

Berkova v Slovakia

The European Court of Human Rights

(Application no. 67149/01)



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Quick Facts

Applicant: Jarmila Berkova

Member State: Slovakia

Court: European Court of Human Rights

Date Decided: 24 March 2009

Issue: (1) Whether five years, eleven months, ten days of divorce proceedings; seven years and nine days of proceedings concerning division of matrimonial property; and six years, six months and twenty seven days of maintenance proceedings had violated the right to a hearing within a reasonable time under Art 6 §1 of the European Convention on Human Rights;

(2) Whether the court's denial of the applicant's request for restoration of full legal capacity for three years violated her right to respect for her private life under Art 8;

(3) Whether legal remedies in force in Slovakia prior to 1/1/2002 were capable of providing the applicant the

right to effective remedy at her disposal according to Art 13 in conjunction with Art 6 §1 with regard to her complaint about the length of divorce proceedings, and proceedings concerning division of matrimonial property and maintenance.

Holding: (1) The Court held unanimously that there had been a violation of Arts 6 § 1 and 13 because Slovakia had failed to promote the right to hearing within a reasonable time due the excessive duration of the three sets of proceedings in issue;

(2) The Court found that the Supreme Court of Slovakia failed to promote the right to respect for private life in accordance to Art 8 by restraining the applicant from restoring her legal capacity for an excessive period of time;

(3) The applicant's claim for just satisfaction was dismissed.

Procedural Background

Domestic Remedies

With regards to the complaint under Article 6 § 1 on the proceedings concerning the application for restoration of legal capacity, the Government contended that the applicant failed to appeal against the District Court's judgment. The Court concluded that the application could not be rejected on this basis because the first-instance judgment had not been served on the applicant. The Court also noted that the extraordinary appeal against the Prešov District Court's judgment put forward by the General Prosecutor on 9 November 1999 was dismissed by the Supreme Court, which was the highest judicial instance in proceedings before ordinary courts. At such, the applicant cannot be rejected for failure to exhaust domestic remedies.

Admissibility

The Court declared admissible:

1. The complaint under Article 6 § 1 about the length of divorce proceedings, proceedings concerning division of matrimonial property and the proceedings concerning the applicant's maintenance;
2. The complaint under Article 13 in conjunction with Article 6 § 1 about the duration of divorce proceedings, proceedings concerning division of matrimonial property and the maintenance proceedings;
3. The complaints under Articles 8 and 13 concerning the restriction of the applicant's right to repeatedly seek restitution of full legal capacity to her.

The Court declared inadmissible the remainder of the application.

Case Summary

On 14/4/1993, the District Court in Proprad restricted the applicant's legal capacity due to her mental disorder. On 6/5/2003, the applicant filed complaints to the Constitutional Court on her proceedings concerning 1) her legal capacity and the appointment of her guardian; 2) restoration of her legal capacity; 3) her divorce; 4) her division of matrimonial property; 5) her maintenance; and 6) her labour dispute.

Article 6 § 1 for the right to fair hearing within a reasonable time

In determining whether the length of the three sets of proceedings had been reasonable, the Court made the assessment with reference to the complexity of the case, the conduct of the applicant and the relevant authorities and the subject matter at stake, referring to the case *Frydlender v. France* (§ 43). Reference had also been made to *Laino v. Italy* (§ 18), which stated that respect for family life should be taken into account.

Accordingly, the Court concluded that i) 5 years, eleven months, ten days from 21 March 1994 to 28 February 2000 of the divorce proceedings; ii) seven years and nine days from 14 February 1994 to 21 February 2001 of proceedings concerning division of matrimonial property; and iii) six years, six months and twenty-seven days from 10 February 1994 to 6 September 2000 of the maintenance proceedings had failed to meet the "reasonable time" requirement and in breach of Article 6 § 1 of the Convention.

Article 8 for the right to respect for private life

The Court considered that the prohibition to make a fresh application to restore legal capacity for three years under Article 186 § 3 of the Code of Civil Procedure constituted a serious interference with the applicant's right to respect for her private life. The Court found it relevant that the Prosecutor General considered the three-year period prohibition of re-applying for restoration of legal capacity to be excessively long. On the other hand, although Article 8 of the Convention allows interference by a public authority which is "necessary in a democratic society", the Court failed to see social needs sufficiently pressing to justify the interference in the current case.

Article 13 in conjunction with Article 6 § 1 and 8 for the right to effective remedy

The Court had found earlier that the Code of Civil Procedure had not provided legal remedies capable of effectively redressing alleged violations of the right to a hearing within a reasonable time prior to 1 January 2002.

The Court referred to its earlier judgment in *Číž v. Slovakia* (§§ 74 and 75), where it concluded that no effective remedy was available because neither Article 130 (3) of the Constitution nor the State Liability Act of 1969 were capable of effectively redressing alleged violations of the right to a hearing within a reasonable time in that case. The Court found no reason to reach a different conclusion in the present case, and therefore considered the length of divorce proceedings, proceedings concerning division of matrimonial property and maintenance proceedings in violation of Article 13.

Resources

- Berková v. Slovakia (Application no. 67149 / 01)
- Legal capacity of persons with intellectual disabilities and persons with mental health problems
(<http://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>)
- MDAC Urges UN Human Rights Committee to Examine Rights of People with Disabilities in Slovakia
(<http://www.mdac.info/en/content/mdac-urges-un-human-rights-committee-examine-rights-people-disabilities-slovakia>)