



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

FOURTH SECTION

CASE OF JAKUBIČKA AND MAGYARICSOVÁ v. SLOVAKIA

(Application no. 16126/05)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

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 Jakubička and Magyaricsová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 16126/05) 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 Slovak nationals, Mr Marcel Jakubička (“the first applicant”) and Ms Jana Magyaricsová (“the second applicant”) (together referred to as “the applicants”), on 13 April 2005.

2. The applicants were represented by Ms L. Jakubičková, their mother. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. On 12 March 2007 the President of the Fourth Section of the Court 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

4. The applicants are siblings. They were born in 1973 and 1976 respectively and live in Bratislava.

A. Factual background

5. The applicants' parents are divorced. Their father had been ordered by the Bratislava III District Court (then *Obvodný súd*, at present *Okresný súd*) to contribute to their maintenance.

6. The father's obligation to contribute to the first applicant's maintenance ended when the first applicant finished his secondary studies and commenced his military service.

7. After his military service, the first applicant commenced his university studies and applied for a fresh maintenance order against his father. Jointly with the first applicant, the second applicant applied for an increase of her maintenance.

8. The applicants' father then filed a separate action to have his maintenance obligation terminated.

9. These two actions were determined in two separate sets of proceedings which are described below, the applicants' action being the main subject matter of the present application.

10. As a consequence of the ongoing and still unresolved maintenance dispute the applicants found it difficult to provide for themselves during their studies. The second applicant finally had to abandon her post-secondary education in order to allow the first applicant to finish his studies.

The second applicant later became a mother and was no longer completely free in her choice of school since she had to combine her studies with her family situation and commitments. Since a public sector college was not an option given her situation, she is currently studying at a private college where she has to pay an annual tuition fee of 45,000 Slovakian korunas¹ (SKK).

B. The applicants' action

11. On 30 September 1994 the applicants' mother filed a motion against their father for a fresh maintenance order in respect of the first applicant and for an increase of the payments towards the maintenance of the second applicant.

12. On 30 November 1994 the applicants submitted powers of attorney in favour of their mother and provided further and better particulars specifying, *inter alia*, that the claim was in their own name but that they were acting through the intermediary of their mother.

13. On 4 July 1996 the District Court held a hearing at which it allowed the applicants to continue the action directly in their own names. Further hearings were scheduled for 13 March and 3 April 1997. The former had to be adjourned due to the absence of the parties. The latter was adjourned to

¹ SKK 45,000 is equivalent to approximately 1,300 euros (EUR).

enable the applicants to amend their statement of claim, which they did on the same day.

14. On 29 December 1998 the applicants requested that the proceedings be dealt with. On 20 May 1999 the District Court requested them to submit information concerning their school attendance and their mother's income.

15. On 19 February 2001 the District Court requested information from the employers of the applicants' mother and father concerning their respective incomes.

16. On 20 March 2001 the District Court held a hearing at which the parties requested a three-week adjournment in order to explore the possibility of settling the case. The hearing was adjourned *sine die*.

17. On 9 April 2001 the applicants' lawyer informed the District Court that the attempts to settle the case had failed and requested that the proceedings be resumed and a hearing fixed promptly. She reiterated the request on 10 September 2001.

18. Another hearing was held on 9 October 2001 and was adjourned *sine die*, the defendant being ordered to produce evidence. The order was reiterated on 8 November 2001.

19. A hearing was fixed for 28 March 2002 and adjourned to 23 April 2002 and then again to 23 May 2002.

20. On 23 May 2002 the District Court held a hearing following which, on the same day, it issued a maintenance order in favour of the first applicant and increased the maintenance to be paid to the second applicant. At the same time it determined the period for which the maintenance should be paid and allowed the father to pay the arrears in instalments.

21. At the request of the District Court judge dealing with the case, the President of the District Court authorised an extension of the period for finalising the written version of the judgment until 30 July 2002. It was finally served on the parties in August 2002 and the defendant appealed.

22. The District Court obtained the applicants' observations in reply and the court fee from the defendant and, on 22 October 2002, submitted the case file to the Bratislava Regional Court (*Krajský súd*) for a decision on the appeal.

23. On 24 February 2003 the Regional Court returned the case file to the District Court without a decision on the ground that the latter had failed to deliver formally the decision of 4 July 1996 concerning the applicants' standing in the proceedings.

24. The District Court delivered and secured service on the parties of the decision in question. It became final on 16 July 2003. The case file was re-submitted to the Regional Court on 9 September 2003.

25. On 23 March 2004 the Regional Court heard the appeal. The hearing was adjourned with a view to obtaining the case file concerning the father's claim for cancellation of his maintenance obligation.

26. On 15 June 2004 the Regional Court quashed the first-instance judgment and remitted the matter to the District Court for the taking of further evidence and re-examination.

