



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

FOURTH SECTION

CASE OF ŠČURYOVÁ v. SLOVAKIA

(Application no. 72019/01)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

31/01/2007

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 Ščuryová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSKI,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 72019/01) 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, Mrs Božena Ščuryová (“the applicant”), on 13 November 2000.

2. The Slovakian Government (“the Government”) were represented by Mrs A. Poláčková, their Agent.

3. On 1 December 2005 the Court decided to communicate to the Government the complaint concerning the length of the proceedings on the increase of the amount of maintenance contributions and of the divorce proceedings. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Čadca.

A. Factual Background

5. The applicant was married to Mr Š with whom she lived in a common household. There were three children of the marriage: L, B and A. The children were born in 1976, 1977 and 1983 respectively.

6. In 1993 Š. opened a business. In connection with that initiative, on the applicant's request, the Čadca District Court (*Okresný súd*) dissolved their matrimonial property regime under Article 148 § 2 of the Civil Code. From that year on the applicant and Š never lived together.

7. In 1994 the District Court ordered that Š contribute towards the children's maintenance by making monthly payments. At the same time, it dismissed as premature the parents' respective claims for custody and care of the children.

8. In 1995 the applicant set up a commercial limited liability company (company B) of which she is the sole owner and statutory representative.

9. In 1996 the applicant and Š set up a commercial limited liability company (company E). They are the sole owners and Š is the statutory representative.

10. In 1999, acting in the name and on behalf of company E, Mr Š transferred the ownership of immovable property from the company to L.

B. Increase of maintenance prior to divorce

11. On 3 February 1998 the applicant filed a motion pursuant to Article 50 § 1 of the Family Code with the District Court for an order entrusting her with the care of A prior to the pronouncement of the divorce. She also sought an increase of the amount of Š's monthly contributions towards A's maintenance on the ground that since the judgments of 1994 the situation had changed.

12. On 19 May 1998 the District Court entrusted A to the care of the applicant and increased the amount of the maintenance contributions.

13. On 31 August 1998, on the applicant's appeal, the Žilina Regional Court (*Krajský súd*) quashed the ruling concerning maintenance payments and remitted this matter to the District Court for the taking of further evidence and re-examination.

14. On 2 March 2000 the District Court again determined the amount of the monthly contributions which Š had to make towards the maintenance of A.

15. On 31 October 2000, on appeals by both parents, the Regional Court quashed the judgment of 2 March 2000 as the facts of the case had still not been adequately established. The case was remitted to the District Court for re-examination. The latter held hearings on 23 June and 7 September 2004.

16. On 26 October 2005 the Regional Court dismissed as unfounded the defendant's challenge against the District Court judge for bias.

17. The District Court held another hearing on 1 February 2006. It was adjourned and the proceedings are still pending.

C. Proceedings concerning divorce and related matters

18. On 14 May 1998 Š lodged a petition for divorce and requested a judicial determination of the arrangements to be made in respect of A.

19. On 28 July 1998 the District Court pronounced the dissolution of the marriage, entrusted A to the care of the applicant and ordered Š to pay, on a monthly basis, an amount of money to the applicant as a contribution towards the maintenance of A. The ruling concerning the divorce and care of A became final and binding on 31 August 1998. The applicant appealed against the maintenance order and sought a higher amount.

20. On 30 July 1999 the Regional Court quashed the maintenance order and remitted this issue to the District Court for the taking of further evidence and re-examination.

21. On 2 May 2000 the District Court again determined the amount of the monthly contributions which Š had to pay in respect of A's maintenance.

22. On 30 October 2000 the Regional Court quashed the judgment of 2 May 2000 as the facts of the case had still not been adequately established. The case was remitted to the District Court for re-examination.

23. On 29 October 2002 the District Court for the third time determined the amount which Š. had to pay every month in respect of the maintenance of A. On 8 July 2004 the District Court corrected a clerical error in the operative part of the judgment.

24. In the meantime, on 16 June 2004 the applicant lodged an “appeal” against the judgment of 29 October 2002. She claimed that a copy of that judgment had been made available to her no earlier than 2 June 2004.

25. On 1 December 2004 the Regional Court declared the applicant's appeal inadmissible. It observed that a copy of the judgment of 29 October 2002 had been served on her legal representative on 11 February 2003 and that, accordingly, the 15 days' period for filing an appeal had expired on 26 February 2003. The applicant's appeal of 16 June 2004 was therefore belated.

D. Maintenance enforcement

26. On 3 September 1998 and 8 March 2001, respectively, A lodged two petitions against Š. seeking the judicial enforcement of her claim to two sums of money due to her under the judgment of 1994 (see above under heading “A”).

