between 30 July 1999 and 13 August 1999. The judgment had been received on 9 August 1999 and no notification of its deposit at the post office had been found in the lawyer's office. The applicant argued that the requirement making service by default of a judgment subject to the addressee's presence at the place of service had not been met in her case.

19. On 26 July 2000 the Office of the Prosecutor General informed the applicant that an extra-ordinary appeal on points of law was not available in the case.

20. Subsequently the applicant complained to the Supreme Court that the name of the defendant company was incorrectly indicated in the decision of 22 February 2000. On 22 June 2004 the Supreme Court issued a decision by which it rectified that mistake.

B. Other proceedings

21. On 19 February 2002 the applicant claimed compensation from the advocate who had represented her in the above proceedings. She maintained that, as a result of the advocate's failure to file the appeal on points of law in time, she had been prevented from recovering compensation for lost salary which had been the subject-matter of those proceedings.

22. On 31 March 2003 the Prešov District Court dismissed the action. The Regional Court in Prešov upheld this judgment on 10 December 2003. The courts held that the applicant had not shown that she would have succeeded in the proceedings had the cassation court quashed the appellate judgment.

23. On 5 April 2004 the applicant filed a complaint to the Constitutional Court. She claimed that the Supreme Court's decision of 22 February 2000 was void as the defendant had been incorrectly indicated in it. The applicant also complained under Article 6 § 1 of the Convention that her claim for compensation filed against the advocate had not been determined in an appropriate manner.

24. On 28 April 2004 the Constitutional Court rejected the applicant's complaints about the Supreme Court's decision of 22 February 2000 and the Prešov District Court's judgment of 31 March 2003 as they had been filed beyond the statutory two months time-limit from the delivery of those decisions. The Constitutional Court further held that the Prešov Regional Court's judgment of 10 December 2003 was not arbitrary.

II. RELEAVANT DOMESTIC LAW AND PRACTICE

A. The Code of Civil Procedure

25. Article 47(2) provides that, where a document is to be notified to an addressee in person and the addressee has not been reached notwithstanding that he or she is staying at the place of service, the person delivering the document shall inform the addressee in an appropriate manner that a second attempt to deliver it will be made at a time indicated in the notification. Where such a new attempt to serve the document fails, the person in charge of the delivery shall deposit the document at the post office or with a municipal body and shall notify the addressee thereof in an appropriate manner. Where the addressee fails to withdraw such a document within three days from its deposition, the last day of this term is considered as the day of service even if the addressee did not learn that the document had been deposited with the post office or a municipal authority.

26. Pursuant to Article 158(2), a certified copy of a judgment is to be served on the parties or, as the case may be, on their representatives in person.

27. Under paragraph 4 of Article 158, a judgment with reasons is to be prepared in writing and dispatched to the parties within 30 days from its oral delivery unless the president of the court decides otherwise for important reasons.

28. Article 159(1) provides that a judgment which cannot be challenged by means of an appeal is final.

29. Pursuant to Article 238(1), an appellate court's judgment modifying a first instance judgment on the merits of a case can be challenged by means of an appeal on points of law.

30. Article 240(1) provides that a party can file an appeal on points of law within one month from the final effect of an appellate court's decision. An appeal on points of law is to be filed with the court which decided the case at first instance. Under paragraph 2 of Article 240, there can be no exemption from the time-limit laid down in paragraph 1. Where, however, an appeal on points of law is filed with the court of appeal or court of cassation within one month from the final effect of the appellate court's decision, the time-limit is deemed to have been complied with.

B. Practice of the Supreme Court

31. A document to be served on a party in person is not deemed to have been served by default under Article 47(2) of the Code of Civil Procedure where the addressee was not residing at the place of delivery at the time when the attempt to deliver the document to him or her was made (Collection of opinions, conclusions, analyses and assessments of judicial practice, No. IV, p. 1087 and also Supreme Court's Collection 42/1999).

32. Where the requirements of Article 47(2) of the Code of Civil Procedure for service by default of a document have been complied with, such a document is considered to have been served on the third day from the moment when it was deposited with the competent authority regardless of the date when the addressee actually received it (Supreme Court's Collection 3/1996 and 24/1998).

