

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

THIRD SECTION

DECISION

Application no. 10816/12
Johann Ján MAXIAN and Iveta MAXIANOVÁ
against Slovakia

The European Court of Human Rights (Third Section), sitting on 13 December 2016 as a Committee composed of:

Helen Keller, *President,*
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 February 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

PROCEDURE

1. The case originated in an application (no. 10816/12) 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 Ján Maxian, who is both a Slovak and Austrian national, and Ms Iveta Maxianová, who is a Slovak national ("the applicants"), on 13 February 2012.

2. The applicants were represented by Ms M. Beňová, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. On 17 September 2012 the application was communicated to the Government under the well-established case-law procedure.

4. On 11 January 2012 the Government submitted their observations on the admissibility and merits of the case under Rule 54 § 2 (b) of the Rules of Court.

5. On 9 October 2012 the Agent of the Austrian Federal Government informed the Court that his Government did not wish to exercise the right to intervene under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court.

6. On 4 March 2016 the Court invited the parties to submit further written observations under Rule 54 § 2 (c) of the Rules of Court.

7. On 18 and 21 March 2016 the parties submitted their observations.

THE FACTS

8. The first applicant, Mr J. Maxian, was born in 1949. The second applicant, Ms I. Maxianová, was born in 1965. They are spouses and live in Vienna, Austria.

9. The applicants have already lodged thirteen applications with this Court, most of which concerned their involvement in complex litigation relating to a collection of properties. A number of those sets of proceedings were interrelated and were often stayed pending the outcome of another set of proceedings concerning related matters.

10. The present application concerns an action brought by the applicants before the Bratislava V District Court on 12 December 2006, which was registered under file no. 13C 37/2007 ("the main proceedings"). The applicants believed that they had ownership rights in respect of a property which they had rented out to an individual in return for payment. They claimed unpaid rent.

11. During the main proceedings, the applicants were involved in three other sets of auxiliary proceedings before a different court, the Dunajská Streda District Court (see paragraphs 21-23). In those auxiliary proceedings, issues relevant to the applicants' present claim were assessed, which influenced the course of the main proceedings. The details are described below.

A. The main proceedings

12. On 7 May 2007 the Bratislava V District Court issued a payment order which was challenged by the defendant. The defendant, *inter alia*, argued that the applicants' property rights had been disputed in the context of the first set of auxiliary proceedings. Following this, that is from 28 June 2007 to 15 May 2009, the Bratislava V District Court repeatedly asked to inspect the case file concerning the first set of auxiliary proceedings, with a view to assessing whether its outcome had been directly decisive for the applicants' main claim of 12 December 2006.

13. The Bratislava V District Court also dealt with the applicants' application to amend the particulars of claim, and their complaint regarding the delays in the proceedings, lodged with the president of the court on 19 October 2009. The president acknowledged such delays, but considered the length of the proceedings justified in view of the ongoing first set of auxiliary proceedings.

14. On 2 February 2009 the Bratislava V District Court learned about a judgment dismissing the action in the first set of auxiliary proceedings (see paragraph 21 below). Later, on 18 November 2009 it received a copy of the judgment from the applicants and scheduled a hearing for 18 January 2010, which was adjourned as a result of the applicants giving reasons as to why they could not attend. The subsequent hearing scheduled for 15 February 2010 was adjourned as a result of the applicants failing to attend and not giving any reasons in advance of the hearing for their failure to attend.

The Bratislava V District Court scheduled several other hearings and adjourned two of them on the grounds that the parties were trying to reach an out-of-court settlement between 15 March 2010 and 17 January 2011 and between 10 October 2011 and 30 January 2012. The applicants also made another application to amend their particulars of claim.

15. In the meantime, the Bratislava V District Court had learned about the applicants' second set of auxiliary proceedings (see paragraph 22 below), and had asked the other court dealing with those proceedings to join the proceedings to the applicants' main proceedings, to no avail. It then asked to consult the case file concerning the second set of auxiliary proceedings on several occasions, unsuccessfully. In particular, it asked for copies of expert opinions from that file.

