



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

FOURTH SECTION

CASE OF KAČMÁR v. SLOVAKIA

(Application no. 40290/98)

JUDGMENT

STRASBOURG

9 March 2004

FINAL

07/07/2004

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 Kačmár v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 17 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 40290/98) against the Slovak Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Ondrej Kačmár ("the applicant"), on 10 January 1998.

2. The applicant, who had been granted legal aid, was represented by Mr Š. Hegedüš, a lawyer practising in Bratislava. The Slovakian Government ("the Government") were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák in that function.

3. The applicant alleged a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 in that he had been prevented from acquiring the ownership of real property to which he considered himself entitled.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 1 October 2002, the Court declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant leased premises in a house owned by Kovošpracujúci podnik, a State owned company with registered office in Prešov. He ran his business there. In April and May 1991 the applicant claimed that the relevant provisions of the State Property Transfer Act of 1990 (Act No. 427/1990) entitled him to purchase the part of the house which he leased.

10. On 12 June 1991 the Prešov District Commission for Denationalisation of State-Owned Property decided that the applicant was not entitled, under the State Property Transfer Act of 1990, to be given priority in purchasing the premises leased by him.

11. On 6 June 1991 the applicant filed an arbitration request claiming that Kovošpracujúci podnik should be ordered to conclude a purchase contract with him under Act No. 427/1990 in respect of the two premises leased by him and having the surface of 47.7 and 34.9 square metres respectively. The applicant further claimed that the purchase contract was to be determined pursuant to Section 8 of Act No. 427/1990.

12. On 16 July 1991 the Regional Arbitration Court (*Krajská štátna arbitráž*) in Košice delivered a decision the operative part of which reads:

“The defendant – Kovošpracujúci podnik, a State owned enterprise in Prešov is obliged to conclude a purchase contract with [the applicant] who has leased two premises situated ... in the building located in Prešov, Hlavná ulica 79 and having a surface area of 47.7 and 34.9 square metres respectively. The purchase contract shall concern the above premises and is to be concluded under Section 16(2) of Act No. 427/1990 within ten days from the final effect of this decision, it being understood that the purchase price will be determined pursuant to Section 8 of Act No. 427/1990.”

The decision acquired final binding effect on 8 August 1991.

13. On 9 October 1991 the applicant concluded a purchase contract with Kovošpracujúci podnik and paid the purchase price. The contract comprised several premises the total surface area of which was 145 square metres and also real estate with a surface area of 883 square metres. Subsequently Kovošpracujúci podnik was placed in liquidation.

14. On 23 July 1992 the liquidator claimed that the proceedings leading to the decision of the Regional Arbitration Court of 16 July 1991 be re-

opened. The liquidator argued that the requirements of the State Property Transfer Act of 1990 had not been met. On 25 February 1994 the Košice Regional Court dismissed the request. The decision stated that the liquidator had submitted no new relevant facts which could not have been invoked in the original proceedings and that, accordingly, the statutory requirements for re-opening the proceedings had not been met.

15. On 31 January 1995 the Prešov District Court declared the purchase contract of 9 October 1991 void *ex tunc* at the initiative of the Prešov District Prosecutor. The District Court found that in the contract the parties had not explicitly agreed on the date of transfer of the ownership as required by the relevant law and that the lawyer of Kovošpracujúci podnik had exceeded his power in that he had also included in the contract premises which had not been leased by the applicant.

16. On 20 December 1995 the Košice Regional Court upheld the District Court's judgment. The Regional Court found that the contract did not specify the property in question with sufficient certainty and that this resulted in conflicts between the applicant and another person who had purchased the remaining part of the house from Kovošpracujúci podnik. With the consent of the parties the Košice Regional Court discontinued the proceedings in respect of the claim that Kovošpracujúci podnik and the applicant should restore to each other everything which had been the subject of the contract of 9 October 1991.

17. On 19 December 1995 the applicant requested the Prešov District Court to enforce the decision delivered by the Regional Arbitration Court in Košice on 16 July 1991. He relied on Article III (7)(a) of Act No. 519/1991, Section 763(1) of the Business Code and Section 42a(6) of the Arbitration Act.

18. In December 1995 and in March 1996 the applicant submitted a new draft purchase contract for signature to the liquidator of Kovošpracujúci podnik with reference to the arbitration court's decision of 1991. On 22 April 1996 the liquidator asked the applicant in writing to submit a supplement to the draft contract as well as an expert opinion.

