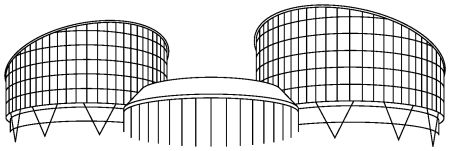

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KOVÁROVÁ v. SLOVAKIA

(Application no. 46564/10)

JUDGMENT

STRASBOURG

23 June 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kovárová v. Slovakia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 46564/10) 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 Eva Kovárová ("the applicant"), on 3 August 2010.

2. The applicant was represented by Mr P. Arendacký, a lawyer practising in Bratislava.

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

3. The applicant alleged that a decision to discontinue proceedings on her civil claim and to declare inadmissible her constitutional complaint in that respect had been contrary to her rights under Article 6 § 1 of the Convention of access to court and to a fair hearing.

4. On 2 April 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Bratislava.

A. Action

6. On 9 May 2007 the applicant lodged an action with the Bratislava V District Court (*Okresný súd*) seeking a ruling declaring that a meeting of flat owners in a block of flats held on 24 April 2007 was contrary to the law, and that the decisions adopted at that meeting were void.

The defendant of the action was an entity with legal personality referred to as a community of owners of residential and non-residential premises in the given building ("the defendant"). Such entities are officially registered with the local District Authority (*obvodný úrad*). The defendant was so registered with the District Authority in Bratislava.

7. On 2 January 2008 a submission was made to the District Court by a lawyer indicating that he was acting on behalf of the defendant and informing the court that on 14 December 2007 the defendant had ceased legally to exist. In that connection he submitted a letter from the District Authority which indicated that the defendant had been struck out of the relevant register on that date, the context being that the administration of the building was no longer the responsibility of the defendant and that that responsibility had been transferred to a specialised agency.

8. On 24 January 2008 the applicant requested that a hearing scheduled before the District Court for 28 January 2008 be postponed *sine die*. She submitted that she had just learned of the striking out of the defendant by consulting the relevant register, and that she would make a further submission once she had analysed the situation, for which she needed time. The hearing scheduled for 28 January 2008 was accordingly adjourned.

9. On 3 March 2008 the District Court discontinued the proceedings, on the grounds that the defendant had ceased to exist and had no legal successor. In particular, the District Court held that neither the individual owners of the flats in the building nor the newly contracted administration agency could be considered as having succeeded to the defendant's position in the proceedings.

10. On 20 March 2008 the applicant appealed (*odvolanie*), raising two principal arguments.

First, she submitted that the administration agency was the successor to the original defendant, and that consequently the proceedings should have continued against it.

Second, even assuming that the first contention was not correct, the court should not have terminated the proceedings but should rather have stayed them pending the outcome of another set of proceedings before the same District Court, in which a decision was being contested which had been taken at another meeting of the flat owners on 11 September 2007, to the effect that the defendant should be wound up (*zrušenie*). If that other set of proceedings ended with a ruling declaring the winding up of the original defendant void, its striking out of the given register would lose basis and the

proceedings could continue against that defendant. More details about those other proceedings are set out below (see paragraphs 18 *et seq*.).

11. On 30 May 2008 the Bratislava Regional Court (*Krajský súd*) upheld the first-instance decision, noting that the defendant had been struck out of the relevant register and had thereby lost capacity to be a party to the proceedings, in which situation there was no alternative to a discontinuance of the proceedings. The relevant legal provisions were referred to, but no reasons were offered for the latter conclusion.

12. On 7 July 2008 the applicant appealed on points of law (*dovolanie*), relying on Article 237 (f) of the Code of Civil Procedure (Law no. 99/1963 Coll., as amended) ("the CCP"), under which such an appeal was admissible if the courts had prevented a party to the proceedings from pursuing a case before them. In particular, she argued that the Regional Court had provided neither any factual nor legal grounds for its conclusion, as a result of which it was not amenable to review. In addition, she pursued and further developed the same line of argument as in her appeal.

13. On 7 May 2009 the Supreme Court (*Najvyšší súd*) declared the applicant's appeal on points of law inadmissible, holding that the shortcomings alleged by the applicant did not fall within the purview of Article 237 (f) of the CCP. This applied specifically to the alleged deficiency in the Regional Court's reasoning and the alleged errors of fact and law in the lower courts' decisions.

In addition, in so far as the applicant had contested an error of procedure in that the courts had failed to stay the proceedings rather than to terminate them, the Supreme Court held that staying the proceedings was an option and not a duty of the court concerned, and that the fact that the present proceedings had not been stayed did not make out the admissibility ground cited by the applicant.