27. On 10 September 1998 and 29 March 2001, respectively, the District Court issued two enforcement warrants for the seizure of money from the defendant's bank account. Both enforcements appear to be still pending.

E. Other civil proceedings

28. On 6 July 1998 the applicant filed a petition for dissolution of her co-ownership regime with Š and for distribution of the property. In December 1999 the applicant provided further and better particulars of her claim. The proceedings appear to be still pending.

29. On 10 February 2000 the applicant brought an action in the District Court challenging the transfer in 1999 of the immovable property from company E to L. An interim injunction was issued, and later quashed on appeal, prohibiting L from disposing of the property. On 29 October 2002 the District Court dismissed the action.

30. On 11 February 2000 company B lodged an action against Š seeking an order for payment of an amount of money owed under a contract of sale of 1997. The action was granted by way of a payment order (*platobný rozkaz*), which was then quashed on the defendant's protest (*odpor*). The proceedings appear to be still pending.

F. Criminal proceedings

31. The applicant filed numerous criminal complaints against Š alleging that he was in default with payments of maintenance in respect of A and B. Š was found guilty of neglecting his alimentary duty within the meaning of Article 213 § 1 of the Criminal Code and sentenced by a penal order (*trestný rozkaz*) of the District Court of 29 July 2002 to 4 months' imprisonment suspended for 1 year. On 30 October 2002 another charge of neglecting his alimentary duty in respect of A was brought against him.

32. On 26 April 2000 the applicant filed a criminal complaint against Š in connection with the transfer of the immovable property from company E. to L. The matter was investigated by the Čadca District Office of Investigation which concluded, on 17 November 2000, that there was no criminal case to answer. This decision was upheld on appeal on 5 January 2001 by the Čadca District Prosecutor.

33. The applicant filed several criminal complaints against Š and L accusing them of having broken into her house and having taken and damaged her property and of having behaved abusively towards her. On 26 October and 2 November 1999 the Čadca District Police decided not to act on these complaints as there was no criminal case to answer. The allegations of abusive behaviour were referred for examination to the minor offences authority. The applicant's repeated appeals were dismissed as unfounded by the District Prosecutor on 22 and 23 November and 21 December 1999 and by the Žilina Regional Prosecutor on 23 August 2000. The matter was not of a criminal nature and concerned the division and distribution of the property in the co-ownership of the applicant and Š, a matter which fell within the exclusive jurisdiction of the ordinary courts.

G. Constitutional complaint

34. In January 2003 the applicant wrote to the Constitutional Court (*Ústavný súd*). In substance she complained of the length of the above civil and criminal proceedings and/or of the inactivity of the official authorities.

35. On 1 April 2003, through the intermediary of a lawyer, the applicant submitted a formal constitutional complaint under Article 127 of the Constitution in which she complained of delays in the proceedings concerning the increase of the maintenance contributions, the divorce proceedings and the two sets of enforcement proceedings.

36. On 17 December 2003 the Constitutional Court declared the complaint admissible in so far as it concerned the proceedings on the increase of maintenance and the divorce proceedings. The complaint was inadmissible in so far as it related to the enforcement proceedings. The latter proceedings concerned the claims of A, who had reached the age of majority in the meantime. The applicant was not a party to these proceedings. She had no standing to complain about them in her own name.

37. On 7 April 2004 the Constitutional Court found that the District Court had violated the applicant's right to a hearing without unjustified delay under Article 48 § 2 of the Constitution in the two sets of proceedings under review. The subject matter of these proceedings was interconnected, was factually complex and called for special diligence. The District Court had failed to handle them with the requisite expedition and their overall length, as such, was excessive. The Constitutional Court consequently ordered that the District Court proceed with the maintenance proceedings without delay and ordered that it pay the applicant 30,000¹ Slovakian korunas (SKK) in compensation for her non-pecuniary damage and reimburse her legal costs. The amount of just satisfaction was determined on an "equitable basis" and with reference to Article 41 of the Convention.

THE LAW

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

38. The applicant complained that in the above proceedings (headings "B" – "F" above) she had not had a fair hearing within a reasonable time, as required under 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..."

¹ SKK 30,000 is equivalent to approximately 750 euros (EUR).

