



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

FOURTH SECTION

CASE OF BERKOVÁ v. SLOVAKIA

(Application no. 67149/01)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

24/06/2009

This judgment may be subject to editorial revision.

In the case of Berková v. Slovakia,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 67149/01) 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 Jarmila Berková (“the applicant”), on 4 August 2000.

2. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 24 November 2005 and 12 December 2006 the Court decided to give notice of the respective parts of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Poprad.

A. Proceedings concerning the applicant's legal capacity and the appointment of a guardian (Poprad District Court file no. Nc 1669/91 and Prešov District Court file no. P 81/95)

1. Proceedings leading to restriction of the applicant's legal capacity

5. On 14 April 1993 the District Court in Poprad restricted the applicant's legal capacity in that she was not allowed to act on her own before public authorities. The court relied on the opinion of several experts concluding that the applicant suffered from a mental disorder as a result of paranoid development of her personality. The applicant suffered from the delusion that she was being persecuted and on that ground she had made a considerable number of complaints and other submissions. The applicant's mother was appointed guardian for the purpose of the proceedings concerning the limitation of the applicant's legal capacity.

6. On 18 April 1994 the Regional Court in Košice upheld the first-instance judgment, which became final on 26 July 1994.

2. Proceedings concerning the appointment of a guardian (Prešov District Court file no. P 81/95)

7. On 1 August 1994 the District Court in Poprad brought proceedings on its own initiative with a view to appointing a guardian for the applicant, whose legal capacity had been restricted by the above decisions. On 12 September 1994 the file was transmitted to the Regional Court in Košice for decision on an objection to the judges of the District Court.

8. On 30 December 1994 the Regional Court excluded the judges of the District Court in Poprad and transferred the case to the District Court in Prešov. The file was returned to the District Court in Poprad on 9 March 1995. The decision was served on the applicant on 20 March 1995. On 6 April 1995 the file was sent to the District Court in Prešov where the case was registered under number P 81/95.

9. On 12 July 1995 and 30 August 1995 the District Court asked the applicant's husband to inform it about persons who could act as the applicant's guardian. The mail was returned to the court with the explanation that the addressee was in hospital. On 19 September 1995 the Town Office in Poprad submitted information at the District Court's request of 30 August 1995.

10. On 29 September 1995 the District Court asked the applicant's mother whether she was willing to act as her daughter's guardian. The mother replied in the negative.

11. On 5 October 1995 the court appointed a judicial secretary to act as the applicant's guardian in the proceedings in issue.

12. On 18 October 1995 the applicant's brother refused to act as guardian.

13. On 31 October 1995 the Town Office in Poprad informed the District Court that its employees were unable to identify a person willing to act as the applicant's guardian. On 14 and 16 November 1995 the applicant's sisters refused to assume that duty.

14. At a hearing held on 4 December 1995 the Poprad Municipality proposed that its employee Mrs Ch. be appointed as the applicant's guardian. That person stated that the applicant had no confidence in her. The case was adjourned and the court asked the municipality to indicate an employee of the Town Office who would act as the applicant's guardian. On 18 December 1995 the Poprad Municipality again proposed that Mrs Ch. should be charged with that responsibility. In a letter of 15 January 1996 the applicant replied that she disagreed.

15. On 29 January 1996 Mrs Ch. informed the court that she had been unable to find any person willing to assume the duty in question. The District Court decided that Mrs K., a person who had represented the town of Poprad at the previous hearing, should act as the guardian. Both Mrs K. and the applicant appealed in March 1996. On 1 April 1996 Mrs K.'s appeal was sent to the District Prosecutor's Office.

16. On 20 June 1996 the Regional Court in Košice quashed the District Court's decision of 29 January 1996.

17. On 16 July 1996 the first-instance court made five inquiries with a view to finding a suitable person. Those inquiries were unsuccessful.

18. On 5 September 1996 the District Court decided that the Town Office in Poprad should act as the applicant's guardian. The decision was served on the applicant, after several unsuccessful attempts, on 3 December 1996. On 11 December 1996 the applicant appealed.

19. The file was sent to the Regional Court in Košice on 20 January 1997. On 13 March 1997 it was transmitted to the Regional Court in Prešov, due to a change in the jurisdiction of the courts of appeal.

20. On 21 March 1997 the Regional Court in Prešov quashed the first-instance decision on the ground that the Town Office lacked legal capacity and therefore could not act as the applicant's guardian.

21. On 6 May 1997 the District Court appointed the Poprad Municipality as the applicant's guardian in respect of all actions involving the applicant's relations with public authorities.

22. On 10 July 1997 the applicant appealed. She also challenged the District Court judges.

23. Between 17 July 1997 and 28 August 1997 the file was submitted to the Regional Court in Košice for consultation.

24. On 24 September 1997 the file was submitted to the Regional Court in Prešov for a decision on the applicant's appeal. The Regional Court returned the file to the first-instance court with the instruction that the District Court judge should first comment on the request for her exclusion and that a mistake in the decision of 6 May 1997 should be rectified.

25. The District Court delivered a rectified decision on 24 October 1997. The court had difficulties in serving the rectified decision on the applicant, who received it on 8 December 1997.

26. On 26 January 1998 the Regional Court in Prešov upheld the decision on the appointment of a guardian and dismissed the applicant's request for the withdrawal of the first-instance court judge. The decision became final on 14 April 1998.