16. Subsequently, on 12 November 2012 the Bratislava V District Court stayed the applicants' main proceedings pending the outcome of the third set of auxiliary proceedings (see paragraph 23 below). The applicants took several procedural steps in that regard. They appealed the decision to stay the proceedings, which was upheld by the appellate court on 31 May 2013 (the Court has no information at its disposal as to when that decision became final). The applicants also asked to be exempted from paying court fees, and lodged another complaint with the president of the court challenging the excessive delays in their proceedings.

17. The applicants' main proceedings have not been resumed since their interruption pending the outcome of the third set of auxiliary proceedings.

B. Constitutional complaint concerning the main proceedings

18. The applicants lodged two constitutional complaints concerning their main proceedings in 2011 and 2014 respectively.

In their first constitutional complaint they challenged the length of the proceedings before the Bratislava V District Court under Article 6 § 1 of the Convention and its constitutional equivalent.

In their second constitutional complaint they merely alleged that the stay of those proceedings – upheld on appeal on 31 May 2013 – was unfair, under Article 6 § 1 of the Convention and its constitutional equivalent.

19. On 16 June 2011 the Constitutional Court (file no. II. ÚS 286/2011) dismissed the applicants' first complaint as manifestly ill-founded.

The Constitutional Court noted that the Bratislava V District Court could not have proceeded with the matter, owing to the ongoing first set of auxiliary proceedings, the outcome of which would have been decisive for the applicants' claim. This was due to the fact that the applicants were alleging to be the owners of the property, and on that basis were claiming payment of rent in their main proceedings. Since their property rights were being contested in the context of the first set of auxiliary proceedings, the Bratislava V District Court had correctly decided to wait for the outcome of the first set of auxiliary proceedings. The Constitutional Court further pointed out that, had the Bratislava V District Court delivered a judgment prior to the outcome of those auxiliary proceedings, this could have established one of the grounds for reopening the proceedings as set out in Article 228 § 1 of the Code of Civil Procedure.

The Constitutional Court further noted that the Bratislava V District Court judge had waited for developments in those proceedings, and between 28 June 2007 and 15 May 2009 had repeatedly asked for that case file to be reviewed. It also noted that the judge could have formally stayed the proceedings in the meantime, although such a procedural decision would not have influenced the speediness of the proceedings.

The Constitutional Court acknowledged two short-term periods of unjustified delay in the main proceedings before the Bratislava V District Court, totalling around fourteen months, after the conclusion of the first set of auxiliary proceedings. However, it concluded that such isolated delays did not amount to a violation of the applicants' right under the Convention. Rather, it noted that the applicants had caused some unnecessary delays in the proceedings, in particular by failing to attend two hearings, where only one absence had been excused, and by requesting to adjourn two hearings on account of attempting to reach an out-of-court settlement.

20. On 5 March 2014 the Constitutional Court rejected the applicants' second complaint as manifestly ill-founded (file no. I. ÚS 107/2014). It concluded that the impugned decision had not been arbitrary.

C. Three sets of auxiliary proceedings

21. The first set of auxiliary proceedings took place before the Dunajská Streda District Court in 1996 (file no. 4C 204/96) and concerned a dispute

over the validity of a purchase agreement concerning a property which the applicants had purportedly been renting to another person. The judgment dismissing that claim became final on 10 November 2008 and stated, *inter alia*, that the claimant, which was the Slovak Republic, lacked the standing to sue the applicants. In April 2003 the applicants jointly received a domestic award from the Constitutional Court amounting to the equivalent of 2,656 euros (EUR) in damages for the breach of their right to a hearing within a reasonable time in the context of those proceedings (file no. II. ÚS 197/02). They also lodged an application in respect of the length of the proceedings with this Court (no. 50780/11), which was declared inadmissible by a single judge on 28 June 2012 (also mentioned in *Maxian and Maxianová v. Slovakia, (dec.),* no. 44482/09, 24 July 2012).