33. In a judgment of 27 August 2002 the Supreme Court, in the context of proceedings under the Administrative Proceedings Act, clarified the requirements for service by default of a document which was to be delivered to the addressee in person. It held, in particular, that the requirement that the addressee should reside at the place where the document was to be served was not met where the addressee was either outside that place, for example on leave or a business trip, or where his or her health condition prevented the addressee in an objective manner from coming to the place of delivery of the document (Supreme Court's Collection 50/2003).

THE LAW

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

34. The applicant complained that her right to a fair hearing by a tribunal, within a reasonable time, had been violated. She relied on Article 6 § 1 of the Convention the relevant part of which 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. Admissibility

1. The length of the proceedings brought on 22 November 1997

35. The applicant complained that the length of the proceedings concerning the alleged second termination of her employment had been excessive.

36. The proceedings were brought on 22 November 1997. They ended with the Supreme Court's decision to reject the applicant's appeal on points of law given on 22 February 2000. That period thus lasted 2 years and 3 months for three levels of jurisdiction. The Court has also noted that subsequently, at an unspecified date, the applicant asked the Supreme Court to rectify a mistake in designation of the defendant in the decision of 22 February 2000. The Supreme Court did so in a decision given on 22 June 2004.

37. Having regard to its case-law on the subject (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII), the Court considers that in the instant case the length of the proceedings was not contrary to the "reasonable time" requirement.

38. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Alleged unfairness of the proceedings

39. To the extent that the applicant alleged that the dismissal of the action against her former employer of 22 November 1997 and of the action against her legal counsel of 19 February 2002 had been arbitrary, the Court recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. It is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I).

40. Having regard to the documents before it, the Court finds no appearance of unfairness, within the meaning of Article 6 § 1 of the Convention, in the manner in which the domestic courts dealt with the applicant's cases.

41. It follows that also this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. As regards the applicant's right to a hearing by a tribunal

42. To the extent that the applicant complained that her right of access to a court had been violated as a result of the dismissal of her appeal on points of law against the Prešov Regional Court's judgment of 28 June 1999, 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

1. Arguments of the parties

a) The Government

43. The Government, with reference to the Court's practice, argued that the right of access to a court was not an absolute one and that the way in which Article 6 § 1 was to be applied in respect of proceedings before appellate or cassation courts depended on the special features of such proceedings. An appeal on points of law was an extra-ordinary remedy in the Slovak legal order permitting a challenge, under certain circumstances, to final decisions given by courts at lower instances.

44. In the applicant's case the appellate court's judgment was delivered orally on 28 June 1999. Both the applicant and her lawyer were present at the hearing. Under Article 158(4) of the Code of Civil Procedure the written version of the judgment with reasons was to be dispatched within 30 days from that date. The applicant and her lawyer should, therefore, have been aware that the judgment would be served on the parties in the week following 28 July 1999. The applicant's lawyer had not taken appropriate measures in order to receive the appeal judgment in his office. The Government thereby relied on several decisions given by the European Commission of Human Rights and the Court (see *Darnay v. Hungary*, no. 36524/97, Commission decision of 16 April 1998; *Hennings v. Germany*, judgment of 16 December 1992, Series A no. 251-A, p. 11, § 26; *E.F. v. Austria*, no. 21924/93, Commission decision of 17 January 1995).

45. The Government further argued that the delivery slip signed by the person authorised by the applicant's lawyer upon receipt of the appellate judgment on 9 August 1999 clearly indicated that attempts had been made, in vain, to serve the document on 3 and 4 August 1999. Accordingly, the applicant's representative should have been aware that the post officer had deemed the lawyer or his employees to be staying at the place of service.

46. Thus the applicant's representative should have expected that the judgment would be served during his absence. When filing the appeal on points of law, he should have drawn the courts' attention to the fact that the

post officer had erroneously presumed that the prerequisites for a service by default of the judgment had been met.

47. Finally, the Government argued that, in any event, the applicant's case had been examined by courts at two levels. The fact that the Supreme Court rejected her appeal on points of law as having been filed belatedly cannot be interpreted as a denial of access to a court in the particular circumstances of the case.

b) The applicant

48. The applicant contested the Government's argument according to which her lawyer had failed to display due vigilance in that he had not explained in the appeal on points of law that the requirements for service by default of the appellate judgment had not been met.

49. In particular, the applicant maintained that, on 23 August 1999, the District Court in Prešov had put a stamp on the appeal judgment formally confirming that the judgment had become final on 13 August 1999. Her appeal on points of law had been filed on 8 September 1999, that is within one month from that date as required by the relevant law.