3. Proceedings on restoration of legal capacity to the applicant (Prešov District Court file no. P 81/95)

27. On 21 October 1998 the Poprad Municipality proposed to the Prešov District Court that legal capacity should be restored to the applicant.

28. On 18 January 1999 the District Court appointed an expert with a view to assessing the applicant's health. On 22 January 1999 it asked a local authority to submit a report on the applicant.

29. On 2 February 1999 the applicant challenged the expert, alleging that drugs had been forcibly administered to her in the hospital department where the expert worked. On 28 April 1999 the District Court appointed a different expert, who was requested to submit an opinion within sixty days.

30. On 16 July 1999 the expert appointed by the court proposed that an expert in psychology should assist him. He also asked for an extension of the time-limit within which the opinion was to be submitted.

31. After they had examined the applicant as an outpatient on 7 and 10 August 1999 the experts submitted an opinion to the District Court on 29 August 1999. It comprised twenty-three pages. According to the opinion, the applicant had been suffering from a chronic disorder resulting in a querulous type of paranoia for many years. She had no critical approach to the disorder and she remained persuaded that her actions were correct. The applicant understood judicial proceedings only within the frame of her mental disorder, in that she remained convinced that courts and other authorities were doing harm to her. The illness was of a lasting character and had developed in a slow and latent manner. It had advanced as compared with 1993, when the applicant's legal capacity had first been restricted. The experts did not recommend that the applicant be heard in person by a court or that judgments should be served on her, as she was unable to understand the scope of the proceedings and the judicial decisions correctly.

32. On 9 November 1999 the Prešov District Court heard the expert appointed and the representative of the authority acting as the applicant's guardian. The latter stated that the proposal to restore full legal capacity to the applicant had been submitted as she had appeared well balanced at that time. However, officials of the Poprad Municipality had encountered serious difficulties with the applicant during the subsequent period. The representative confirmed that the applicant had reacted in an inappropriate

manner whenever authorities had failed to act in accordance with her wishes.

33. The District Court also heard a guardian whom it had appointed to represent the applicant in the proceedings. The guardian did not propose restoring full legal capacity to the applicant as her health had not improved.

34. Relying on the expert opinion the District Court decided not to hear the applicant. Reference was made to Article 187 § 2 of the Code of Civil Procedure.

35. In its judgment of 9 November 1999 the District Court referred in detail to the applicant's situation and behaviour. With reference to the experts' conclusion it held that numerous abusive complaints, submissions and appeals which the applicant had made proved that her personality disorder persisted, resulting in her querulous behaviour. The court therefore decided not to restore full legal capacity to the applicant.

36. As the applicant's mental disorder was chronic and since it could not be expected that her health would improve, the court decided that the applicant was not to be allowed to make a fresh request for full legal capacity to be restored to her for three years from the date of the judgment. Reference was made to Article 186 § 3 of the Code of Civil Procedure.

37. Following the explicit recommendation of the experts, the District Court decided not to serve the judgment on the applicant. It became final on 11 December 1999.

38. On 5 December 2000 the General Prosecutor lodged an extraordinary appeal on points of law on the applicant's behalf, in which he contested the decision that the applicant was not entitled to make a fresh claim concerning her legal capacity for three years. The General Prosecutor objected that the District Court had decided exclusively at the request of the applicant's guardian and that it had failed to decide on the applicant's requests seeking restoration of full legal capacity, which were included in the file.

39. The Supreme Court dismissed the appeal on points of law on 19 December 2000. It held that the first-instance court had considered all relevant facts, including the applicant's submissions.

B. Divorce proceedings (Prešov District Court file no. 14 C 153/94)

40. The applicant married Mr B. on 22 January 1977. Two children were born to the couple, in 1979 and 1981 respectively. The spouses were divorced at the applicant's petition on 1 July 1991.

41. On 30 November 1991 the applicant and Mr B. remarried.

42. On 21 March 1994 the applicant applied for a divorce before the Poprad District Court.

43. On 23 March 1994 the judge instructed the Poprad District Court's Registry to wait for the outcome of the proceedings concerning the applicant's legal capacity.

44. On 4 May 1994 the applicant's husband informed the court that he had agreed to a divorce.

45. On 26 May 1994 the file was submitted to the Regional Court in Košice as the judges of the District Court in Poprad considered themselves biased. On 9 June 1994 the Regional Court decided that the case was to be dealt with by the District Court in Prešov. The file was transmitted to the latter court on 10 August 1994.

46. On 6 June 1995 the proceedings were stayed pending the outcome of the above proceedings no. P 81/95 concerning the appointment of a guardian. A guardian was appointed to represent the applicant in the divorce proceedings. The decision to stay the proceedings was served on that guardian on 21 June 1995.

47. On 6 July 1995 the applicant appealed against the decision to stay the divorce proceedings. The file was transmitted to the Regional Court of Košice on 25 July 1995. On 22 December 1995 the Regional Court dismissed the appeal on the ground that the applicant lacked the standing to file it, as her legal capacity had been restricted on 14 April 1993.

48. The judge made inquiries as regards the progress of proceedings no. P 81/95 on 3 May 1995, 5 June 1997, 3 March 1998 and 27 April 1998.

49. On 15 May 1998 the District Court asked the Poprad Municipality to inform it, as the applicant's guardian, whether it was seeking determination of the applicant's petition for divorce. The court reiterated that request on 19 August 1998 and 17 November 1998. On 7 December 1998 the Poprad Municipality replied in the affirmative. On 19 January 1999 the Poprad Municipality submitted further documents and information at the court's request of 22 December 1998.

