



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

FOURTH SECTION

CASE OF TOMLÁKOVÁ v. SLOVAKIA

(Application no. 17709/04)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Tomláková v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 17709/04) 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 two Slovakian nationals, Mrs Yvetta Tomláková (“the first applicant”) and Miss Alexandra Tomláková (“the second applicant”), on 1 May 2004.

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

3. On 26 September 2005 the President of the Chamber decided that the application should be given priority under Rule 41 of the Rules of Court.

4. On 7 May 2006 the President decided to give notice of the application to the Government. 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**

5. The applicants are a mother and a daughter. They were born in 1961 and 1990 respectively and live in Vienna (Austria).

A. Proceedings concerning paternity and maintenance

6. On 12 March 1990 the first applicant lodged an action with the Bratislava V. District Court (*Okresný súd*) against Mr B., a Hungarian national living in Hungary. She sought rulings declaring that B. was the father of the second applicant, granting her custody over the second applicant, and ordering B. to contribute to the second applicant's maintenance.

7. Before 18 March 1992, the date on which the Convention entered into force with respect to Slovakia, the District Court held 5 hearings and sent a letter rogatory to the Hungarian court in the judicial district where the defendant resided, seeking the defendant's observations in reply.

8. On 22 May 1992 the District Court ordered that a blood test be carried out in order to establish paternity. It subsequently appointed an expert to perform the test and ordered that the first applicant lodge a sum with the court in respect of the expert's costs.

9. On 26 August 1993 the District Court requested the first applicant to state whether she wished to continue the action. On 3 April 1995 the District Court informed her that it was impossible to proceed with the case since the whereabouts of B. were unknown. In response, on 11 October 1995, the first applicant indicated to the District Court the place where she believed the defendant was employed.

10. On 31 October 1995 the District Court decided to stay the proceedings. On 10 May and 4 June 1996 it again invited the first applicant to state whether she wished to pursue her claims and asked whether or not she knew the address of the defendant.

11. In September 1996 the District Court requested assistance from the Slovakian Ministry of Justice in ascertaining the address of the defendant. The Ministry submitted the address on 3 February 1997.

12. On 29 September 1997 the District Court interviewed the first applicant and she confirmed her intention to pursue the action.

13. On 5 February 1998 the District Court again ordered that blood tests be carried out and appointed another expert to do so.

14. On 30 June 1999, following a hearing held on the same day, the District Court granted the action and on 14 April 2000 the Bratislava Regional Court (*Krajský súd*) quashed its judgment on the defendant's appeal on the ground that the District Court had failed to establish the facts adequately. The case was remitted to the District Court for re-examination.

15. On 31 July 2002 the District Court sent a letter rogatory to the court in charge of the case in Hungary, requesting it to obtain and provide blood samples from the defendant.

16. On 12 February and 2 July 2004 the District Court imposed fines of, respectively, 5,000¹ and 25,000² Slovakian korunas (SKK) on the expert for having failed to produce the DNA report in time.

17. On 21 January 2005 the expert submitted his report. He concluded that, with a 99.99% degree of probability, the defendant was the father of the second applicant.

18. On 16 February 2005, on the applicants' motion, the District Court indicated an interim measure ordering that, as from that day, the defendant was to pay SKK 4,000³ per month towards the maintenance of the second applicant. The defendant appealed.

19. On 17 May 2005 the District Court held a hearing at which the applicants modified the scope of their claim for maintenance. The defendant did not attend.

20. Between 10 November 2004 and 19 May 2005 the District Court sent 3 letters rogatory to the court in Hungary requesting assistance on various matters.

21. On 7 July 2005 the first applicant made a written submission to the District Court. She maintained that the defendant was evading service of the decision of 16 February 2005 and that, as long as the decision had not been served on him, it could not be enforced. She therefore proposed that the District Court appoint an *ex officio* representative for the defendant for the purpose of serving that decision.

22. On 20 August 2005 the District Court requested the defendant to correct his appeal against the interim measure of 16 February 2005. He responded on 27 October 2005.

23. On 2 January 2006 the Regional Court upheld the interim measure.

24. On 1 June 2006 the District Court held a hearing following which, on the same day, it (i) ruled that the defendant was the father of the second applicant; (ii) gave the first applicant custody of the second applicant; (iii) ordered that the defendant contribute to the costs of the second applicant's maintenance; and (iv) issued an order for costs against him. Both parties appealed, the applicant seeking maintenance in a higher amount.

The appeal is still pending.

B. Constitutional complaint

25. On 23 December 2002 the applicants lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). They supplemented the complaint on 17 February 2003 in that they challenged the length of the above proceedings before the District Court and

¹ SKK 5,000 is equivalent to approximately 130 euros (EUR).

² SKK 25,000 is equivalent to approximately EUR 660.

³ SKK 4,000 is equivalent to approximately EUR 105.

jointly claimed SKK 1,000,000¹ in compensation for their non-pecuniary damage.

26. On 20 March 2003 the Constitutional Court declared the complaint admissible.

27. On 8 September 2003 the Constitutional Court found that the District Court had violated the applicants' right to a hearing "without unjustified delay" (Article 48 § 2 of the Constitution) and "within a reasonable time" (Article 6 § 1 of the Convention); ordered that the District Court proceed with the matter expeditiously; awarded the first applicant SKK 50,000² and the second applicant SKK 70,000³ by way of just satisfaction in respect of their non-pecuniary damage; and ordered the reimbursement of their legal costs.