50. Furthermore, as none of the persons authorised to receive mail addressed to the advocate had been at the advocate's office, the statutory requirements for service by default of the judgment had not been met. In accordance with the Supreme Court's case-law, the date when the document had been actually delivered to the addressee, that is 9 August 1999, was to be considered as the date of service of that judgment on the applicant.

51. The applicant concluded that the dismissal of her action had been arbitrary. Her right of access to a court had been violated in that the Supreme Court had erroneously considered her appeal on points of law to have been lodged belatedly.

2. The Court's assessment

52. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the requirements of Article 6 must be complied with, so as for instance to guarantee to litigants an effective right of access to the courts for the determination of their "civil rights and obligations".

The "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired.

The rules which govern the conditions for the admissibility of appeals before highest judicial authorities are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Those concerned must expect those rules to be applied (see the recapitulation of the relevant case-law in, for example, *Nakov v. the Former Yugoslav Republic of Macedonia* (dec.), no. 68286/01, 24 October 2002).

53. In the present case the applicant was entitled, under Article 238(1) of the Code of Civil Procedure, to have her appeal on points of law examined by the Supreme Court provided that she filed it in accordance with the formal requirements. The Supreme Court concluded that the applicant had failed to do so. In its view, the appeal judgment had to be deemed to have been served on the parties by default under Article 47(2) of the Code of Civil Procedure on 7 August 1999 and had become final on that date.

54. The Supreme Court's finding was contrary to that of the District Court which indicated, both in a stamp on the appeal judgment and in a letter accompanying the appeal on points of law, that the appeal judgment had become final on 13 August 1999. The above letter explicitly stated that the appeal on points of law had been filed within the one month time-limit from the final effect of the judgment. The Supreme Court apparently did not invite the parties to comment on the issue prior to reaching a different conclusion on it.

55. Unlike in the applications on which the Government relied in their observations, the service by default of the judgment in the present case was subject to the condition, laid down in Article 47(2) of the Code of Civil Procedure, that the applicant's representative or the persons authorised to receive his mail resided, within the meaning of the Supreme Court's case law, at the place of delivery of the mail at the time when unsuccessful attempts to serve the judgment were made. The documents submitted by the applicant indicate that such was not the case, and this has not been contested by the respondent Government.

56. Accordingly, the Supreme Court's conclusion that the appellate judgment was served on the applicant by default on 7 August 1999 and became final on the same day cannot be considered as having been justified in the circumstances of the case. That decision resulted in the rejection of the applicant's appeal on points of law as having been filed beyond the statutory time-limit. The applicant was thereby prevented from having the merits of her case determined by the Supreme Court.

57. The Court does not share the Government's view that the applicant's representative had been required to explain to the Supreme Court, of his own initiative, that the prerequisites for service by default of the appeal judgment had not been met. Similarly, the fact that courts at two levels had examined the applicant's case prior to the delivery of the Supreme Court's

decision complained of by the applicant cannot affect the position as regards the point in issue.

58. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right of access to a court was not respected.

There has accordingly been a violation of Article 6 § 1 of the Convention on this account.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 15,521 euros (EUR) in respect of pecuniary damage. That sum comprised compensation for lost income which would have been awarded to her in case of success in domestic proceedings as well as compensation for social allowances paid in advance which she would have been obliged to pay back to the authorities in such a case.

The applicant further claimed EUR 7,772 in compensation for non-pecuniary damage.

61. The Government contested these claims.

62. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. In particular, it cannot speculate about the outcome of the proceedings had they been in conformity with Article 6 § 1. It therefore rejects this claim.

On the other hand, it accepts that the applicant suffered non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed EUR 1,490 for the costs and expenses incurred both before the domestic courts and in the context of the proceedings before the Court.

64. The Government argued that the applicant's claim was overstated.

65. According to the Court's case-law, an applicant is entitled to reimbursement of his or her 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 under all heads, less the EUR 715 already paid in legal aid by the Council of Europe, together with any tax that may be payable.

C. Default interest

66. 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 complaint under Article 6 § 1 of the Convention concerning the applicant's right of access to a court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the rejection of the applicant's appeal on points of law;
3. *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 285 (two hundred and eighty-five euros) in respect of costs and expenses, the above amounts 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 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President