



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

SECOND SECTION

CASE OF NEBUSOVÁ v. HUNGARY AND SLOVAKIA

(Application no. 61/03)

JUDGMENT

STRASBOURG

10 October 2006

FINAL

10/01/2007

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 Nebusová v. Hungary and Slovakia,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr J. ŠIKUTA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 19 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 61/03) against the Republic of Hungary and 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 Slovak national, Mrs Anna Nebusová (“the applicant”), on 15 December 2002.

2. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice and Law Enforcement.

3. On 13 September 2005 the Court decided to give notice of the application to the Hungarian Government and also to notify the Slovak Government of the case. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 11 October 2005 the Slovak Government declared that they would not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

5. The applicant was born in 1943 and lives in Bratislava. She has a son whose father, a Hungarian national, lives in Miskolc, Hungary.

6. On 9 September 1991 the Bratislava 5th District Court (Slovakia) ordered the father to pay child maintenance.

7. On 7 June 1994 the applicant, on behalf of her son, filed a petition with the District Court for the judicial enforcement of the maintenance

payments. She claimed that, since August 1993, the father had not been paying the maintenance regularly or in full.

8. On 31 July 1995 the District Court increased the amount of child maintenance payable by the father retroactively, as from 1 January 1994. The judgment became final and binding on 6 December 1995.

9. On 4 March 1996 the District Court forwarded the applicant's petition for enforcement to the Miskolc District Court (Hungary) under a 1989 treaty between former Czechoslovakia and Hungary. On 29 April 1996 enforcement proceedings were instituted before the Miskolc District Court.

10. On 10 October 1996 the Miskolc District Court, having heard the debtor and obtained documents from his employer and the bank handling the transfer of child maintenance payments in foreign currency, informed the Bratislava 5th District Court directly of its finding that the debtor had been making regular payments. Since no reply or acknowledgement was received from the Slovak authorities, the Miskolc District Court attempted service through the Ministry of Justice. Service was finally acknowledged on 21 January 1998.

11. On 14 August 2000 the applicant had answered the debtor's objection lodged in the meantime. She requested the Miskolc District Court to re-examine the amount and regularity of the payments. On 17 November 2000 the court received information from the bank that some payments had been withheld on account of the applicant's failure to submit a certificate of school attendance, which was required once her son had reached the age of 16.

12. In May or June 2001 the Miskolc District Court observed that the applicant's petition for enforcement concerned amounts due for the period from 1992 to 1996. It informed her that a claim for maintenance concerning any periods preceding the claim by more than six months could only be enforced if she proved that the father had acted in bad faith or that she had had serious and justified reasons for not having petitioned for enforcement earlier. The court invited the applicant to substantiate within 15 days of service of the decision whether either of these conditions was met. The decision was served on the applicant through the Bratislava Regional Court on 3 September 2001. On 19 September 2001 she replied via the Bratislava Regional Court (Slovakia).

13. On 26 October 2001 the Miskolc District Court rejected the applicant's petition for enforcement finding that, despite its above instruction, the applicant had failed to provide the relevant information. The decision was served through the Bratislava Regional Court. On the applicant's appeal in March 2002, the Borsod-Abaúj-Zemplén County Regional Court (Hungary) quashed the first-instance order and remitted the case to the Miskolc District Court.

14. In the resumed proceedings, on 5 March 2003 the Miskolc District Court declared the decisions of the Bratislava 5th District Court executable. This decision became final on 8 April 2003.

15. On 4 July 2003 execution proceedings were instituted against the father. It appears that on 15 August and 12 December 2003, respectively, the judicial executor attempted to attach the father's salary and tangible assets.

16. On 9 January 2004 the father filed with the Miskolc District Court an objection to the execution. After the applicant's claims had been recalculated (given that the debt was determined in Slovak currency, whereas the applicant had claimed payments in American dollars, and the amounts were deducted from the debtor's salary in Hungarian currency), the execution order was supplemented on 6 January 2005 and served on 1 June 2005.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION BY HUNGARY ON ACCOUNT OF THE PROTRACTION OF THE PROCEEDINGS

17. The applicant complained that the length of the Hungarian proceedings had been incompatible with the "reasonable time" requirement of 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..."

18. The Government argued that the two-and-a-half-year period between 21 January 1998, when the Miskolc District Court received confirmation that its writ of 10 October 1996 had reached the Bratislava 5th District Court (see paragraph 10 above), and 14 August 2000, when the applicant reacted to the debtor's objection (see paragraph 11 above), was imputable to the applicant. The applicant conceded that this period could be attributed to her; however, she maintained that the overall length of the proceedings was still unacceptable.

19. The period to be taken into consideration began on 29 April 1996 and ended on 1 June 2005. It thus lasted more than nine years for two levels of jurisdiction.

A. Admissibility

20. 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

21. 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).

22. 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).

23. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive – notwithstanding the delay imputable to the applicant – and failed to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The applicant also complained that the proceedings before the Slovak authorities had also been protracted and, furthermore, that the Hungarian courts’ inefficient conduct had amounted to a virtual denial of her right to recover the outstanding maintenance payments. She relied on Articles 6 § 1 and 13 of the Convention.

25. As regards the role played by the Slovak authorities in the case, the Court observes that this was in essence limited to the period between 7 June 1994 and 4 March 1996 (see paragraphs 7 and 9 above). For the Court, no unreasonable delay occurred during this time. Moreover, concerning the outcome of the proceedings before the Hungarian authorities, the Court observes that, ultimately, the applicant’s claim to have the Slovak court decisions enforced was accepted by the Hungarian courts and they proceeded to the execution phase. In these circumstances, the applicant cannot claim to be a victim of a violation of her Convention rights in relation to the enforcement of her claim. It follows that these complaints

are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 450,000 Slovak crowns¹ in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis and taking into account that the applicant also caused some delay, it awards her 5,000 euros (EUR) under that head.

B. Costs and expenses

30. The applicant made no claim under this head.

C. Default interest

31. 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 concerning the excessive length of the Hungarian proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention by Hungary;

¹ Approximately 12,000 euros

3. *Holds*

(a) that this 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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of Hungary 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 amount 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 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President