50. On 25 January 1999 the Poprad Municipality proposed that the divorce proceedings should be stayed pending the determination of its proposal that full legal capacity be restored to the applicant, which had been made in October 1998. On 17 March 1999 the Poprad Municipality submitted further copies of the petition for divorce, in compliance with the District Court's request.

51. On 18 May 1999 the District Court asked the municipality to pay the court fee.

52. On 20 May 1999 the court sent the applicant's claim to her husband. The latter submitted his comments on 14 June 1999.

53. On 8 June 1999 the Poprad Municipality asked for an exemption from the obligation to pay the court fee.

54. On 6 September 1999 the case was assigned to a different judge.

55. On 27 January 2000 the District Court exempted the applicant from the obligation to pay the court fee.

56. A hearing was held on 28 February 2000, at which the Prešov District Court granted the applicant and her husband a divorce. The judgment was sent to the parties on 20 April 2000 and it became final on 16 June 2000.

C. Proceedings for division of matrimonial property (Poprad District Court file no. 14 C 114/94 and Prešov District Court file no. 14 C 154/94)

57. On 14 February 1994 the applicant claimed before the Poprad District Court that property she and her husband jointly owned as spouses should be divided. The judge decided to wait for the outcome of the proceedings on the applicant's legal capacity, which were then pending before the court of appeal.

58. As the Poprad District Court judges considered themselves biased, due to the applicant's past statements about them, the file was submitted to the Regional Court in Košice. On 30 June 1994 the Regional Court excluded the judges of the District Court in Poprad and transferred the case to the District Court in Prešov. The file was transmitted to that court on 10 August 1994.

59. On 6 June 1995 the proceedings were stayed pending the outcome of proceedings no. P 81/95, relating to the appointment of a guardian for the applicant. On the same day a guardian was appointed to represent the applicant in the proceedings for division of matrimonial property.

60. On 6 July 1995 the applicant appealed. The case was submitted to the Regional Court in Košice on 1 February 1996. On 12 February 1997, 4 April 1997 and 14 May 1997 the Regional Court asked the District Courts in Poprad and Prešov for files concerning the applicant's legal capacity. The Regional Court dismissed the applicant's appeal against the decision to stay the proceedings on 28 August 1997. The file was returned to the District Court in Prešov on 16 September 1997.

61. On 16 November 2000 the District Court asked the Poprad Municipality to inform it, as the applicant's guardian, whether it maintained the action. The District Court reiterated that request on 12 February 2001. It warned the municipality that a fine would be imposed on it in the absence of a reply.

62. On 19 February 2001 the Poprad Municipality withdrew the applicant's action on the ground that the applicant and her husband had divorced in the meantime. The applicant's claim had concerned division of property which the applicant and her husband had jointly owned during their marriage. The reason for the applicant's action no longer existed.

63. The District Court discontinued the proceedings on 21 February 2001. The decision became final on 24 May 2001.

D. Proceedings concerning the applicant's maintenance (Prešov District Court file no. 14 C 155/94)

64. On 10 February 1994 the applicant claimed before the Poprad District Court that her husband should be obliged to contribute to her maintenance.

65. On 17 February 1994 the judge decided to wait for the outcome of the proceedings relating to the applicant's legal capacity, which were then pending before the court of appeal.

66. On 26 May 1994 the file was submitted to the Regional Court in Košice as the judges of the District Court in Poprad considered themselves biased. On 30 June 1994 the Regional Court decided that the case was to be dealt with by the District Court in Prešov. The file was transmitted to the latter court on 11 August 1994.

67. On 30 August 1994 the District Court in Prešov asked the applicant's husband for comments on the action. It also asked the applicant to specify her claim.

68. On 30 August, 13 October and 10 November 1994 and 16 January and 6 March 1995 the District Court in Prešov asked for information concerning the proceedings relating to the restriction of the applicant's legal capacity and for the relevant file.

69. On 6 June 1995 the District Court in Prešov stayed the proceedings pending the outcome of proceedings no. P 81/95 relating to the appointment of a guardian. It also appointed a guardian to represent the applicant in the proceedings concerning her claim for maintenance.

70. On 6 July 1995 the applicant appealed against the decision to stay the proceedings. On 28 June 1996 the court of appeal discontinued the proceedings on the appeal as the applicant lacked standing to lodge it. The file was returned to the first-instance court on 8 July 1996.

71. The District Court in Prešov asked for the file in proceedings no. P 81/95 on 22 August 1996, 7 February and 5 June 1997 and 16 February 1998. It did not obtain that file, as the relevant case had been dealt with by different courts.

72. On 22 April 1998 the case concerning the applicant's claim for maintenance was allocated to a different judge of the Prešov District Court. On 27 April 1998 the judge was informed that file no. P 81/95 could still not be submitted, as that case had been dealt with.

73. On 15 May 1998 the District Court asked the applicant's guardian, the Poprad Municipality, for comments on the applicant's claim. In the absence of any reply the District Court reiterated the request on 19 August 1998 and on 17 November 1998. On 7 December 1998 the Poprad Municipality replied that it was maintaining the applicant's claim for maintenance. On 19 January 1999 the municipality submitted further information at the request of the District Court.

74. On 9 February 1999 the District Court asked three different authorities for information about the situation of the applicant and her husband. It received replies during March 1999.

75. On 6 September 1999 the case was allocated to a different judge.

76. On 1 February 2000 the District Court asked the Poprad Municipality for information about the applicant's income in 1994 and 1995.

