



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

THIRD SECTION

**CASE OF A.H. v. SLOVAKIA**

*(Application no. 23386/09)*

JUDGMENT

STRASBOURG

19 February 2013

*This judgment is final but it may be subject to editorial revision.*



**In the case of A.H. v. Slovakia,**

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President*,

Ján Šikuta,

Nona Tsotsoria, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 29 January 2013,

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

**PROCEDURE**

1. The case originated in an application (no. 23386/09) 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, Ms A.H. (“the applicant”), on 3 April 2009. The President of the Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was originally represented by Ms K. Dušáková, a lawyer practising in Košice. On 27 September 2010 she appointed Mr V. Zvolenský, a lawyer practising in Košice, to represent her in the proceedings. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. On 3 May 2010 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1964 and lives in Košice.

**A. Civil proceedings**

6. On 5 February 2004 the applicant living with her two sons who were students initiated proceedings before the Košice II District Court on

contribution to her maintenance by her husband. She claimed that she was unemployed and her state of health did not allow her to work.

7. The Košice II District Court scheduled a hearing for 14 September 2005.

8. On 28 June 2005 the applicant's husband raised an objection to the territorial jurisdiction of the Košice II District Court claiming that he lived and worked in Veľký Krtíš.

9. On 5 August 2005 the matter was transmitted to the Veľký Krtíš District Court.

10. Between 9 February 2006 and 6 May 2008 the Veľký Krtíš District Court scheduled six hearings. The applicant had excused herself for not being able to appear before the court since her financial situation did not allow her to pay for the journey from her place of residence to the District Court's seat. On that account, the Veľký Krtíš District Court requested the Košice II District Court to hear the applicant. The applicant was heard by the latter court three times.

11. On 9 May 2006 the applicant requested that the case be dealt with by the Košice II District Court. She argued that other proceedings linked to her family situation – divorce, maintenance of the applicant's and her husband's children and distribution of marital property – were pending before that court. She further submitted that she had no income and lived in Košice. Being in material need she stressed that she would not be able to travel to Veľký Krtíš which was situated some 200 kilometers from Košice.

12. On 24 July 2006 the Veľký Krtíš District Court requested the applicant to pay court fees for her request to transfer the case.

13. On 4 August 2006 the applicant in her response sought an exemption from the obligation to pay them.

14. On 10 August 2006 the Veľký Krtíš District Court informed the applicant that according to the existing legal regulation it was not possible to exempt her request to transmit the case from the obligation to pay the court fees.

15. Following the applicant's repeated request, on 4 September 2006 the Veľký Krtíš District Court warned the applicant that in case of a failure to pay the court fees the request would not be dealt with.

16. On 14 September 2006 the applicant again asked to be exempted from the obligation to pay the court fees.

17. On 2 October 2006 the Veľký Krtíš District Court refused to grant the exemption. On 31 October 2006 the Banská Bystrica Regional Court, following the applicant's appeal, quashed the decision and ordered the Veľký Krtíš District Court to examine the applicant's financial situation.

18. On 6 March 2007 the Veľký Krtíš District Court granted the exemption from the obligation to pay the court fees.

19. On 19 April 2007 the Veľký Krtíš District Court transmitted the case file to the Supreme Court to decide on the applicant's request.

20. On 26 April 2007 the Supreme Court returned the case file to the Veľký Krtíš District Court since the court had failed to bring forward the defendant's observation to the applicant's request.

21. On 7 May 2007 the defendant submitted his disagreement with transfer of the case.

22. On 14 May 2007 the case file was again transmitted to the Supreme Court which on 16 May 2007 dismissed the applicant's request.

23. On 21 May 2007 the case file was returned to the Veľký Krtíš District Court.

24. On 25 June 2007 the applicant again requested that the case be transferred to the Košice II District Court. She submitted that none of the parties to the proceedings had any longer residence in Veľký Krtíš and that her financial situation did not allow her to appear before the Veľký Krtíš District Court.

25. On 10 August 2007 the matter was transmitted to the Supreme Court which on 3 September 2007 refused to grant the applicant's request.

26. On 17 September 2007 the case file returned to the Veľký Krtíš District Court.

27. On 29 November 2007 the Veľký Krtíš District Court adjourned a hearing and sent the case file to the Košice II District Court to enable the applicant to consult it.

28. On 3 February 2009 the Veľký Krtíš District Court dismissed the applicant's claim. The applicant and the defendant appealed.

29. On 30 April 2009 the Banská Bystrica Regional Court upheld the judgment. It became final on 13 June 2009.

## **B. Constitutional proceedings**

30. In April 2007 the applicant complained to the Constitutional Court about delays in the proceedings before both the Košice II District Court and the Veľký Krtíš District Court.

31. On 10 April 2008 the Constitutional Court declared admissible the complaint related to the proceedings pending before the Veľký Krtíš District Court. At the same time, it rejected the part of the complaint concerning the proceedings before the Košice II District Court as belated. It held that the proceedings before the latter court had ended on 5 August 2005 when the matter was transmitted to the other District Court. The applicant had learned about it on 3 January 2006 at the latest, when she was summoned to appear before the Veľký Krtíš District Court.

32. On 2 October 2008 the Constitutional Court decided that the applicant's right to a hearing within a reasonable time before the Veľký Krtíš District Court had not been violated. It concluded that the case was not complex and that the applicant by her conduct had significantly contributed to the delay. As to the conduct of the District Court, the Constitutional

Court held that, except for a period of five months of delays when dealing with the applicant's request to be exempted from the obligation to pay the court fees, the District Court had been dealing with the case in an appropriate manner. Thus the delays in the proceedings could not be considered as unreasonable within the meaning of Article 6 § 1 of the Convention.