The Constitutional Court observed that it had jurisdiction *ratione temporis* to consider only the period after 15 February 1993 when the Constitutional Court had been established. Nevertheless, it took into account the state of the proceedings at that time.

The Constitutional Court held that the case was not legally complex. However, the international element and the difficulty of assessing the evidence involved certain complexities. No substantial delays were imputable to the applicants and what was at stake for them called for special diligence. The conduct of the District Court was inefficient and uncoordinated and there were the following periods of inactivity on its part: from 26 August 1993 to 27 September 1995; from 27 September 1995 to 5 February 1998; from 5 February 1998 to 29 April 1999; and from 22 November 2000 to 14 September 2001.

THE LAW

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

28. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

¹ SKK 1,000,000 is equivalent to approximately EUR 26,300.

² SKK 50,000 is equivalent to approximately EUR 1,300.

³ SKK 70,000 is equivalent to approximately EUR 1,850.

A. Admissibility

29. The Government objected that, to the extent the proceedings had been reviewed and the applicants granted compensation by the Constitutional Court, they could no longer be considered “victims” within the meaning of Article 34 of the Convention. They maintained that the Constitutional Court had examined the applicants’ constitutional complaint thoroughly and that the amount of just satisfaction awarded complied fully with the Constitutional Court’s practice on the point. Moreover, the proceedings before it had been easily accessible to the applicants, they had been speedy and had been conducted in the applicants’ language and the compensation had been paid to them without any delay.

30. They further submitted that the applicants could have raised the issue of any possible recurring delays in the proceedings in the period after the Constitutional Court’s judgment by way of a fresh complaint under Article 127 of the Constitution. As they had not done so, they had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

31. The applicants reiterated their complaint. They argued that the amount of just satisfaction awarded 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.

32. The Court observes that, in view of the Constitutional Court’s judgment of 8 September 2003, a question arises whether the applicants can still claim to be “victims”, within the meaning of Article 34 of the Convention, of a violation of their right to a hearing within a reasonable time.

33. The Court observes that in the present case the applicants’ status as “victims” depends on whether the redress afforded to them 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-...).

34. At the time of the Constitutional Court’s judgment, the length of the proceedings under the Court’s temporal jurisdiction (see paragraph 36 below) was 11 years and almost 6 months. It must however be taken into consideration that the applicants’ constitutional complaint was only aimed at the proceedings before the first-instance court and not the court of appeal, which lasted up to 9 and a half months (see paragraph 14 above). The Constitutional Court awarded the applicants jointly the equivalent of approximately 3,150 euros (EUR) in respect of their non-pecuniary damage. This amount is about 25% of what the Court would generally award in a similar situation in a Slovakian case. After the Constitutional Court’s

judgment, the proceedings continued for 2 years and almost 9 months before a single instance and are still pending on appeal. In these circumstances, the redress obtained by the applicants at the domestic level must be considered insufficient (see *Scordino (no. 1)*, cited above, §§ 205-06 and 214-15). The applicants can accordingly still claim to be “victims” of a breach of the “reasonable time” requirement.

35. In view of the conclusion in the preceding paragraph, the Court considers that the applicants were 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. The complaint, accordingly, cannot be rejected for non-exhaustion of domestic remedies.

36. The period to be taken into consideration began only on 18 March 1992, when the recognition of the right of individual petition took effect in respect of Slovakia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted more than 14 years and 6 months for 2 levels of jurisdiction.

37. The Court notes that the application 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

38. The Government admitted that the overall length of the proceedings was incompatible with the “reasonable time” requirement. However, they argued that in the period after the Constitutional Court’s judgment there had been no unjustified delays on the part of the authorities. In so far as any delays had been caused by the defendant or other person outside the jurisdiction of Slovakian courts, such delays could not be imputed to the latter.

39. The applicants emphasised that the proceedings concerned the sensitive matter of the paternity and maintenance of a minor. They submitted that, in view of the stage currently reached in the proceedings, there was a real risk that the proceedings would not be completed before the second applicant reached the age of majority. Furthermore, they pointed out that despite the interim measure of 16 February 2005 they have to date received no payment from the defendant at all.

40. 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 applicants and the relevant authorities and what was at stake

for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In cases relating to civil status, what is at stake for the applicants is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

41. 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 and also *Hefková v. Slovakia*, no. 57237/00, 31 May 2005).

42. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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 and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicants claimed 25,000 euros (EUR), each, in respect of non-pecuniary damage.

45. The Government contested the claim.

46. The Court considers that the applicants must have sustained some 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 applicants have already obtained some just satisfaction under the Constitutional Court’s judgment of 8 September 2003, it awards them jointly EUR 4,000 under that head.

B. Costs and expenses

47. The applicants also claimed EUR 470 for legal costs, EUR 152 for translation costs and EUR 40 for administrative costs incurred before the Court.

48. The Government invited the Court to determine the amount of the award in accordance with its case-law.

49. 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 that the sums claimed should be awarded in full. It therefore awards the applicants jointly EUR 662 under this head.

C. Default interest

50. 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*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, jointly EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and jointly EUR 662 (six hundred and sixty two 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President