77. A hearing was held on 28 February 2000. The applicant's husband did not appear. On 3 April 2000 the defendant informed the court that he had been in hospital since the beginning of February 2000 and that he would be undergoing surgery. The hearing scheduled for 17 April 2000 was therefore cancelled.

78. On 28 April 2000 the case was allocated to a different judge.

79. On 17 May 2000 the court asked the defendant's employer for information about the income of the applicant's husband. On 20 June 2000 it made an inquiry as regards the applicant's legal capacity.

80. The District Court heard a representative of the Poprad Municipality on 12 July 2000. The case was adjourned as the defendant was absent.

81. On 6 September 2000 the District Court heard the parties. It dismissed the action with reference to the situation of the applicant and that of her husband. It noted in particular that the defendant had covered all household expenses and the maintenance of their two children at the material time. The judgment was served on the parties on 23 October 2000 and 6 December 2000 respectively.

E. Proceedings concerning a labour dispute (Poprad District Court file no. 8 C 1059/91)

82. On 5 November 1987 the applicant brought an action with the District Court in Poprad. She challenged her employer's conclusion that she had been absent from work without authorisation for five days and claimed compensation for lost income totalling 1,141 Czechoslovak korunas.

83. On 17 June 1988 the District Court in Poprad found that the employer had proceeded erroneously. It granted the claim for compensation in part. Both the applicant and the defendant appealed. On 25 January 1989 the Regional Court in Košice upheld the first-instance judgment. On 27 June 1991 the Supreme Court quashed the lower courts' decision to dismiss a part of the applicant's claim and returned the case to the Poprad District Court. The outstanding part of the proceedings concerned a claim for payment of the equivalent of approximately 12 euros (EUR).

84. The District Court did not proceed with the case as it was established that, in the meantime, proceedings concerning the applicant's legal capacity had been brought.

85. On 14 March 1994 the applicant requested that the Poprad District Court judges should be excluded from all her cases.

86. In 1999 and in 2001 the Poprad District Court requested the file concerning the applicant's legal capacity. The Prešov District Court replied on 21 February 2001 that the file had been sent to the Regional Prosecutor's Office in Prešov.

87. On 30 April 2001 the applicant's guardian informed the District Court in Poprad that the applicant was maintaining her request for exclusion of the judges.

88. In October and December 2003 the District Court again requested that the file concerning the applicant's legal capacity should be submitted to it.

89. On 23 June 2004 the case was assigned to a different judge.

90. The District Court received the requested files concerning different cases of the applicant on 6 July 2004.

91. On 17 February 2005 the Poprad District Court judges were invited to comment on the applicant's request for their exclusion. Later the Regional Court in Prešov excluded the judge of the District Court who had dealt with the case. The case was transferred to a different chamber of the District Court on 18 May 2006.

92. On 7 March 2007 the Poprad District Court noted that the parties had concluded a friendly settlement under which the defendant undertook to pay the equivalent of EUR 5 plus default interest to the applicant. The court discontinued the proceedings in respect of that part of the action. The applicant withdrew the remaining part of her claim (payment of the equivalent of EUR 7) as that sum had already been paid to her.

F. Other proceedings and relevant facts

93. In 1991 the applicant brought an action with the Poprad District Court which concerned the right to use a flat (Poprad District Court file no. 15 C 692/91). On 17 June 2002 she informed the Court that the District Court had failed to proceed with the action.

94. On 25 April 1994 the applicant and several other members of her family sued the applicant's husband on the ground that he had made vulgar statements in respect of the applicant and her relatives. The Prešov District Court decided on the action on 24 June 1999 (file no. 15 C 76/96).

95. In 1996 the applicant sued her husband, claiming compensation for non-pecuniary damage on the ground that the defendant had ill-treated her. On 24 June 1999 the Prešov District Court dismissed the action.

96. On 30 May 1996 the applicant claimed before the Poprad District Court that she should be granted custody of her children and that their father should be ordered to pay maintenance. On 4 July 1996 the applicant claimed compensation for movable property before the Poprad District Court. The

District Court did not proceed with those claims as the applicant had not made them through the intermediary of her guardian.

97. In 1996 the Spišská Nová Ves District Court approved of an examination of the applicant's health in a mental hospital without her consent. The relevant decision became final on 17 November 1997 (file no. Ncú 8/96).

98. On 3 March 1999 the applicant and several other persons claimed damages from a couple who had sold livestock to them. The applicant submitted the relevant documents to the Court on 13 August 2002 stating that the proceedings concerning that claim were still pending (Stará Ľubovňa District Court file no. 5 C 771/98).

99. On 22 November 2000 the cooperative which owned the flat in which the applicant and her husband lived claimed that the tenants should be ordered to move out as they had failed to pay the rent. On 28 November 2001 the Poprad District Court granted the claim (file no. 14 C 1156/00). The judgment became final on 29 December 2001.

100. On 10 September 2001 the cooperative sued the applicant and her husband for a sum of money. On 27 March 2002 the District Court in Poprad discontinued the proceedings as the plaintiff had withdrawn the action (file no. 11 C 942/02). On 26 April 2002 the applicant appealed. No further information has been submitted.

101. The applicant unsuccessfully made a number of criminal complaints against different persons including her husband and one of the judges dealing with her cases.

G. Constitutional proceedings

102. On 6 May 2003 the applicant complained to the Constitutional Court about a violation of her rights in the proceedings concerning her cases. On 12 February 2004 the Constitutional Court appointed an advocate to represent the applicant. The advocate submitted a complaint in due form on 24 September 2004.

