CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

Application no. 60230/00
by Viera PROBALOVÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 25 January 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 15 May 2000,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the formal declarations accepting a friendly settlement of the case.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Viera Probalová, is a Slovakian national who was born in 1952 and lives in Košice. The respondent Government were represented by Mr P. Kresák, their Agent. The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was employed at the Military Veterinary Institute (*Vojenský veterinárny ústav*) in Košice. In February 1993 she was informed that her employment had terminated as, due to restructuring, her post had become redundant.

On 30 July 1993 the applicant challenged the dismissal before the Košice 1 District Court (at that time *Obvodný súd*, at present *Okresný súd*). She sought a ruling declaring her dismissal void and an order for payment of wages lost as a consequence of the unlawful dismissal.

On 2 October 1996 the District Court discontinued the proceedings. It found that the defendant had no legal personality and could not be sued.

On 27 February 1997, on the applicant's appeal (*odvolanie*), the Košice Regional Court (*Krajský súd*) quashed the District Court's decision of 2 October 1996 and remitted the case-file to the latter for further proceedings.

On 25 June 1997 the District Court dismissed the action.

On 16 March 1998 the Regional Court quashed the District Court's judgment of 25 June 1997 on appeal. It found that the District Court had failed to examine adequately the applicant's arguments.

On 1 December 1999 the District Court ruled that the applicant's dismissal was unlawful. It partially allowed her claim for compensation for lost wages and ordered the defendant to pay default interest. Both parties appealed.

On 8 March 2000, on the applicant's petition (*podnet*) under Article 130 § 3 of the Constitution as then in force, the Constitutional Court (*Ústavný súd*) found that the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay. However, at that time, the Constitutional Court lacked jurisdiction to draw any legal consequences from the finding.

On 31 May 2000 the Regional Court partially amended the District Court's judgment of 1 December 1999 in that it set a different rate of default interest for late payment of the principal amount. It upheld the remainder of the judgment of 1 December 1999. After the Regional Court's judgment had been served on the parties, it became final and binding on 17 July 2000.

On 27 September 2001, on the defendant's appeal on points of law (*dovolanie*), the Supreme Court (*Najvyšší súd*) quashed the Regional Court's

judgment of 31 May 2000 finding that the Regional Court had failed to examine adequately certain aspects of the case.

On 24 September 2002 the Regional Court again decided on the parties' appeals against the District Court's judgment of 1 December 1999 and quashed it. At the same time, the Regional Court remitted the case to the District Court for the taking of further evidence and re-examination. The case-file was transmitted to the District Court on 9 October 2002.

On 31 March 2003 the District Court again ruled that the applicant's dismissal of February 1993 was unlawful and again allowed her claim for compensation for lost wages only in part. No party was entitled to reimbursement of its legal costs.

The defendant filed an appeal in reply to which the applicant stated that she considered the District Court's judgment to be correct.

On 30 September 2003 the Regional Court upheld the District Court's judgment of 31 March 2003. The decision became final and binding on 3 November 2003.

On 26 February 2003 the Constitutional Court declared inadmissible the applicant's fresh complaint (*sťažnosť*) under Article 127 of the Constitution, as in force since 1 January 2002, of continuing unjustified delays in her proceedings. The Constitutional Court considered separately the parts of the proceedings which took place before the Supreme Court, before the Regional Court and before the District Court. It observed that the proceedings before the Supreme Court and the Regional Court had already ended by their respective decisions of 27 September 2001 and 24 September 2002. The Constitutional Court found that an examination of these parts of the proceedings could no longer serve to expedite them. In line with its established case-law the Constitutional Court concluded that it was not called upon to examine these parts of the proceedings. As to the proceedings before the District Court, the Constitutional Court examined only that part of the proceedings which took place after case file had been returned to it on 9 October 2002 following the Regional Court's judgment of 24 September 2002. As the period under consideration had only lasted some 4 months, the complaint was manifestly ill founded.

COMPLAINTS

The applicant principally complained under Article 6 § 1 of the Convention that her civil action was not determined within a reasonable time. Under the same provision she also alleged that in the determination of her action she did not have a fair hearing by an independent and impartial tribunal.

THE LAW

On 2 December 2004 the Court received the following declaration from the Agent of the Government:

> "I, Peter Kresák, the Agent of the Government of the Slovak Republic, declare that the Government of the Slovak Republic offer to pay 200,000 (two hundred thousand) Slovakian korunas to Mrs Viera Probalová with a view to securing a friendly settlement of the above mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.
>
> This declaration does not entail any acknowledgement by the Government of a violation of the European Convention on Human Rights in the present case..."

On 20 December 2004 the Court received the following declaration signed by the applicant:

> "I, Viera Probalová, note that the Government of the Slovak Republic are prepared to pay me the sum of 200,000 (two hundred thousand) Slovakian korunas with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> I accept the proposal and waive any further claims against Slovakia in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case..."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President