22. The second set of auxiliary proceedings commenced in 2005 and concerned a different claim by the applicants for payment of rent (file no. 4C 73/2005). Those proceedings were concluded with final effect on 5 April 2011.

23. The third set of auxiliary proceedings commenced on 14 March 2011 and once again related to a dispute over the validity of the purchase agreement concerning the above-mentioned property (file no. 10C 62/2011). Those proceedings are still pending.

D. Constitutional proceedings concerning the applicants' third set of auxiliary proceedings

24. On 7 May 2015 the applicants challenged the length of the third set of auxiliary proceedings (file no. 10C 62/2011) by way of a constitutional complaint, relying on Article 6 § 1 of the Convention and its constitutional equivalent.

25. The Constitutional Court declared their complaint admissible on 11 February 2016. To date, the Court has received no further information about the outcome of the constitutional proceedings.

THE LAW

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

26. The applicants complained that the length of the main proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

27. The Government, relying on the Constitutional Court's decision of 16 June 2011 (see paragraph 19 above), disagreed with the applicants.

They submitted that the delay between the commencement of the proceedings and the delivery of the Constitutional Court's decision on 16 June 2011 could be partly attributed to the applicants' behaviour and partly to the fact that the Bratislava V District Court had been prevented from deciding the applicants' case owing to objective reasons, since it had waited for the outcome of the auxiliary proceedings. The Government highlighted that the applicants had contributed to the delay by attempting to reach an out-of-court settlement on numerous occasions and by failing to attend some hearings. They also stated that the Bratislava V District Court had proceeded to deal with the case by requesting information from the Dunajská Streda District Court at regular intervals.

The Government also argued that the applicants could have used a constitutional remedy under Article 127 of the Constitution and contested the length of proceedings in respect of the period in question in the context of the first set of auxiliary proceedings (see paragraph 21 above).

In respect of the period following the Constitutional Court's decision, the Government submitted that the applicants had been obliged to lodge a fresh complaint under Article 127 of the Constitution, which they had failed to do. Hence, they had failed to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention.

28. The applicants disagreed. They stated that, despite the fact that they had duly cooperated with the Bratislava V District Court, the latter had proceeded inefficiently in the main proceedings. In particular, they complained regarding the length of time that the Bratislava V District Court had spent merely monitoring the outcome of the first set of auxiliary proceedings. In this connection, they submitted two main arguments:

Firstly, they argued that the first set of auxiliary proceedings, which had lasted about fifteen years, had resulted in the finding that the claimant in that case, the Slovak Republic, lacked standing to sue the applicants.

Secondly, they reasoned that the Bratislava V District Court had had at its disposal a formal procedural means of staying the applicants' main proceedings while the auxiliary proceedings were ongoing. By failing to adopt such a procedural decision, the Bratislava V District Court had been bound to proceed and decide the applicants' matter without undue delay.

Moreover, the applicants emphasised that it had taken one year for the Bratislava V District Court to obtain the decision delivered in the first set of auxiliary proceedings after that decision had become final. They further submitted that the Bratislava V District Court's actions in requesting to consult the case file of the second set of auxiliary proceedings had been ineffective, as those proceedings had been irrelevant to the assessment of their main claim.

The applicants also disputed that they had been required to lodge a fresh constitutional complaint following the Constitutional Court's decision of 16 June 2011, since the Constitutional Court had already failed to provide them with protection of their right to a hearing within a reasonable time.

29. In the present case, the Court considers it necessary to examine the Constitutional Court's conclusions in the light of the principle of subsidiarity, on which the Government relied. It needs to assess whether the State guaranteed and implemented the rights enshrined in the Convention.

30. At the outset, the Court reiterates the Constitutional Court's most relevant conclusions, which are summarised in paragraph 19 above.