103. On 11 January 2005 the Constitutional Court declared admissible the complaint about a violation of the applicant's right to a hearing by an independent tribunal and without unjustified delays in the proceedings concerning a labour dispute which had been pending since 1987. It rejected the remaining complaints for the following reasons.

104. The Constitutional Court rejected as having been lodged outside the statutory two-month time-limit complaints relating to (i) the claim for division of matrimonial property of 14 February 1994, (ii) the applicant's claim for maintenance of 10 February 1994 and (iii) the proceedings concerning the placement of the applicant in a mental hospital for the purpose of examination of her health, in which the final decision had been given in 1996.

105. The Constitutional Court noted that the District Court in Poprad had failed to proceed with the applicant's claims for compensation for movable property of 4 July 1996 and for custody of her children and their maintenance, lodged on 30 May 1996. It found no violation of her constitutional rights in that context, as the applicant's legal capacity had been restricted and she had not been entitled to bring judicial proceedings herself. After examination of the relevant files, the Constitutional Court held that the authority appointed to act as her guardian had not failed to comply with any of its duties. In particular, the applicant's guardian had acted with due care in the divorce proceedings in 1994 in the context of which both the custody and maintenance of the children and the division of marital property had been determined.

106. On 20 April 2005 the Constitutional Court gave a decision on the merits of the admissible part of the case. It found that the Poprad District Court had violated the applicant's right to a hearing without unjustified delay. It noted that the proceedings had been pending for over seventeen years and that during the period falling within its jurisdiction (from 17 March 1993) there had been delays imputable to the District Court totalling 135 months. The Constitutional Court granted the applicant 90,000 Slovakian korunas¹ (SKK) as just satisfaction. It ordered the District Court to proceed with the case without delay and to reimburse the costs of the applicant's representation in the constitutional proceedings.

II. RELEVANT DOMESTIC LAW

A. Civil Code

107. Article 10 §§ 2 and 3 entitles courts to restrict the legal capacity of individuals who, *inter alia*, are suffering from a lasting mental disorder and who are therefore capable of taking only certain legal actions. A restriction on a person's legal capacity or his or her deprivation thereof has to be cancelled or its scope modified when the underlying grounds change or fall away.

B. Code of Civil Procedure and commentary thereon

108. Article 58 § 1 entitles courts to exempt a party from the obligation to respect a time-limit which that party has failed to respect for a justifiable reason. A request to that effect has to be made within fifteen days from the date the obstacle preventing the party from taking the relevant legal action has fallen away.

¹ SKK 90,000 was at that time the equivalent of 2,265 euros.

109. Under Article 186 § 3, as in force at the relevant time, a person who was deprived of legal capacity could claim that it should be restored to him or her. However, where a court dismissed such a request and where it could not be expected that the condition of the person concerned would improve, courts were entitled to prevent that person from making a similar request for an appropriate period, the length of which could not exceed three years.

110. With effect from 1 October 2004 Article 186 § 3 has been amended in that the period during which a person can be prevented from claiming restoration of his or her legal capacity was reduced to a maximum of one year.

111. In a commentary on the above amendment the view was expressed that the original three-year period had been excessively long and capable of seriously affecting a person's human rights. In view of the progress of medical science, reduction of that period to a maximum of one year was considered appropriate (see *Občiansky súdny poriadok*, Nová práca, spol. s r.o., 2006, p. 265).

112. Article 187 § 2 provides that a court can refrain from hearing a person whose legal capacity is to be restricted where it is not possible to hear such a person at all or where a hearing would impair that person's health.

113. Under Article 189 § 2, courts can refrain from serving a decision concerning a person's legal capacity where its service can have a negative impact on that person because of his or her mental disorder or where the person concerned is not capable of understanding the meaning of the decision.

THE LAW

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

114. The applicant complained that the proceedings in her cases were unfair and too long. She relied on Article 6 § 1 of the Convention which, in its relevant part, 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. Alleged violation of the applicant's right to a hearing within a reasonable time

a) Proceedings concerning the applicant's legal capacity and the appointment of a guardian (Poprad District Court file no. Nc 1669/91 and Prešov District Court file no. P 81/95)

(i) Proceedings leading to restriction of the applicant's legal capacity and to the appointment of a guardian

115. The Court notes that the proceedings in which the applicant's legal capacity was restricted ended with a decision which became final on 26 July 1994. In the subsequent proceedings the decision to appoint a guardian authorised to act on the applicant's behalf became final on 14 April 1998.

116. Since the application was introduced on 4 August 2000, in respect of the above two sets of proceedings the applicant did not respect the six-month time-limit laid down in Article 35 § 1 of the Convention.

117. It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(ii) Proceedings on the application for restoration of legal capacity to the applicant

118. The proceedings lasted from 21 October 1998 to 9 November 1999, that is approximately one year at one level of jurisdiction. In addition, on 5 December 2000 the General Prosecutor lodged an extraordinary appeal on points of law on the applicant's behalf. The Supreme Court dismissed that appeal on 19 December 2000, that is within a fortnight. In the Court's view, the duration of the relevant period was not contrary to the requirements of Article 6 § 1.

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

b) Divorce proceedings (Prešov District Court file no. 14 C 153/94)

120. The Government contended that the length of the proceedings, including the period during which the proceedings had been stayed pending the appointment of a guardian, had not been excessive in the particular circumstances of the case.