As the appeal was not admissible, the Supreme Court did not examine the merits of the case.

B. Constitutional complaint

14. On 17 August 2009 the applicant lodged a complaint under Article 127 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended) with the Constitutional Court (*Ústavný súd*). She directed the complaint against all three levels of the ordinary courts and pursued and further developed in principle the arguments described above.

She considered that the discontinuance of the proceedings had been unlawful, submitted that it had been a mistake of the ordinary courts not to have examined the merits of her claim, and argued that this had amounted to a breach of her rights of access to court and to a fair hearing under Article 6 § 1 of the Convention.

15. On 16 December 2009 the Constitutional Court declared the complaint inadmissible. It considered it separately with reference to the individual levels of ordinary jurisdiction involved.

As regards the alleged shortcomings in the proceedings leading to the Regional Court's decision of 30 May 2008, it held that the applicant had failed to submit her complaint within the statutory time-limit of two months.

As regards the Supreme Court, it observed that the central argument in the applicant's appeal on points of law was the alleged error of law. In that regard, it went on to hold, *inter alia*, that:

> "The Supreme Court ... rightfully emphasised ... that, as there were no grounds on which the applicant's appeal on points of law would be admissible, it was not possible for it to review the merits of the Regional Court's decision. The Supreme Court did not exclude in a binding manner that the decision of the Regional Court was the result of a wrongful legal assessment of the matter, nor did it exclude the possibility of there having been another error in the proceedings before it which had resulted in a wrongful decision on the merits."

16. Nevertheless, the Constitutional Court found that, as regards the admissibility of the applicant's appeal, the Supreme Court had given relevant reasons for its decision and that that decision was not arbitrary.

In particular, it also noted that, should the other set of proceedings end with a ruling declaring the winding up of the defendant void, this would create for the applicant the opportunity to seek reopening of the proceedings in her case. Future examination of that case on the merits thus could not be completely excluded. However, at the same time, the Constitutional Court noted that even if the winding up of the defendant were to be declared void, this would not automatically mean that the defendant would legally come into existence once more. The coming into being of a legal entity such as the defendant required incorporation, which in turn necessitated a decision of the District Authority, and could not result directly from a judicial decision.

17. The Constitutional Court's decision was served on the applicant on 5 February 2010.

C. Challenge to the decision to wind up the defendant

18. On 26 September 2007 an individual brought proceedings against the above-mentioned defendant as well as the above-mentioned newly appointed management agency, seeking a ruling declaring void a decision to wind up the defendant taken at a meeting of flat owners in the block held on 11 September 2007 (see paragraph 10 above).

19. After the first dismissal of the action was quashed following the claimant's appeal, the action was again dismissed by the District Court on 4 April 2012 and, following the claimant's appeal, by the Regional Court on 19 March 2014.

20. On 14 July 2014 the claimant challenged the judgments last mentioned by way of a complaint to the Constitutional Court.

The complaint appears to be still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law and practice is described in detail in the Court's judgment in the case of *Franek v. Slovakia* (no. 14090/10, §§ 22-23 and 25-31, 11 February 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained (i) that the ordinary courts' decisions on her civil claim had been arbitrary, and (ii) that the Constitutional Court had breached her right of access to court in that it had rejected her complaint against the Regional Court's decision as belated. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

23. The Court observes that the applicant's complaint has two components, that concerning the fairness of the hearing she received before the ordinary courts and that concerning access to the Constitutional Court.

In considers that, on the specific facts of the present case, these two components are intertwined to an extent that, at the admissibility stage, they should be assessed together.

The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

24. The Government pointed out that, although the applicant's constitutional complaint was rejected, an important part of her arguments from that complaint was in fact examined by the Constitutional Court. In particular, while it was true that, formally speaking, the part of the

applicant's constitutional complaint which concerned the decision of the Regional Court was declared inadmissible as belated, the Constitutional Court did actually review the decision of the ordinary courts not to suspend the proceedings in the applicant's action but rather to terminate them, and it found that such an approach was compatible with the applicant's fundamental rights. In the Government's view, therefore, the present case was to be distinguished from that of *Franek* (cited above) in that, unlike in that case, in the present case no important part of the applicant's arguments was in fact excluded from the Constitutional Court's review.