31. In order to assess whether those conclusions can be upheld by this Court, it is firstly important to establish the following.

The proceedings which the Constitutional Court examined ran from 12 December 2006 to 16 June 2011. During this period, the applicants' main case intertwined with their other auxiliary proceedings, which slowed down the course of the main proceedings. Notably, the Bratislava V District Court had to wait from 28 June 2007 to 2 February 2009 (see paragraphs 12-14 above), that is for around one year and seven months, for the outcome of the first set of auxiliary proceedings where a prejudicial issue had to be determined.

32. The Court notes that the length of the relevant proceedings in the present case could *prima facie* raise concerns with regard to the Convention. However, it has to take into account the particular circumstances of the case and have regard to the reasons relied upon by the domestic authorities. In the present case, the Court can accept the Constitutional Court's conclusion that the subject matter of the above-mentioned sets of domestic proceedings was interrelated, as the Constitutional Court provided sufficient explanation to that effect. As a result, the Bratislava V District Court was objectively prevented from proceeding with the applicants' main action for one year and seven months, which the Court cannot ignore when assessing the period in question. In this connection, the Court also notes that it was for the domestic court to decide whether or not to stay the proceedings formally and how to proceed with the matter. The role of the Court is merely to examine whether the results of the steps taken were compatible with the Convention.

33. The Court further observes that the Bratislava V District Court did not wait idly for the outcome of the auxiliary proceedings. Rather, it continuously monitored the course of the proceedings and waited for the result of the applicants' attempts to reach an out-of-court settlement.

34. Having regard to the above, and to the particular circumstances of the case as well as the specific nature of the applicants' intertwined litigation, the Court concurs with the Government's argument that the conclusions reached by the Constitutional Court on 16 June 2011 were justified. 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.

35. Furthermore, the Court accepts the Government's argument that the applicants could have sought redress before the Constitutional Court after the delivery of its judgment of 16 June 2011, in particular in the light of the principles established by its practice (see *Becová v. Slovakia* (dec.), no. 23788/06, 12 July 2008; and, to the contrary, see *Sukobljević v. Croatia*, no. 5129/03, § 52; *Sika v. Slovakia*, no. 2132/02, § 31, 13 June 2006; and *Tomláková v. Slovakia*, no. 17709/04, §§ 34-35, 5 December 2006). Such redress could have been sought by the applicants until their main proceedings were stayed with a final decision, yet, as far as can be substantiated, the applicants failed to do this. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

36. The Court also reiterates that the main proceedings were stayed on 12 November 2012, pending the outcome of the third set of auxiliary proceedings, and that decision was upheld on appeal on 31 May 2013. The main proceedings have not yet been resumed. The applicants lodged a constitutional complaint regarding the length of their third set of auxiliary proceedings on 7 May 2015 (see paragraphs 23, 24, 25), and the Constitutional Court declared that complaint admissible in February 2016.

37. For the purposes of Article 6 § 1 of the Convention, the applicants' present case and their claim in the third set of auxiliary proceedings must be considered together with regard to their period of overlap, that is from the moment the applicants' proceedings were stayed with the final effect (see *Obluk v. Slovakia*, no. 69484/01, § 69, 20 June 2006).

38. Accordingly, this part of the applicants' complaint must be rejected as premature, in accordance with Article 35 § 1 of the Convention. This is without prejudice to a possible complaint before the Court regarding the length of the proceedings in respect of this period, depending on the outcome of the Constitutional Court's examination of the applicants' complaint on the merits.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicants complained that their right to peaceful enjoyment of their possession had been violated as a result of the protracted determination of their civil claim lodged on 12 December 2006. They relied on Article 1 of Protocol No. 1.

40. Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegation, the Court notes that the applicants failed to lodge a complaint under Article 127 of the Constitution of the Slovak Republic.

41. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2017.

Fatoş Aracı
Deputy Registrar

Helen Keller
President