27. In December 2005 the District Court requested the applicants to inform the court whether they were still full-time students or engaged in training for a future career.

28. The District Court held hearings on 20 and 24 April 2007. At the latter hearing it pronounced a judgment ordering the defendant to pay maintenance in favour of the first applicant, determining the period for which the maintenance should be paid, allowing the defendant to pay the arrears in instalments and dismissing the remainder of the action. The second applicant appealed and the proceedings concerning her are still pending.

C. Constitutional complaint

29. On 13 July 2004 the applicants, who were represented by a lawyer, lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*) in respect of the length of the proceedings in their action. They directed the complaint against both the District Court and the Regional Court and claimed SKK 500,000¹ each in damages.

30. On 8 September 2004 the Constitutional Court declared the complaint admissible in so far as it was directed against the Regional Court and inadmissible in so far as it was directed against the District Court. In accordance with its established practice, the Constitutional Court found that the complaint in respect of the District Court was belated because the proceedings before that court had ended with its judgment of 23 May 2002. Since the proceedings had no longer been pending at the time when the constitutional complaint had been lodged, their examination could no longer serve to expedite them.

31. On 2 December 2004 the Constitutional Court found that there was no violation of the applicants' right to a hearing without unjustified delay (Article 48 § 2 of the Constitution). In line with its admissibility decision, the Constitutional Court examined exclusively the part of the proceedings before the Regional Court. It found no particular factual or legal complexity in the case and no delays attributable to the applicants. It further found that the Regional Court could not bear any responsibility for the proceedings in the period between 24 February and 9 September 2003 when the case file was with the District Court for the correction of procedural errors in connection with the decision of 4 July 1996. The Constitutional Court thus

¹ SKK 500,000 is equivalent to approximately EUR 15,000.

confined itself to the period after 9 September 2003 and found no significant delays on the part of the Regional Court.

D. The applicants' renewed constitutional complaint

32. On 14 October 2004 the applicants lodged a fresh constitutional complaint about delays in the proceedings in their action before the District Court. They submitted that on 4 October 2004, that is to say after the above partial inadmissibility decision of 8 September 2004, they had been served with the Regional Court's decision of 15 June 2004 by which the first-instance judgment had been quashed and the matter remitted to the District Court. Thus, neither they nor the Constitutional Court had been aware of the fact that, at the time of the Constitutional Court's partial inadmissibility decision, their action had in fact been again before the District Court. Therefore, the complaint about the length of the proceedings before the District Court had not been belated.

33. On 27 October 2004 the Constitutional Court declared the complaint inadmissible under sections 24 (a) and 25 § 2 of the Constitutional Court Act on the ground that it concerned a matter that was considered *res iudicata*.

E. The father's action

34. On 5 June 1995 the applicants' father lodged a separate motion for the cancellation of his maintenance obligation in respect of the second applicant.

35. On 29 April 1996 the District Court allowed the motion. The second applicant appealed.

36. On 21 February 1997 the Regional Court declared the appeal inadmissible as being belated. The second applicant appealed on points of law (*dovolanie*) arguing that there had been a miscalculation of the period for filing the appeal.

37. The case file subsequently had to be re-assembled after having been misplaced.

38. On 26 August 2003 the Supreme Court quashed the decision of 21 February 1997 and remitted the matter to the Regional Court for a new determination of the second applicant's appeal against the judgment of 29 April 1996.

The Supreme Court found that the Regional Court had erred in the calculation of the period for appealing and that the appeal had been lodged in due time.

39. On 26 February 2004 the Regional Court quashed the first-instance judgment and discontinued the proceedings following the father's withdrawal of the action.

THE LAW

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

40. The applicants complained that the length of the proceedings in their action 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...”

A. Admissibility

41. The Government contested that argument. In particular, they argued that the applicants had failed to comply with the requirement under Article 35 § 1 of the Convention to exhaust domestic remedies in that they had not challenged the length of the proceedings before the District Court when these proceedings had still been pending and in that they had failed to contest any possible procedural delays in the period after the Constitutional Court's judgment (*nález*) of 2 December 2004 by way of a fresh complaint under Article 127 of the Constitution.

42. The applicants considered that they had complied with the requirements of Article 35 § 1 of the Convention as regards the exhaustion of domestic remedies. They submitted that the approach of the Constitutional Court to complaints about length of proceedings that took place over several instances was unclear and inconsistent. Given that their repeated recourse to the Constitutional Court had failed to produce any effect, the applicants considered that they were not required to file another complaint with it. As for the substance of the application, the applicants argued that the proceedings had throughout been marked by grave inefficiency on the part of the courts and pointed out that they were still pending.

43. The Court considers it appropriate to recapitulate the relevant part of its case-law in respect of length of proceedings in Slovakia.