19. On 9 April 1996 the person who had purchased the other part of the house claimed that the co-ownership of the house be dissolved and that the share owned by Kovošpracujúci podnik be transferred to his ownership. On 22 April 1996 the Prešov District Court granted the claim with reference to Article 142(1) of the Civil Code and ordered the plaintiff to pay 188,496.61 Slovakian korunas (SKK) to Kovošpracujúci podnik. The liquidator of the latter waived his right to appeal and the judgment became final on 2 May 1996. It was not served on the applicant as he was not a party to the proceedings.

20. On 17 May 1996 the applicant requested the grant of an interim measure prohibiting Kovošpracujúci podnik from concluding any contracts for the transfer of the property in question. On the same day the Prešov

District Court granted the request. On 7 February 1997 the Košice Regional Court reversed the first instance decision as, at the time of its delivery, Kovošpracujúci podnik no longer owned the property.

21. On 23 May 1997 the applicant complained about a violation of his property rights to the Constitutional Court. On 1 July 1997 the latter rejected the petition for lack of jurisdiction.

22. On 26 May 1997 the applicant requested the Prešov District Court to consider the new owner of the house as defendant in the enforcement proceedings brought on 19 December 1995.

23. On 4 June 1997 the Prešov District Court, responding to the applicant's above request of 19 December 1995, ordered the enforcement of the decision of the Regional Arbitration Court of 16 July 1991 in that it imposed a fine of SKK 5,000 on the owner of the house with reference to Article 351 of the Code of Civil Procedure. The District Court expressed the view that the obligation to conclude a purchase contract had passed *ex lege* to the new owner of the house following the transfer of ownership to him. The proceedings were discontinued so far as they concerned Kovošpracujúci podnik, as the latter no longer owned the property. The owner of the house appealed.

24. On 15 August 1997 the Prešov Regional Court quashed the District Court's decision of 4 June 1997. The Regional Court did not find it established that the obligation imposed by the arbitration court in 1991 had been transferred to the new owner of the house. It therefore instructed the first instance court to ask the applicant and the liquidator of Kovošpracujúci podnik whether they agreed to a change of defendant. Failing such an agreement, there could be no change of defendant.

25. As to the merits of the applicant's claim for enforcement, the Regional Court's decision stated:

"... it is not possible to proceed pursuant to Article 351 of the Code of Civil Procedure or by any other means of enforcement of a decision where the decision to be executed imposes an obligation to make a certain declaration of intent [*prejav vôle*] within the meaning of Article 80(b) of the Code of Civil Procedure (for example to conclude a purchase contract). In such a case Section 161(1) of the Code of Civil Procedure is not applicable ... but Article 161(3) is to be applied, according to which final judgments imposing the declaration of intent replace such a declaration of intent. Accordingly, on the basis of such a judgment it is not possible to claim its judicial enforcement where the person concerned fails to comply with the obligation imposed, and it is not possible to have recourse to Article 351 of the Code of Civil Procedure..."

26. On 6 November 1997 the Prešov District Court dismissed the applicant's request for change of defendant as the liquidator of Kovošpracujúci podnik disagreed with the proposal. The statutory requirements for granting the applicant's request had thus not been met.

27. In a separate decision delivered on 6 November 1997 the Prešov District Court dismissed the applicant's request for enforcement of the

Košice Regional Arbitration Court's decision of 16 July 1991. In particular, the District Court's decision stated:

"...a decision relating to a declaration of intent may be relied on by the person at whose request it is made and is given effect to as a document reflecting a legal act, in accordance with the legal rules in force. The decision is submitted to the competent legal authority, where necessary, with a view to registering or making public the intent of the person against whom the proceedings have been brought. Such a decision may not be the subject either of judicial enforcement or of execution by an execution officer.

The Košice Arbitration Court's decision of 16 July 1991 ... cannot be enforced as it lacks a material element of enforceability. Where proceedings concern a declaration of intent in respect of a contract, the operative part of the decision on the merits of the case must contain all essential elements of such a contract ... Where one of such elements is omitted, the decision on the merits cannot be enforced pursuant to Article 161(3) and such a shortcoming cannot be remedied by any other means of enforcement.

In the present case [the dispute concerns] a purchase contract. The definition of the purchase price is, along with its object, one of the essential elements of such a contract. Reference [in the Arbitration Court's decision of 16 July 1991] to Section 16 of Act No. 427/1990 does not mean that the [vendor's] declaration of intent which was to be replaced was sufficiently certain as required by Section 37 of the Code of Civil Procedure.

In the case under consideration it is Article 161(3) and not Article 161(1) of the Code of Civil Procedure which is applicable... This means that on the basis of a judgment [replacing the declaration of intent of a party] ... it is not possible to claim judicial enforcement and it is not possible to proceed pursuant to Section 351 of the Code of Civil Procedure."