A. Admissibility

1. Fairness and length of the enforcement proceedings and the proceedings in the action of 11 February 2000

39. In so far as the applicant complained of the unfairness and length of the two sets of enforcement proceedings described under heading “D” above, it is observed that she was not a party to those proceedings. It was her daughter, A, who sought enforcement of her maintenance claims against Š. It is also to be noted that A was born in 1983 and that, during the enforcement proceedings, she reached the age of majority (see the Constitutional Court's judgment of 7 April 2004). In these circumstances the applicant herself cannot claim to be a “victim” within the meaning of Article 34 of the Convention of a violation of her own right to a hearing within a reasonable time in these proceedings (see, for example, *Macková and Macko v. Slovakia* (dec.), no. 51543/99, 1 April 2003).

40. As to the length of the proceedings in the action of 11 February 2000, described under heading “E” above, the applicant in her personal capacity was not a party to these proceedings. It was company B which sued Š. The applicant herself therefore cannot claim to be a “victim” within the meaning of Article 34 of the Convention of a violation of her own right to a hearing within a reasonable time in these proceedings (see, for example, *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330 A, pp. 22-26, §§ 59-72 and *Veselá and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005).

41. It follows that the complaint of the unfairness and length of the enforcement proceedings and of the proceedings in the action of 11 February 2000 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Fairness and length of the criminal proceedings

42. As to the criminal proceedings complained of, which are described under heading “F” above, it is to be noted that they did not concern a criminal charge against the applicant and, therefore, Article 6 § 1 under its “criminal head” is not applicable to them.

43. The Court reiterates that Article 6 § 1, under its “civil head”, applies only to proceedings concerning the “determination” of a “civil right” which can be said, at least on arguable grounds, to be recognised under domestic law (see among other authorities *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333, p. 14, § 46).

44. The applicant has not shown that in the proceedings in question she has submitted any claim for damages in connection with the alleged offences (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

It follows that the complaint of the unfairness and length of these proceedings is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. Length of the proceedings in the actions of 6 July 1998 and 10 February 2000

45. As to the length of these proceedings (heading “E” above), the applicant has failed to show that she complained to the Constitutional Court under Article 127 of the Constitution (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX) in accordance with the applicable requirements (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 66).

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

4. Fairness of the proceedings in the actions of 6 July 1998 and 10 February 2000 and in the proceedings on the increase of maintenance and the divorce proceedings

46. As the proceedings in the action of 6 July 1998 and the proceedings on the increase of maintenance are still pending, the complaint of their unfairness is premature (see *Macková and Macko*, cited above).

47. The applicant has not shown that she appealed against the judgment of 29 October 2002 in the action of 10 February 2000.

48. As for the divorce proceedings, it is to be noted that the applicant failed to lodge her appeal against the judgment of 29 October 2002 within the applicable time-limit (see *Akdivar and Others*, cited above, § 66).

49. It follows that this part of the application must be rejected under Article 35 §§ 1, 3 and 4 of the Convention for non-exhaustion of domestic remedies.

5. Length of the proceedings on the increase of maintenance contributions and the divorce proceedings

50. The Government objected that, to the extent the proceedings had been reviewed and the applicant granted compensation by the Constitutional Court, she could no longer be considered a “victim” within the meaning of Article 34 of the Convention. They further submitted that the applicant could have raised the issue of recurring delays in the proceedings on the increase of maintenance contributions in the period after the Constitutional Court's judgment (*nález*) of 7 April 2004 by way of a fresh complaint under

Article 127 of the Constitution. As she had not done so, she had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

51. The applicant reiterated her complaint. She argued that the amount of just satisfaction awarded to her by the Constitutional Court was unacceptably low and that the injunction imposed by it on the District Court to proceed with the maintenance contributions case promptly had been ineffective, given that the proceedings had not been accelerated.

52. The Court observes that, in view of the Constitutional Court's judgment of 7 April 2004, a question arises whether the applicant can still claim to be a "victim", within the meaning of Article 34 of the Convention, of a violation of her right to a hearing within a reasonable time as regards the maintenance increase proceedings and the divorce proceedings.

53. The Court observes that in the present case the applicant's status as a "victim" depends on whether the redress afforded to her at the domestic level was adequate and sufficient having regard to Article 41 of the Convention. This issue falls to be determined in the light of the principles established under the Court's case law (see, most recently, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-... and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

54. The Constitutional Court found unjustified delays in both the proceedings on increase of maintenance and on divorce and related matters. In assessing the length of these two sets of proceedings, the Constitutional Court took into account the fact that they were closely interconnected. In determining the amount of just satisfaction, the Constitutional Court considered both sets together. The Court will follow the same approach.