44. Prior to 1 January 2002 there was no “effective remedy” in the Convention sense in respect of excessive length of proceedings in Slovakia (see, for example, *Bánošová v. Slovakia* (dec.), no. 38798/97, 27 April 2000).

45. On 1 January 2002 a constitutional amendment entered into force which provided for a new remedy under Article 127 of the Constitution. This remedy is in principle considered “effective” in the Convention sense in respect of excessive length of proceedings (see *Andrášik and Others v.*

Slovakia (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX).

46. Having regard to the Constitutional Court's practice to examine separately the parts of proceedings which take place before several instances or institutions without providing an overall assessment of their length, the Court has stressed that a length of proceedings complaint under Article 127 of the Constitution can only be considered "effective" for Convention purposes if it is capable of leading in each individual case to an examination of the overall length of the proceedings (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

47. The above practice of the Constitutional Court posed a general question as to whether a complaint under Article 127 of the Constitution was a remedy compatible with the requirements of Article 35 § 1 of the Convention in situations where the proceedings took place before several instances or institutions (see *Šebeková and Horvatovičová v. Slovakia*, no. 73233/01, § 42, 14 February 2006 and *Jakub v. Slovakia*, no. 2015/02, § 47, 28 February 2006).

48. The European Court answered the above question on the basis of the most recent information concerning the relevant domestic practice. It found no reasons to doubt *a priori* and in general the effectiveness of the complaint under Article 127 of the Constitution as a remedy in respect of length of proceedings that took place before several instances or institutions and that this finding was not affected by the technical requirements of the Constitutional Court's approach to such situations (see *Obluk v. Slovakia*, no. 69484/01, § 60, 20 June 2006).

49. Accordingly, the European Court has recognised that applicants are required to formulate their constitutional complaints in a way permitting the Constitutional Court to examine the overall length of the proceedings (see, *a contrario*, *Obluk*, cited above, §§ 61 and 62 and *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006).

50. Turning to the circumstances of the present case, the Court observes that in their constitutional complaint of 13 July 2004 the applicants contested the length of the proceedings both before the District Court and the Regional Court. Represented by a lawyer, they formulated their complaint and its summary in accordance with the applicable procedural rules and established practice in a way which allowed the Constitutional Court to deal with the proceedings as a whole (see *Obluk*, cited above, §§ 61 and 62). However, by its decision of 8 September 2004 the Constitutional Court for policy reasons excluded from its examination the part of the proceedings which had taken place before the District Court and which, at the same time, represented a substantial part of the proceedings. The applicants' renewed constitutional complaint, lodged at the time when the proceedings were again pending before the first-instance court after the first

judgment of the District Court had been quashed on appeal and the matter had been remitted to the District Court, failed to alter this outcome.

51. In the above circumstances and having regard to the principle that the Convention is intended to safeguard rights that are practical and effective (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147), the Court finds that the applicants complied with the exhaustion of domestic remedies rule under Article 35 § 1 of the Convention and that requiring them to make use of the remedy under Article 127 of the Constitution for a third time would be too onerous a requirement under that provision of the Convention (see, for example, *Sukobljević v. Croatia*, no. 5129/03, § 52, 2 November 2006).

It follows that that the Government's objection as to the exhaustion of domestic remedies has to be dismissed.

52. The period to be taken into consideration began on 30 September 1994 and has not yet ended. It has thus lasted more than 13 years for two levels of jurisdiction.

53. 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

54. 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).

55. 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).

56. 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

57. 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

58. The second applicant claimed SKK 225,000¹ in respect of pecuniary damage. This amount represented tuition fees for five years of her studies (see paragraph 10 above). The applicants also claimed SKK 750,000² each in respect of non-pecuniary damage.

59. The Government contested the claim concerning pecuniary damage as such and the claim concerning non-pecuniary damage as to its amount.

60. In so far as the claim in respect of pecuniary damage has been substantiated, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards to each of them 8,000 euros (EUR) under that head.

B. Costs and expenses

61. The applicants also claimed SKK 40,653³ for legal fees incurred before the ordinary courts and the Constitutional Court and SKK 10,000⁴ for translation costs incurred before the Court.

62. The Government contested the claim as to legal fees but accepted the claim as to translation costs.

63. 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 sum of EUR 950 for legal fees before the Constitutional Court and EUR 300 for translation costs before the Court. Accordingly, it awards the applicants jointly EUR 1,250 under this head.

¹ SKK 225,000 is equivalent to approximately EUR 6,800.

² SKK 750,000 is equivalent to approximately EUR 22,700.

³ SKK 40,653 is equivalent to approximately EUR 1,200.

⁴ SKK 10,000 is equivalent to approximately EUR 300.

C. Default interest

64. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, each of the applicants EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and the applicants jointly EUR 1,250 (one thousand two hundred and fifty 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 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President