28. The applicant appealed. He argued, *inter alia*, that the arbitration court's decision of 16 July 1991 had not replaced the declaration of intent of the defendant company but had obliged its representatives to conclude a contract with the applicant.

29. On 18 December 1997 the Prešov Regional Court upheld the District Court's decisions of 6 November 1997. The Regional Court noted that it was not possible to change defendants in the context of enforcement proceedings as a decision could be enforced only in respect of the person against whom it was delivered. The new owner of the house did not become the general successor to Kovospracujúci podnik which still existed. By purchasing the house the new owner was not, therefore, liable for the original owner's contractual obligations.

30. As regards the applicant's request for enforcement of the arbitration court's decision of 16 July 1991, the Prešov Regional Court fully subscribed to the views expressed by the first instance court. In particular, the Regional Court's decision stated that a decision ordering a party to conclude a purchase contract replaced the intent of the vendor to do so. In respect of such decisions, Article 161(3) was relevant, according to which, once they

were of binding and final effect, such decisions replaced the intent of the party concerned. Enforcement of such decisions under Articles 161(1) and 351 of the Code of Civil Procedure was excluded.

31. In 1998 the applicant was ordered to move his business out of the premises in question. On 26 April 1999 the Prešov District Court ordered the applicant to pay SKK 513,187 plus default interest to the owner of the premises as compensation for their prior use.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Civil Code

32. Pursuant to Article 142(1), courts may terminate co-ownership of property at the request of one of the co-owners. When it is not practicable to divide the property, its ownership shall be transferred to one or several co-owners for appropriate compensation. Practical use of the property should be borne in mind.

33. Article 142(2) provides, *inter alia*, that courts shall not dissolve co-ownership when this is justified by the particular circumstances of the case.

34. Under Article 142(3), the termination of co-ownership may not be detrimental to persons possessing rights attached to the real property concerned.

2. The Code of Civil Procedure

35. Under Article 80(b), a claim by way of judicial proceedings may concern the fulfilment of an obligation resulting from the law, from a legal relationship or from a violation of law.

36. Article 161(1) and (2) provides that a judgment is enforceable after the expiry of the time-limit set for complying with the obligation imposed by it or, when it does not impose an obligation, after it becomes final.

37. Under Article 161(3), final judgments ordering a party to make a declaration of intent have the effect of such a declaration.

38. Article 351(1) provides that courts may, in the context of enforcement proceedings, fine parties who fail to comply with obligations imposed by a decision which is to be enforced.

39. Pursuant to Article 351(2), the payment of a fine under the first paragraph of Article 351 does not exempt the party concerned from liability for damage.

40. Under Article 351(3), courts shall allow the party concerned to take steps with a view to restoring the previously existing conditions at the cost of the other party when the latter fails to comply with the obligation imposed by the decision to be enforced and thereby brings about a change in

the situation. Courts may take appropriate measures with a view to assisting the party concerned in having the original situation restored.

3. Act No. 519/1991

41. Act No. 519/1991 of 18 December 1991 amends the Code of Civil Procedure. Article III(7)(a) provides that arbitration courts' decisions remain enforceable unless the rights in question have lapsed.

4. The Arbitration Act of 1962

42. Section 42a(6) provides that a decision imposing an obligation other than the payment of a sum of money can be enforced by means of a fine of up to 100,000 korunas. Such fines can be imposed repeatedly.

5. The Business Code

43. The Business Code entered into force on 1 January 1992. Section 763(1) provides that legal relations which came into being prior to its entry into force and the rights resulting there from are governed by legal rules existing prior to the entry into force of the Business Code.

6. Act No. 427/1990

44. Section 8 provides that real estate and buildings the ownership of which is to be transferred under this Act are to be valued in accordance with the relevant price regulations.

45. Under Section 16(1) and (2), persons who, by 1 October 1990, leased premises the ownership of which is to be transferred have the right to purchase those premises. In such a case, no public sale is to be held and the State organisation concerned shall conclude a purchase contract with the tenant.

46. Section 16(3) provides that the purchase price is to be determined pursuant to Section 8 of Act No. 427/1990.

7. The State-Owned Company Act of 1990

47. Act No. 111/1990 on State-owned company (*Zákon o štátnom podniku*) was adopted on 19 April 1990. Under Section 2(1), State-owned companies carry out their activities autonomously and on their own account. Section 5(1) provides that State-owned companies are legal persons which take legal actions on their own behalf and incur liability for such actions. Under paragraph 2 of Section 5, State-owned companies do not assume

liability for obligations of the State or of other persons. The State does not assume liability for obligations of a State-owned company unless the law otherwise provides.