55. At the time of the Constitutional Court's judgment, the length of the proceedings on the increase of maintenance was about 6 years and 2 months for two levels of jurisdiction. At that time the length of the divorce proceedings was more than 4 years and 5 months (14 May 1998 – 29 October 2002). The Constitutional Court awarded the applicant the equivalent of approximately 750 euros (EUR) in respect of her non-pecuniary damage. This amount is less than 20% of what the Court would generally award in a similar situation in a Slovakian case. After the Constitutional Court's judgment, the proceedings on the increase of the maintenance have been pending for more than 2 years and 5 months at a single instance. They have not yet been completed.

In these circumstances, the redress obtained by the applicant at the domestic level must be considered insufficient (see *Scordino (no. 1)*, cited above, §§ 205-06 and 214-15). The applicant can accordingly still claim to be a "victim" of a breach of the "reasonable time" requirement.

56. In view of the conclusion in the preceding paragraph, the Court considers that the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to resort to the remedy under Article 127

of the Constitution anew, as suggested by the respondent Government (see, *a contrario*, *Šidlová v. Slovakia*, no. 50224/99, §§ 49 and 50, 26 September 2006). The complaint, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

57. As for the proceedings on the increase of maintenance, the period to be taken into consideration began on 3 February 1998 and has not yet ended. It has therefore lasted more than 8 years and 7 months at two levels of jurisdiction to date. The divorce proceedings started on 14 May 1998 and lasted until 29 October 2002 (3 years and more than 8 months), also before two levels of jurisdiction. The applicant's appeal of 16 June 2004 was finally determined on 1 December 2004 (more than 3 months).

58. The Court notes that the complaint of the length of the two sets of proceedings specified above 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

59. 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).

60. 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).

61. Having examined all the material submitted to it, the Court considers that no facts or arguments have been put forward 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 on the increase of maintenance payments together with the proceedings concerning divorce and related matters 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 1 OF PROTOCOL No. 1 TO THE CONVENTION

62. In connection with the proceedings in the action of 10 February 2000 concerning the validity of the transfer of the immovable property from company E. to L., the applicant also complained of a violation of Article 1 of Protocol No. 1, which reads as follow:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

63. This complaint has the same factual and legal background as the complaint under Article 6 § 1 of the Convention of the unfairness of the proceedings in the action of 10 February 2000. The Court found that complaint inadmissible for non-exhaustion of domestic remedies in that the applicant did not show that she had appealed against the judgment of 29 October 2002 (see paragraphs 47 and 49 above). The Court finds no reasons for reaching a different conclusion under Article 1 of Protocol No. 1.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 5 OF PROTOCOL No. 7 TO THE CONVENTION

64. Without further specification, the applicant also alleged a violation of Article 5 of Protocol No. 7 to the Convention.

65. To the extent this complaint has been substantiated, the Court has found no indication of a violation of the Article invoked.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 16,919,400¹ Slovakian korunas (SKK) in respect of pecuniary damage. This amount included compensation in respect of outstanding maintenance, the immovable property in dispute and other

¹ SKK 16,919,400 is equivalent to approximately EUR 445,000.

material damage. The applicant also claimed SKK 5,190,000¹ in respect of non-pecuniary damage.

68. The Government contested these claims.

69. The Court does not discern any causal link between the violation found (see paragraph 61 above) and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have suffered non-pecuniary damage. Ruling on an equitable basis, and having regard to its case-law on the subject (see the recapitulation of the relevant principles and, *mutatis mutandis*, their application in *Scordino (no. 1)*, cited above, §§ 267-272), and taking into account that the applicant has already obtained some satisfaction under the Constitutional Court's judgment of 7 April 2004, the Court awards her EUR 2,150 under that head.

B. Costs and expenses

70. The applicant also claimed SKK 7,500² for her legal costs in Slovakia and SKK 7,794³ for her translation, telecommunications and other administrative costs incurred before the Court.

71. The Government contested the claim as regards the costs at the domestic level. They accepted that the applicant must have incurred some costs in the proceedings before the Court and invited the Court to determine the amount of the compensation in accordance with the Court's case-law and “the subject value”.

¹ SKK 5,190,000 is equivalent to approximately EUR 137,000.

² SKK 7,500 is equivalent to approximately EUR 200.

³ SKK 7,794 is equivalent to approximately EUR 205.

72. 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 information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented before the Court by a lawyer, the sum of EUR 200 covering costs under all heads.

C. Default interest

73. 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 proceedings on the increase of maintenance payments and of the divorce proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the above-mentioned proceedings;
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 2,150 (two thousand one hundred and fifty euros) in respect of non-pecuniary damage and EUR 200 (two hundred 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 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President