33. On 4 August 2009 the applicant complained to the Constitutional Court again mainly about the outcome of the proceedings.

34. On 23 September 2009 the Constitutional Court dismissed her complaint as being manifestly ill-founded.

## THE LAW

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

35. 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 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

36. As to the length of proceedings before the Košice II District Court, the Government submitted that the Court's assessment of the exhaustion of domestic remedies would be important for interpretation and application of the Convention as well as for the future decision-making of the Constitutional Court.

37. The Government further argued, referring to judgment of the Constitutional Court of 2 October 2008, that the Veľký Krtíš District Court had not dealt with the applicant's claim in a manner violating her right to a hearing within a reasonable time and that the applicant herself had significantly contributed to the length of the proceeding. Her complaint in respect of that period was therefore manifestly ill-founded. As to the course of the proceedings following the Constitutional Court's judgment, the Government submitted that the applicant was required to have a recourse to the Constitutional Court under Article 127 of the Constitution again, had she been of the opinion that further delays had occurred. This part of the application should therefore be rejected for non-exhaustion of domestic remedies.

38. The Court notes that the applicant initiated the proceedings on 5 February 2004 by lodging her claim for maintenance by her husband before the Košice II District Court.

39. As to the course of the proceedings the Court notes that the Košice II District Court scheduled a first hearing for 14 September 2005 which is more than one year and seven months after lodging of the claim. The Court further notes that following the defendant's objection the matter was transferred to the Veľký Krtíš District Court in August 2005. In April 2007 the applicant lodged her constitutional complaint alleging that the proceedings had been delayed before both the above-mentioned courts.

40. The Court further notes that on 10 April 2008 the Constitutional Court rejected as belated the applicant's complaint related to the proceedings before the Košice II District Court and declared admissible the part of the complaint concerning the proceedings before the Veľký Krtíš District Court. Subsequently, on 2 October 2008 the Constitutional Court ruled that the applicant's right to a hearing within a reasonable time before the latter court had not been violated.

41. The Court observes that the applicant formulated her constitutional complaint in a manner permitting the Constitutional Court to examine the overall duration of the proceedings (see also *Obluk v. Slovakia*, no. 69484/01, § 61, 20 June 2006). Additionally, at the time of the lodging of her constitutional complaint the proceedings had not yet been concluded by a final decision (see, *a contrario*, *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009). The Constitutional Court thus could have addressed their overall length, in line with the Court's approach when examining similar cases (see *SOFTEL spol. s r.o. v. Slovakia* (no. 2), no. 32836/06, § 21, 16 December 2008).

42. However, in the present case, the Constitutional Court excluded from its review the phase of the proceedings before the Košice II District Court on the ground that the District Court was no longer dealing with the case. Such an approach is not in line with both the Constitutional Court's and the Court's case-law on the matter while examining similar complaints (see *Šedý v. Slovakia*, no. 72237/01, §§ 66-67, 19 December 2006, *SOFTEL spol. s r.o. v. Slovakia* (no. 1), no. 32427/06, § 8, 16 December 2008, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

43. Indeed, the Court has already held that it has been its practice to examine the overall length of the proceedings complained of (see *SOFTEL spol. s r.o. v. Slovakia* (no. 2), § 21, cited above, with further reference). It has further held on several occasions that the remedy under Article 35 of the Convention is susceptible of providing appropriate and sufficient redress only where it allows for an examination of the proceedings in their entirety (see *Bako*, cited above and *A.R., spol. s r.o. v. Slovakia*, no. 13960/06, §§ 37-38, 9 February 2010).

44. The Court notes that at the time of the Constitutional Court's judgment the civil proceedings had been pending for four years and almost eight months at two levels of jurisdiction including the period of some six weeks when the Supreme Court dealt with the procedural question of territorial jurisdiction of the Veľký Krtíš District Court.

45. In view of the above, the Court finds that the effects produced by the decision and the judgment of the Constitutional Court did not satisfy the above criteria applied by the Court. The Court therefore concludes that the applicant was not required, for the purposes of Article 35 § 1 of the Convention, to have again recourse to the remedy under Article 127 of the Constitution in respect of the proceedings subsequent to the Constitutional Court's judgment (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007). The Government's objections must therefore be dismissed.

46. Further, the Court notes that this complaint 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**

47. The Court notes that the proceedings in issue ended on 13 June 2009. Their overall duration was thus five years and more than four months at two levels of jurisdiction.

48. 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).

49. 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).

50. 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).

51. It is relevant that the courts dealt with the applicant's claim for maintenance when she was in a difficult financial and social situation being unemployed and living alone with her two sons. The outcome of the proceedings was accordingly of significant importance for her every day life.

52. While admitting that the applicant's hearings before the Košice II District Court and her requests to transmit the case to it had partly prolonged the proceedings, the Court cannot ignore the delay of eighteen months caused by the Košice II District Court (see paragraphs 6-9 above) and the conduct of the Veľký Krtíš District Court when dealing with the applicant's request to be exempted from the obligation to pay the court fees (see paragraphs 11-22 above).

53. In the light of the above and taking note of what was at stake for the applicant, the Court takes the view that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 7,463.85 euros (EUR) in respect of pecuniary damage. She further claimed EUR 20,000 in respect of non-pecuniary damage.

56. The Government contested these claims.

57. 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 awards the applicant EUR 2,400 in respect of non-pecuniary damage.

### B. Costs and expenses

58. The applicant also claimed EUR 3,288.33 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

59. The Government left the matter to the Court's discretion.

60. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the sum of EUR 1,500 under all heads.

### C. Default interest

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

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
    - (i) EUR 2,400 (two thousand four 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 19 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariálana Tsirli  
Deputy Registrar

Luis López Guerra  
President