121. The applicant disagreed.

122. The period to be taken into consideration began on 21 March 1994 and ended on 28 February 2000. It thus lasted five years, eleven months and

ten days. During this period the merits of the case were determined by the first-instance court and procedural issues were dealt with by the court of appeal. It is also relevant that the proceedings were stayed, on 6 June 1995, pending the outcome of the proceedings on appointment of a guardian authorised to act on the applicant's behalf. The decision on that issue became final on 14 April 1998. In assessing the overall length of the proceedings the Court also has to take into account however the relevant part of the proceedings leading to the appointment of a guardian.

123. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

c) Proceedings concerning the division of matrimonial property (Poprad District Court file 14 C 114/94 and Prešov District Court file 14 C 154/94)

124. The Government admitted that the complaint about the length of the proceedings concerning the division of matrimonial property was not manifestly ill-founded.

125. The proceedings began on 14 February 1994 and ended on 21 February 2001. The period under consideration thus lasted seven years and nine days. During this period case was dealt with by two courts at first-instance, and procedural issues were examined by a court at second instance. It is also relevant that the proceedings were stayed on 6 June 1995 pending the appointment of a guardian to act on the applicant's behalf. That guardian was appointed in a decision given in a separate set of proceedings which became final on 14 April 1998.

126. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

d) Proceedings concerning the applicant's maintenance (Prešov District Court file no. 14 C 155/94)

127. The Government admitted that there had been a period of inactivity between March 1999 and 1 February 2000. The District Court had been obliged to repeatedly ask the applicant's guardian – the Poprad Municipality – for relevant information, as a result of which the proceedings had been prolonged. In the Government's view, the overall length of the proceedings was not excessive in the circumstances.

128. The applicant disagreed.

129. The proceedings started on 10 February 1994 and ended on 6 September 2000. Accordingly, the period under consideration lasted six years, six months and twenty-seven days. The merits of the case were examined at a single instance and several procedural issues were dealt with

by a court at a higher instance. The case could not be proceeded with between 6 June 1995 and 14 April 1998 as the court had to wait for appointment of a guardian authorised to act on the applicant's behalf.

130. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

e) Proceedings concerning a labour dispute (Poprad District Court file 8 C 1059/91)

131. The Government contended, with reference to the Constitutional Court's finding of 20 April 2005, that the applicant could no longer claim to be a victim of a violation of Article 6 § 1 of the Convention. It was relevant in that context that the proceedings concerned an insignificant sum.

132. The applicant maintained that her right to a hearing within a reasonable time had been violated.

133. The period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, of which Slovakia is one of the successor States, of the right of individual petition took effect. 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 ended on 7 March 2007. It thus lasted fourteen years, eleven months and twenty-two days. During that period the case was pending at first instance, the court of appeal decided on the request for exclusion of judges in 2005.

134. The question 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 falls to be determined in the light of the principles established under the Court's case-law (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-..., and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...).

135. The Constitutional Court, after analysing the proceedings complained of, awarded the applicant the equivalent of EUR 2,265 in respect of the period between 17 March 1993 and 20 April 2005. Having regard to the amount at stake in the proceedings complained of (see paragraphs 83 and 92 above) and the significant award made by the Constitutional Court, the Court considers that the applicant can no longer claim to be a "victim" as regards the duration of the proceeding up to the judgment of the Constitutional Court.

136. To the extent that the applicant may be understood as complaining about delays which had occurred after the judgment of the Constitutional Court, she should have sought redress by means of a fresh complaint under Article 127 of the Constitution (see *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

137. It follows that this complaint must be rejected under Article 35 §§ 1, 3 and 4 of the Convention partly as being manifestly ill-founded and partly for non-exhaustion of domestic remedies.

2. Alleged unfairness of the proceedings on the application for restoration of legal capacity to the applicant

138. The applicant also complained that the proceedings concerning the motion for restoration of full legal capacity to her were unfair. The court's failure to hear her in person and the dismissal of the motion amounted to a violation of her right to a fair hearing by a tribunal.

139. The Government contended that the applicant had not exhausted domestic remedies, as she had failed to appeal against the District Court's judgment. They relied on Article 58 § 1 of the Code of Civil Procedure and argued that the applicant could have appealed within fifteen days of learning about the first-instance judgment, irrespective of the court's conclusion not to serve that judgment on her. In any event, the District Court's decision to refrain from hearing the applicant and from serving the decision on her had been based on the opinion expressed by experts and justified in the circumstances of the case.

140. The applicant stated that she could not have appealed against the District Court's judgment as she had not received it. In her view, the expert opinion was not reliable and the decision in issue was arbitrary.

141. The Court finds relevant the applicant's argument that she could not lodge a qualified appeal as the first-instance judgment had not been served on her. It further notes that the General Prosecutor made an extraordinary appeal on points of law against the Prešov District Court's judgment of 9 November 1999, in which he contested the conclusions reached as well as the fact that the District Court had disregarded the applicant's submissions. On 19 December 2000 the Supreme Court dismissed the appeal on points of law, holding that the first-instance court had acted in accordance with the law.

142. Thus the Supreme Court, as the highest judicial instance in proceedings before ordinary courts, addressed, upon the initiative of the General Prosecutor, the issues of which the applicant had complained to the Court. In these circumstances, the application cannot be rejected for the applicant's failure to exhaust domestic remedies.

143. As regards the complaint that the Prešov District Court failed to hear the applicant and decided arbitrarily, the Court notes that the District Court had obtained an expert opinion and also documentary evidence including a local authority's report on the applicant.

