

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

FORMER SECTION IV

DECISION

Application no. 36768/09
by Kristína ŠARIŠSKÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 30 August 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 1 June 2009,

Having regard the Government's request to strike the case out of its list of cases and the text of a unilateral declaration made with a view to resolving the issues raised by the application and the applicant's reply thereto,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Kristína Šarišská, is a Slovakian national who was born in 1998 and lives in Telgárt. The application was submitted on her behalf by her mother, Ms M. Mižigárová. She was represented before the Court by Ms E. Kováčechová, a lawyer practising in Banská Bystrica.

The Slovak Government ("the Government") were represented by their Agent, Ms M. Pirošíková.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant's father, Mr Ľubomír Šarišský, died on 17 August 1999. He died from an injury following the discharge of a police service pistol during his interrogation on police premises. On 18 October 2000 the policeman involved was convicted of injury to health caused by negligence in the course of duty. The criminal court informed the applicant's mother of the possibility of recovering damages through a civil action.

In a judgment of 14 December 2010 the Court found, in the context of an application lodged by the applicant's mother, a breach of Article 2 of the Convention on account of the authorities' failure to (i) safeguard the right to life of Mr Šarišský, and (ii) conduct an effective investigation into the circumstances surrounding Mr Šarišský's death. The Court further held that it was not necessary to make a separate finding in respect of the complaints under Articles 3 and 13 of the Convention, and that there had been no violation of Article 14 of the Convention taken in conjunction with Article 2 in respect of its substantive or procedural head (for further details see *Mižigárová v. Slovakia*, no. 74832/01).

On 9 August 2002 the applicant's mother claimed compensation from the State for non-pecuniary damage alleging that, as a result of the wrongful conduct of the policeman involved, there had been an interference with her husband's physical integrity which had resulted in his death.

On 6 February 2006 the Poprad District Court admitted the applicant as a plaintiff in the proceedings. The applicant claimed SKK 150,000 for interference with her personal rights resulting from the violent death of her father. She later extended the action in that she claimed an additional SKK 600,000 for breach of her late father's personal rights.

On 31 May 2006 the District Court discontinued the proceedings in respect of the applicant's mother, who had withdrawn her action. It dismissed the claims of the applicant. It did not find it established that the applicant, who was ten months old when her father died and lived with her grandmother, had suffered any interference with her personal rights warranting protection under Articles 11 et seq. of the Civil Code. In addition, the court established that the defendant, as named in the action, lacked standing in the case. Finally, the claim had been filed outside the statutory time-limit. The court concluded that the right claimed by her had therefore lapsed.

On 20 September 2007 the Prešov Regional Court, for different reasons, upheld the District Court's judgment. It did not accept the first-instance court's conclusions according to which (i) the defendant lacked standing in the case and (ii) the right claimed by the applicant had become

statute-barred. However, the Regional Court held that the right to compensation for interference with one's personal rights ceased to exist upon the death of the person concerned. It further held that there had been no interference with the applicant's own personal rights since, as it had been established in the course of the criminal proceedings, her father had shot himself with the police officer's weapon.

On 18 January 2008 the applicant lodged a complaint with the Constitutional Court. She referred to the above-mentioned proceedings leading to the Prešov Regional Court's judgment of 20 September 2007 and relied, *inter alia*, on Articles 2, 3, 8 and 13 of the Convention.

On 5 November 2008 the Constitutional Court dismissed the complaint as being manifestly ill-founded.

COMPLAINTS

1. The applicant complained under Articles 2 and 3 of the Convention that the respondent State had failed to comply with its obligation to prevent ill-treatment of her father and to protect his life, and that the courts involved had failed to provide her redress in that respect.

2. The applicant complained that, as a result of her father's death, she had lost the possibility of knowing him, talking to him and growing up in the presence of both her parents. With reference to the domestic courts' refusal to acknowledge the State's liability and to provide redress to her she alleged a breach of her right under Article 8 of the Convention to respect for her private and family life.

3. Under Articles 6 § 1 and 13 of the Convention the applicant complained that the domestic courts had dismissed her above claim. She argued, in particular, that the Regional Court arbitrarily held that (i) there had been no unjustified interference with her father's personal rights as he had shot himself with a policeman's service weapon and (ii) the right to pecuniary compensation for any unjustified interference with her father's personal rights was not transferrable to the applicant.

THE LAW

The applicant alleged a breach of Articles 2, 3, 6 § 1, 8 and 13 of the Convention with reference to the above civil proceedings. Those proceedings concerned compensation for non-pecuniary damage on the ground that the State had failed to ensure respect for the applicant's and her late father's personal rights.

Following the breakdown in friendly settlement negotiations, on 13 April 2011, the Government proposed to dispose of the case by means of the following unilateral declaration:

> "I, Marica Pirošíková, the Agent of the Government of the Slovak Republic before the European Court of Human Rights, with regard to the conclusions of the European Court of Human Rights on the violation of Article 2 of the Convention in its judgment in the case of Mižigárová v. Slovakia (application no. 74832/01), concerning analogous issues, and also with regard to the fact that the applicant Ms Kristína Šarišská failed to obtain redress at domestic level, acknowledge the applicant's status as a victim within the meaning of Article 34 of the Convention and declare that the Government offer to pay her the sum of EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable. This sum shall cover any pecuniary and non-pecuniary damage including any costs and expenses incurred by the applicant in connection with the violation of her rights guaranteed by the Convention.
>
> The Government would suggest that the above information be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1(c) of the Convention.
>
> In the event of the Court's decision pursuant to Article 37 § 1 of the Convention, the Government undertake to pay to the applicant the declared sum within three months from the date of service of the decision. In the event of failure to pay that 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. This payment will constitute the final settlement of the case."

The applicant, in her written reply, considered that the Government's proposal should not be accepted. She considered the sum proposed by the Government to be disproportionately low in view of the subject-matter of the application and the costs and expenses incurred.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 in fine includes the provision that:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State as regards, in particular, the respect for a person's right to life as guaranteed by Article 2 of the Convention (see, for example, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109-111 and 136-140, ECHR 2002-IV; *Keenan v. the United Kingdom*, no. 27229/95, §§ 89-102, ECHR 2001-III; *Carabulea v. Romania*, no. 45661/99, §§ 109-138, 13 July 2010; *Öneryıldız v. Turkey* [GC],

no. 48939/99, §§ 91-96, ECHR 2004-XII; *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 89-91, ECHR 2002-VIII; *McKerr v. the United Kingdom*, no. 28883/95, §§ 108-161, ECHR 2001-III; or *Slimani v. France*, no. 57671/00, §§ 27-32, ECHR 2004-IX (extracts)).

The Court has carefully examined the terms of the Government's declaration. Having regard to the nature of the admissions contained in the declaration (which it considers to be sufficiently broad to cover all relevant complaints raised in the present case) as well as the amount of compensation proposed (which in view of the particular circumstances is consistent with the amounts awarded in similar cases), the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c); for the relevant principles see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

Moreover, given the clear and extensive case-law on this topic and also its judgment in the case of *Mižigárová* (referred to above) in which the Court found a breach of the substantive and procedural limbs of Article 2 of the Convention in respect of the death of the applicant's father, it is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Lawrence Early
Registrar

Nicolas Bratza
President