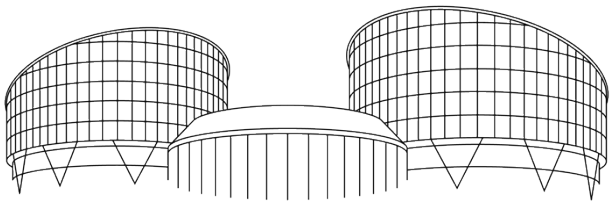

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF BOŠKOVÁ v. SLOVAKIA

(Application no. 21371/06)

JUDGMENT

STRASBOURG

2 June 2009

FINAL

02/09/2009

This judgment may be subject to editorial revision.

In the case of Bošková 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 12 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 21371/06) 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 Slovak national, Mrs Iveta Bošková ("the applicant"), on 16 May 2006.

2. The applicant was represented by Ms H. Dobosová, a lawyer practising in Bratislava. The Slovak Government ("the Government") were represented by their Agent, Mrs M. Pirošíková.

3. On 2 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Bratislava.

5. On 3 April 2002 the applicant lodged an action against her husband with the Bratislava IV District Court, seeking a judicial determination of their parental rights and obligations in respect of their child.

6. On 30 January 2003 the District Court delivered an interim measure in the applicant's favour.

7. On 20 March 2003 the District Court gave the applicant custody of the child. It did not order the defendant to pay any maintenance. On 13 November 2003 the Bratislava Regional Court quashed the judgment in its part concerning maintenance and remitted the case to the District Court. The view was expressed that the court of first instance had not sufficiently established the relevant facts. The Regional Court ordered the District Court to proceed along the lines specified.

8. In a judgment of 21 September 2004 the District Court determined the issue. On 23 September 2005 the Regional Court again quashed the relevant part of the judgment and remitted the case to the District Court. It found that the District Court had not sufficiently established the relevant facts and explained to the latter how the case should be dealt with.

9. On 29 November 2005 the applicant withdrew the action as she had reached an out-of-court settlement with the defendant.

10. The District Court thus discontinued the proceedings on 17 January 2006. The decision became final on 17 February 2006.

11. Meanwhile, on 10 January 2006, the Constitutional Court found that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay. The Constitutional Court established that the case was not complex and that no delays could be imputed to the applicant. It noted that the District Court had acted ineffectively. In view of the subject-matter of the proceedings, their overall duration had been excessive. The Constitutional Court concluded that the finding of a violation represented in itself sufficient just satisfaction in the circumstances of the case, especially as the applicant had withdrawn the action. It did not order the District Court to proceed with the case on the ground that the applicant had withdrawn the action. It ordered the District Court to reimburse the applicant's legal costs.

THE LAW

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

12. The applicant 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 in its relevant part 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

13. The Government did not contest that argument but expressed the view that the applicant could no longer claim to be a victim of a violation of her right to a hearing within a reasonable time. They argued that the Constitutional Court had expressly acknowledged such a violation and had ordered reimbursement of the applicant's legal costs. They noted that the Court had not yet examined a case where the Constitutional Court had not awarded any just satisfaction to the applicant on the ground that he or she had withdrawn the action due to an out-of-court settlement.

14. The applicant reiterated her complaint.

15. The Court finds that, in respect of the alleged violation of the applicant's right to a hearing within a reasonable time, it is irrelevant that the applicant withdrew her claim and that, as a result, the ordinary courts did not ultimately determine the merits of the case (see *Číž v. Slovakia*, no. 66142/01, § 61, 14 October 2003).

16. It observes that the proceedings started on 3 April 2002 and ended on 17 February 2006. The period under the Court's consideration is thus three years and almost eleven months for two levels of jurisdiction.

17. On 10 January 2006 the Constitutional Court found a violation of the constitutional equivalent of Article 6 § 1 of the Convention but it did not award any just satisfaction in respect of non-pecuniary damage on the ground that the applicant had withdrawn her claim due to an out-of-court settlement. The Court reiterates that whether the redress afforded to the applicant was adequate and sufficient having regard to Article 41 of the Convention falls to be determined in the light of the principles established under the Court's case-law (see, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-..., and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-...). These include, most notably, the amount of the compensation awarded to the applicant and the effectiveness of the preventive measure applied (see *Sika v. Slovakia (no. 3)*, no. 26840/02, § 54, 23 October 2007).

18. Although the proceedings ended following the applicant's initiative, the Court cannot overlook the fact that they had been pending for almost four years and that the Constitutional Court had itself acknowledged the District Court's responsibility for delays in those proceedings. Having regard to the facts of the case and to the principles established in its case-law, the Court considers that the redress obtained by the applicant at the domestic level was not adequate and sufficient. Firstly, even though the proceedings unexpectedly came to an end immediately following the Constitutional Court's ruling, the Constitutional Court did not in fact order the District Court to proceed diligently with the case. Secondly, the applicant did not obtain any compensation (see, mutatis mutandis, *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004 and *Becová v.*

Slovakia (dec.), no. 23788/06, 18 September 2007). In view of the above, it concludes that the applicant did not lose her status as a victim within the meaning of Article 34 of the Convention (see, for example, *Bič v. Slovakia*, no. 23865/03, § 37, 4 November 2008).

19. The Court notes that this part of 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

20. 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 and *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

21. 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).

22. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

23. The applicant further complained that she had no effective remedy at her disposal within the meaning of Article 13 of the Convention, which reads:

> "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."

24. The Government contested that argument.

25. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. The applicant used the possibility to lodge a complaint under Article 127 of the Constitution, which was at her disposal, and the Constitutional Court found a violation of her right to a

hearing without unjustified delay guaranteed by the constitutional equivalent of Article 6 § 1 of the Convention. The fact that the redress obtained from the Constitutional Court was not sufficient for the Convention purposes does not render the remedy under Article 127 of the Constitution in the circumstances of the present case incompatible with Article 13 of the Convention (see *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

27. The applicant claimed 6,639 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to its case-law and to what was at stake for the applicant, it awards EUR 2,200 under that head.

B. Costs and expenses

30. The applicant claimed EUR 1,480 for the costs and expenses incurred before the domestic courts, including the Constitutional Court, and EUR 1,341 for those incurred before the Court. She further claimed EUR 415 in respect of translation costs.

31. The Government contested all claims except of the one concerning the translation costs.

32. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found. In the present case, having regard to the fact that the costs of the applicant's legal representation before the Constitutional Court were reimbursed at the

domestic level, the Court rejects the claim for costs and expenses incurred in the constitutional proceedings. It also rejects the remaining claims as regards the domestic costs because it finds no indication that those costs were incurred in order to prevent or obtain redress for the violation found (see *Záborský and Šmáriková v. Slovakia*, no. 58172/00, § 46, 16 December 2003). Having regard to the documents in its possession, the Court considers it reasonable to award the applicant, who was represented by a lawyer, the overall sum of EUR 1,500 for the costs and expenses incurred before the Court, including the translation costs.

C. Default interest

33. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı Deputy Registrar	Nicolas Bratza President