144. Experts in psychiatry and psychology examined the applicant as an outpatient on 7 and 10 August 1999. They submitted their opinion to the

District Court on 29 August 1999. It comprised twenty-three pages. According to the opinion, the applicant had been suffering from a chronic disorder resulting in a querulous type of paranoia for many years. She had no critical approach to the disorder and she remained persuaded that her actions were correct. The applicant understood judicial proceedings only within the frame of her mental disorder, in that she remained convinced that courts and other authorities were doing harm to her. The illness was of a lasting character; it developed in a slow and latent manner. The experts did not recommend that the applicant be heard in person by a court or that judgments should be served on her as she was unable to correctly understand the scope of the proceedings and the judicial decisions.

145. On 9 November 1999, that is approximately two months after the opinion had been submitted, the Prešov District Court heard the expert appointed and the representative of the authority acting as the applicant's guardian. The latter stated that the officials had encountered serious difficulties with the applicant, who had reacted in an inappropriate manner when authorities had failed to act in accordance with her wishes.

146. The District Court also heard a guardian whom it had appointed to represent the applicant in the proceedings concerning the proposal to restore full legal capacity to her. That guardian proposed not to restore full legal capacity to the applicant as her health had not improved.

147. Relying on the expert opinion the District Court decided not to hear the applicant. Reference was made to Article 187 § 2 of the Code of Civil Procedure.

148. In its judgment of 9 November 1999 the District Court referred in detail to the applicant's situation and behaviour. With reference to the experts' conclusion it held that the numerous abusive complaints, submissions and appeals which the applicant had lodged proved that her personality disorder persisted. It resulted in her querulous behaviour. The court therefore decided not to restore full legal capacity to the applicant. The Supreme Court found no violation of the applicant's rights in the proceedings before the District Court.

149. In view of the documents before it the Court considers that in the proceedings in question the District Court gathered sufficient evidence with a view to reliably establishing the facts and correctly determining the point in issue. Appropriate procedural guarantees were provided with a view to protecting the applicant's rights and taking into account her legitimate interests (see, to the contrary, *H.F. v. Slovakia*, no. 54797/00, §§ 39-44, 8 November 2005).

150. The Court further reiterates that it has only limited power to examine complaints about errors of fact or law allegedly committed by national courts (for a recapitulation of the relevant case-law see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

151. In the light of all the material in its possession the Court finds no appearance of a violation of the applicant's right under Article 6 § 1 to a fair hearing in the proceedings in issue.

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

3. Alleged unfairness of the other sets of proceedings

153. The applicant complained that the courts had proceeded in her cases in an unfair and arbitrary manner.

154. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

B. Merits

155. The Court declared admissible the applicant's complaints about the length of divorce proceedings, proceedings concerning division of matrimonial property and the maintenance proceedings (see paragraphs 123, 126 and 130 above).

156. 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).

157. In cases relating to civil status, what is at stake for the applicant 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 (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

158. 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).

159. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the proceedings under consideration was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 in respect of the length of the above three sets of proceedings.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

160. The applicant complained that the courts had refused to restore full legal capacity to her and that she had been prevented from making a fresh request in that respect for three years. She relied on Article 8 of the Convention, which in its relevant part provides:

“1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. Exhaustion of domestic remedies

161. The Government objected that the applicant had not exhausted domestic remedies as she had not appealed against the Prešov District Court’s judgment of 9 November 1999. Even though the court had refrained from serving the judgment on her, she could have appealed, pursuant to Article 58 § 1 of the Code of Civil Procedure, within fifteen days of the date she learned about the judgment.

162. The applicant disagreed with that objection.

163. The Court, for reasons set out above (see paragraphs 141 and 142) considers that the objection cannot be upheld.

2. Complaint about the refusal to restore full legal capacity to the applicant

164. The Court notes that the decision not to restore full legal capacity to the applicant amounted to an interference with her right to respect for her private life. It had a legal basis, namely Article 10 of the Civil Code, and it can be considered to have been given in the interest of protecting the applicant’s rights and health as well as the rights of others, which is a legitimate aim within the meaning of the second paragraph of Article 8.

165. As to the question whether the interference was “necessary in a democratic society”, the Court reiterates that a certain margin of appreciation is left to the Contracting States and that its task is to review under the Convention the decisions taken by the national authorities in the exercise of their powers rather than to take the place of the competent national authorities in the exercise of their responsibilities when determining a person’s legal capacity (see, *mutatis mutandis*, *Matter v. Slovakia*, no. 31534/96, §§ 66 and 69, 5 July 1999).

166. The District Court's judgment of 9 November 1999 was based on documentary evidence comprising a public authority's report and the opinion of experts in psychiatry and psychology who had examined the applicant. The Court found that appropriate procedural guarantees had been provided with a view to protecting the applicant's rights and taking into account her legitimate interests in the proceedings (see paragraph 149 above).

167. In view of the documents before it the Court considers that the interference resulting from the District Court's decision not to restore full legal capacity to the applicant was not disproportionate to the legitimate aim pursued.

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

3. Complaint that the applicant's right to re-apply for full legal capacity had been restricted

169. The Government argued that the decision to prevent the applicant from making a fresh application for full legal capacity to be restored to her had been in accordance with Article 186 § 3 of the Code of Civil Procedure. It was in the interest of the applicant and the persons in her environment and was necessary in a democratic society in the circumstances of the case.