25. In addition, the Government pointed out that in the present case the defendant was in any event wound up without a universal legal successor and that, under the relevant domestic practice, in such instances it was not the courts' task to search for its possible singular successors, but it was rather for those concerned to identify any such singular successors, if they could be found. Although in her submission of 24 January 2008 the applicant declared her intention to make a further submission, she did not submit anything to justify the continuation of the proceedings before their discontinuance by the District Court on 3 March 2008 (see paragraphs 8 and 9 above).

26. In reply, the applicant submitted that the Supreme Court had never reviewed the correctness of the decisions of the lower courts, but had only examined whether the alleged errors on their part would constitute a ground for admissibility of her appeal on points of law, without actually examining those errors as such. As regards the Constitutional Court, it had in turn only examined the decision of the Supreme Court, without any independent analysis of the decisions of the lower courts or the applicant's arguments against them.

27. The Court reiterates that it has already found a violation of an applicant's right of access to court under Article 6 § 1 of the Convention in a case against Slovakia, where the Constitutional Court rejected as premature a constitutional complaint in a matter that was subject to an appeal on points of law, and as belated a subsequent constitutional complaint in the same matter lodged after the appeal on points of law had been declared inadmissible (see *Stavebná spoločnosť TATRY Poprad, s.r.o. v. Slovakia*, no. 7261/06, §§ 13-14, 19-18 and 46, 3 May 2011). It has likewise found a breach of the same right in cases where constitutional complaints were lodged in a single complaint at all the ordinary levels of jurisdiction involved after a decision on inadmissibility of the respective appeals on points of law, while the part of those complaints which concerned the court of appeal was rejected as belated, and the Constitutional Court review was limited to the decision of the Supreme Court (see *Zborovský v. Slovakia* (no. 14325/08, §§ 24-26 and 56, 23 October 2012, and *Franek*, cited above, §§ 17-19 and 56).

28. The Court refers to the summary of the principles relevant for its analysis of such cases under Article 6 § 1 of the Convention in those judgments (see, most recently, *Franek*, cited above, §§ 42-46).

29. It observes that the Government sought to distinguish the present case from the last-mentioned, arguing that no important part of the applicant's arguments in her constitutional complaint had in fact been excluded from examination by the Constitutional Court.

30. The Court will therefore proceed initially to examine this argument with a view to establishing whether it justifies a conclusion different from those reached in the cases mentioned above.

31. The Court notes that the distinction cited by the Government is of a factual nature. Without engaging in an analysis of its comparative relevance, and with a view to examining its factual accuracy, the Court observes that the applicant's claim in the original proceedings has never been examined on its merits, that those proceedings were terminated because the defendant was struck out of the relevant register, and that in her appeal on the merits and her appeal on points of law the applicant in principle raised two objections to such a decision.

Firstly, the applicant argued that the decision to terminate the proceedings was substantively wrong, because there was in fact a legal successor to the defendant, with whom the proceedings should continue.

Second, she argued that the decision to terminate the proceedings was procedurally wrong, because the courts should rather have stayed the proceedings pending the outcome of another set of proceedings, in which a question of a preliminary nature in relation to the applicant's own proceedings was being resolved.

32. In reply to the Government's specific argument (see paragraph 25 above), the Court notes that the proceedings at first instance were discontinued without the applicant having been given any prior notice. There may be a question whether her not having made a further submission to the first-instance court despite having previously stated her intention of doing so constituted a failure to make the given arguments before the first-instance court. Be that as it may, the arguments were undoubtedly raised before the court of appeal, the court of cassation, and ultimately the Constitutional Court.

33. In so far as these arguments have been raised in the applicant's appeal, the Court observes that they were summarily dismissed without any specific reasons being given (see paragraph 11 above).

34. Concerning the applicant's appeal on points of law, as established by the Constitutional Court in its decision of 16 December 2009, the first of the applicant's principal arguments was not a subject of the Supreme Court's examination in any way (see paragraphs 15 and 16 above).

As regards the second argument, the Court observes that it was not examined by the Supreme Court as such, but merely from the point of view

of whether it could constitute the ground cited by the applicant for the admissibility of her appeal on points of law.

35. The applicants' arguments from her appeal on points of law were then reiterated and further developed in her constitutional complaint (see paragraph 14 above). However, in so far as they concerned the Regional Court, they again were not examined because the relevant part of the applicant's constitutional complaint was found to be inadmissible as belated.

36. As regards the remainder of the applicant's constitutional complaint, that is its part concerning the Supreme Court's assessment of the admissibility of the applicant's appeal on points of law, the Constitutional Court found that its decision was not arbitrary and that it was supported by adequate reasons.

