CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF SLOVÁK v. SLOVAKIA

(Application no. 57983/00)

JUDGMENT

STRASBOURG

8 April 2003

FINAL

08/07/2003

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 Slovák v. Slovakia,

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

Mr M. PELLONPÄÄ, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 57983/00) 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 Slovakian national, Mr Marián Slovák ("the applicant"), on 28 February 2000.

2. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský.

3. On 14 May 2002 the Fourth Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Cífer.

5. On 2 January 1995 the applicant filed an action for rehabilitation with the Bratislava City Court.

6. On 7 February 1995 the City Court transferred the case to the Bratislava I District Court for reasons of jurisdiction. On 1 July 1998 the case was assigned to another judge who started proceeding with it on 16 June 1999.

7. On 2 September 1999 the Constitutional Court found that the Bratislava I District Court had violated the applicant's constitutional right to have his case examined without undue delays. In its finding the Constitutional Court noted, in particular, that the District Court had failed to proceed with the case between 31 July 1995 and 3 April 1997 and also between 1 July 1998 and 16 June 1999.

8. On 27 November 2001 the Bratislava I District Court dismissed the action. The applicant appealed on 23 June 2002. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. Article 48 (2) of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

10. Pursuant to Article 130 (3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon the petition ("*podnet*") presented by any individual or a corporation claiming that their rights have been violated.

11. According to its case-law under the former Article 130 (3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48 (2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

12. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127. Under this provision the Constitutional Court has the power, in case that it finds a violation of Article 48 (2) of the Constitution, to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to the person whose constitutional right was violated as a result of excessive length of proceedings (for further details see, e.g., *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002).

13. According to an explanatory letter by the President of the Constitutional Court of 6 June 2002, nothing has prevented the Constitutional Court from dealing with complaints about length of proceedings in cases in which proceedings have also been instituted before the European Court of Human Rights provided that the domestic proceedings complained of are still pending at the moment when the constitutional complaint is filed. The letter further states that where the Constitutional Court earlier found a violation of Article 48 (2) of the Constitution, a further complaint about delays in the same proceedings can

be entertained only to the extent that it relates to the period after the delivery of the first finding of the Constitutional Court. However, when deciding on such cases the Constitutional Court will, as a rule, take into account that the ordinary courts have failed to proceed with the case without undue delays following its finding of a violation of Article 48 (2) of the Constitution.

THE LAW

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

14. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" principle, provided in Article 6 § 1 of the Convention, which reads as follows:

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

15. The period to be taken into consideration began on 2 January 1995 and has not yet ended. It has thus lasted more than eight years and two months.

A. Admissibility

16. The Government objected that the applicant had failed to exhaust domestic remedies as he did not file a constitutional complaint under Article 127 of the Constitution after the relevant amendment had entered into force on 1 January 2002.

17. The applicant contended that he had had recourse to the Constitutional Court which had found, on 2 September 1999, a violation of his constitutional right to a hearing without undue delays. In his view, he was therefore not required to seek another finding of the Constitutional Court to the same effect.

18. The Court has previously found that the complaint under Article 127 of the Constitution is an effective remedy, both in law and in practice, in the sense that it is capable of preventing the continuation of the alleged violation of the right to a hearing without undue delays and of providing adequate redress for any violation that has already occurred. It has held that applicants in cases against Slovakia which concern the length of proceedings should, in principle, have recourse to this remedy notwithstanding that it was enacted after their applications had been filed with the Court or the European Commission of Human Rights (see the *Andrášik and Others v. Slovakia* decision referred to above).

19. In the present case the position is different in that, prior to the entry into force of the amended Article 127 of the Constitution on 1 January 2002, the applicant complained about the length of the proceedings under Article 130 (3) of the Constitution. The Constitutional Court found, on 2 September 1999, a violation of the applicant's constitutional right to a hearing without undue delay. The Constitutional Court itself admitted that in similar cases the law then in force did not empower it to provide redress to persons whose constitutional rights were violated.

20. Given that the applicant tried to obtain redress before the Constitutional Court and that any new proceedings which it is open to him to bring before that judicial authority can formally concern only the period after 2 September 1999 (see paragraph 13 above), the Court finds that the applicant is not required to have recourse to the remedy available under Article 127 of the Constitution (see, *mutatis mutandis*, *Gavrus v. Romania*, no. 32977/96, § 37, 26 November 2002). The Government's objection must therefore be rejected.

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

B. Merits

22. The Government admitted, with reference to the Constitutional Court's finding of 2 September 1999, that the applicant's right to a hearing within a reasonable time had been violated.

23. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. The Court considers that the case was not particularly difficult to determine, and the information before it does not indicate that the applicant by his behaviour contributed to the length of the proceedings. Consequently, it takes the view that an overall period of eight years and more than two months could not, in itself, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention in the particular circumstances of the case.

25. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 500,000 Slovakian korunas (SKK) in respect of pecuniary damage arguing that he had lost income as a result of his persecution. He also claimed SKK 500,000 in respect of non-pecuniary damage.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Default interest

29. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see the case of *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002).

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*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage to be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 8 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President