170. The applicant maintained that her rights under Article 8 of the Convention had been infringed.

171. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

172. By prohibiting the applicant from making a fresh application for full legal capacity for three years the domestic courts interfered with her right to respect for her private life. The Court concurs with the Government that such interference was in accordance with the law, namely Article 186 § 3 of the Code of Civil Procedure as in force at the relevant time and that it pursued the legitimate aim within the meaning of the second paragraph of Article 8 of protecting the rights of the applicant, who was suffering from mental illness, as well as the rights of others.

173. As regards the question whether the interference was "necessary in a democratic society", the Court notes, on the one hand, that the District Court based its decision on the experts' opinion that the applicant was

suffering from a mental illness of a lasting character and that a significant improvement in her health was unlikely in the near future.

174. On the other hand, however, the Court considers it relevant that the restriction in question was challenged by the Prosecutor General, that views had been expressed in Slovakia that the three-year period during which a person could be prohibited from re-applying for restoration of their legal capacity was excessively long and capable of seriously affecting such a person's human rights (see paragraph 111 above). Furthermore, the relevant law was amended, with effect from 1 October 2004, to reduce that period to a maximum of one year. This did not affect the position in the case under consideration.

175. The Court considers that the restriction in issue constituted a serious interference with the applicant's right to respect for her private life. It fails to see any social need sufficiently pressing to justify that interference as being proportionate to the aim pursued and necessary in a democratic society within the meaning of paragraph 2 of Article 8.

176. It follows that there has been a violation of Article 8 as a result of the applicant's being prohibited from re-applying for restitution of full legal capacity for a period of three years.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 6 § 1 AND 8 OF THE CONVENTION

177. The applicant complained that she had no effective remedy at her disposal as regards her complaints above under Articles 6 § 1 and 8 of the Convention. She relied on Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

1. As regards the complaint under Article 6 § 1 about the length of divorce proceedings, proceedings concerning division of matrimonial property and the maintenance proceedings

178. The Government admitted that the applicant's complaint under Article 13 in respect of the length of the above three sets of proceedings was not manifestly ill-founded.

179. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-

founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. As regards the complaint under Article 8 about restriction of the applicant's right to apply for full legal capacity

180. The Government argued that no issue arose under Article 13 of the Convention in respect of the applicant's above complaint under Article 8.

181. The Court notes that this complaint is linked to the complaint under Article 8 concerning restriction of the applicant's right to renew her request for full legal capacity which it declared admissible. It must therefore likewise be declared admissible.

3. As regards the other complaints under Articles 6 § 1 and 8 of the Convention

182. The Court reiterates that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). It found the remaining complaints of the applicant under Articles 6 § 1 and 8 of the Convention inadmissible. Accordingly, in respect of those complaints the applicant did not have an "arguable claim" and Article 13 is, therefore, not applicable.

183. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Article 13 in conjunction with Article 6 § 1 (complaint about the length of divorce proceedings, proceedings concerning division of matrimonial property and maintenance proceedings)

184. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

185. The three sets of proceedings in issue ended in 2000 and 2001 respectively. The Court has found earlier that there existed no legal remedies in force in Slovakia prior to 1 January 2002 capable of effectively redressing alleged violations of the right to a hearing within a reasonable time (see, for example, *Číž v. Slovakia*, no. 66142/01, §§ 74 and 75, 14 October 2003, with further references). It finds no reason to reach a different conclusion in the present case.

186. Accordingly, there has been a violation of Article 13 in this respect.

2. Article 13 in conjunction with Article 8 (restriction of the applicant's right to renew her application for full legal capacity)

187. Having regard to its finding that the restriction in issue infringed the applicant's rights under Article 8 (see paragraph 176 above), the Court does not consider it necessary to examine the applicant's complaint also under Article 13.

IV. THE APPLICANT'S OTHER COMPLAINTS

188. The applicant further alleged that the facts of her case amounted to a violation of her human rights. She relied on Articles 1, 2, 3, 5, 7, 8, 9, 10, 11, 13, 14 17 and 18 of the Convention, on Articles 1, 2 and 3 of Protocol No. 1, on Article 2 of Protocol No. 4 and on Articles 3 and 5 of Protocol No. 7.

189. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

190. 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

191. The applicant claimed SKK 10,000 in respect of damage resulting from the protracted length of the proceedings concerning her labour dispute.

192. The Government contested the claim.

193. The Court concluded that the complaint about the length of the proceedings relating to the applicant's labour dispute was inadmissible (see paragraph 137 above). Her claim for just satisfaction in respect of those proceedings must therefore be dismissed.

B. Costs and expenses

194. The applicant submitted no claim under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible:
 - (a) the complaint under Article 6 § 1 of the Convention about the length of divorce proceedings, proceedings concerning division of matrimonial property and the proceedings concerning the applicant's maintenance;
 - (b) the complaint under Article 13 in conjunction with Article 6 § 1 about the duration of divorce proceedings, proceedings concerning division of matrimonial property and the maintenance proceedings;
 - (c) the complaints under Articles 8 and 13 of the Convention concerning the restriction of the applicant's right to repeatedly seek restitution of full legal capacity to her;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the duration of the three sets of proceedings in issue;
4. *Holds* that there has been a violation of Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 in respect of the duration of divorce proceedings, proceedings concerning division of matrimonial property and the proceedings concerning the applicant's maintenance;
6. *Holds* that a separate examination of the complaint under Article 13 in conjunction with Article 8 is not called for;
7. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President