At this juncture, however, the Court observes that the Constitutional Court's review of the Supreme Court's decision was limited by the scope of the Supreme Court's own review, that is a review with regard to the procedural question whether or not the ground given by the applicant for the admissibility of her appeal on points of law was fulfilled.

37. In so far as the Government have argued that the Constitutional Court actually examined the second of the two principal arguments by the applicant, that is the argument that the ordinary courts had wrongfully failed to stay the proceedings in her action, the Court notes the Constitutional Court's conclusion that an examination of the applicant's claim on its merits could not be excluded in the future, by way of reopening of the proceedings, following and depending on the resolution of the preliminary question concerning the validity of the winding up of the defendant in the other set of proceedings.

38. In that respect, however, the Court also notes the Constitutional Court's position that not even a finding that the winding up of the defendant was invalid would automatically bring into being a resumption of its legal existence, which presumably would be a prerequisite for reopening of the proceedings originally directed against it.

39. In these circumstances, the Court considers that any examination on the part of the Constitutional Court with regard to the second of the applicant's principal questions was inconclusive and only auxiliary to its examination of the Supreme Court's decision as to whether or not the cited requirement for the admissibility of the applicant's' appeal on points of law was fulfilled.

40. Nevertheless, and in any event, it remains a fact that the first of the applicant's principal arguments, after having been summarily dismissed by the court of appeal, was not examined, either by the Supreme Court or by the Constitutional Court.

41. The Court thus finds no support for the Government's contention that an important part of the applicant's arguments in the present case has

actually been examined by the Constitutional Court, or, conversely, that no important part of her arguments was excluded from its review. It therefore considers it unnecessary to examine whether the distinction relied on by the Government, if actually given on the facts, would have been relevant for distinguishing the present case from that of *Franek*.

42. In the case last mentioned (see *Franek*, cited above, §§ 17-19 and 56), Mr Franek lodged his constitutional complaint after his appeal on points of law had been declared inadmissible and directed it against all levels of the ordinary jurisdiction having been involved in the determination of his case. The Constitutional Court rejected his complaint as being belated, in so far as it concerned the decisions of the first-instance court and the court of appeal, and as being manifestly ill-founded, in so far as it concerned the decision of the cassation court to reject his appeal on points of law. The Court found a breach of Mr Franek's right of access to court under Article 6 § 1 of the Convention on the ground that, by doing so, the Constitutional Court had

> "excluded from its review part of the arguments [Mr Franek] [had] made, namely the alleged unfairness in the context of the determination of the merits of the case by the courts at first and second instance ..."

43. The Court observes that, in the present case, similarly to *Franek*, as a result of the Constitutional Court's rejection of the part of the applicant's constitutional complaint which concerned the appellate court's decision, the Constitutional Court actually excluded from its review an essential part of the applicant's arguments as regards her right of access to court with her claim from the original proceedings. The Court therefore concludes that by rejecting the relevant part of her complaint the Constitutional Court prevented the applicant from asserting her rights and effectively using the remedy available to her under Article 127 of the Constitution as regards relevant aspects of the proceedings in issue. The applicant's "right to court" was thereby disrespected.

There has accordingly been a violation of Article 6 § 1 of the Convention on that account.

44. At the same time, the Court is of the opinion that in view of its above finding it is not called upon to examine separately the merits of the applicant's complaint that the ordinary courts' decisions to discontinue the proceedings on her civil claim was arbitrary.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed one euro (EUR) in respect of non-pecuniary damage.

47. The Government submitted that they had no objection to the claim.

48. Regard being had to the amount of the applicant's claim and the Court's practice with respect to such claims, (see, for example, *Marckx v. Belgium*, 13 June 1979, § 68, Series A no. 31; *Lehideux and Isorni v. France*, 23 September 1998, § 63, *Reports of Judgments and Decisions* 1998-VII; and *Agga v. Greece (no. 2)*, nos. 50776/99 and 52912/99, § 66, 17 October 2002), the Court considers that the finding of a violation of the applicant's rights under Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage she might have sustained.

B. Costs and expenses

49. The applicant also claimed EUR 500 for legal fees incurred before the Court. In support of that claim, she submitted a copy of a contract with her lawyer pursuant to which she had pledged to pay him for legal representation before the Court the above amount as a lump sum.

50. The Government asked that the matter be resolved in accordance with the Court's case-law.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

52. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed in full.

It accordingly awards the applicant the sum of EUR 500, plus any tax that may be chargeable to her, for the proceedings before the Court.

C. Default interest

53. 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* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicant might have sustained;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Josep Casadevall President