8. Domestic courts' practice

48. In accordance with the Supreme Court's case-law, judgments imposing an obligation to conclude a purchase contract replace the vendor's declaration of intent to conclude such a contract. There is, therefore, no reason for applying Article 351 of the Code of Civil Procedure in proceedings concerning the enforcement of such judgments (Collection of opinions, conclusions, analyses and assessments of judicial practice, No. IV, p. 796).

49. Where a court's judgment is to replace the declaration of intent of a party to a purchase contract concerning real property, the contents of the contract has to be specified in the operative part of the judgment or a reference must be made therein to an attached written version of such a contract. Such contract thus becomes a part of the operative part of the judgment. Where the real property is not sufficiently specified and where the operative part of a judgment does not contain information about the purchase price, the judgment cannot replace the declaration of intent of a party to conclude a purchase contract (Collection of Judicial Decisions and Standpoints of the Supreme Court, No. 53/1991).

THE LAW

I. THE SCOPE OF THE CASE

50. The applicant argued that his rights were violated on the ground that (i) the liquidator of Kovošpracujúci podnik had failed to conclude a new purchase contract with him and had accepted the transfer of the property to another person, (ii) he could not defend his rights in the proceedings in which the property in question had been transferred to another person, (iii) the domestic courts had granted the other person's request for such a transfer and had disregarded the fact that, in another set of proceedings brought earlier, the applicant had claimed the enforcement of the arbitration court's decision of 1991 and (iv) his request for enforcement of that decision had not been granted.

51. The Court notes that, after the original purchase contract had been quashed, the applicant attempted to avail himself of his right granted by the arbitration court's decision of 1991 in the following two ways.

52. Firstly, the applicant requested the liquidator of Kovošpracujúci podnik to conclude a new purchase contract with him. The applicant was aware of the fact that the liquidator would not accede to his request not later than on 26 May 1997 when he asked for a change of defendants in the enforcement proceedings brought by him on the ground that another person had become the exclusive owner of the property. Since the application was introduced on 10 January 1998, the Court is unable, because of the six-month rule laid down in Article 35 § 1 of the Convention, to take cognisance of the merits of the complaints relating to the alleged misconduct of the liquidator of the defendant company and the alleged inability of the applicant to defend his rights in the proceedings concerning the transfer of the property to another individual.

53. Secondly, the applicant attempted to have the arbitration court's decision of 1991 enforced. The proceedings relating to his request ended with the delivery of the Prešov Regional Court's decision of 18 December 1997. The Court will below address the applicant's complaints relating to the alleged shortcomings in those proceedings.

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

54. The applicant complained that his request for enforcement of the Košice Regional Arbitration Court's decision of 16 July 1991 had not been granted. He alleged a violation of Article 6 § 1 of the Convention which, so far as relevant, provides as follows:

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

A. Applicability of Article 6 § 1

55. The Government argued that the judgment of the Regional Arbitration Court of 16 July 1991 replaced the declaration of intent of Kovošpracujúci podnik to conclude a purchase contract with the applicant within the meaning of Article 161(3) of the Code of Civil Procedure. Such judgments could be presented in the course of legal transactions as statements of intent of the party whom they concerned. Enforcement of such decisions pursuant to Article 351 of the Code of Civil Procedure was therefore superfluous and excluded. The Government further argued that the courts' decision to quash *ex tunc* the purchase contract concluded between the applicant and Kovošpracujúci podnik had rendered the arbitration court's decision of 1991 *de facto* void. The applicant's request for enforcement of the arbitration court's decision of 1991 did not therefore concern a right which was recognised, at least on arguable grounds, in

domestic law. The Government concluded that Article 6 § 1 was not applicable.

56. The applicant disagreed. He maintained, in particular, that the decision to quash the original purchase contract had in no way affected the validity of the arbitration court's decision of 1991 entitling him to have a purchase contract concluded.

57. The Court recalls that for Article 6 § 1 to be applicable under its "civil" head, the proceedings at issue must concern a "dispute" over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question (see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43 with further references, ECHR 2000).

58. Contrary to what has been argued by the Government, the Court finds no indication that the judicial decisions to quash the purchase contract which the applicant and Kovospracujúci podnik had concluded on 9 October 1991 had any effect on the arbitration court's decision of 16 July 1991 giving the applicant the right to have such a contract concluded.

59. The proceedings complained of concerned the enforcement of an arbitration court's decision entitling the applicant to have a purchase contract concluded in respect of real property. The dispute in question therefore concerned the applicant's "civil" rights within the meaning of Article 6 § 1 of the Convention. In view of the legal provisions on which the applicant relied in his request and the one invoked in the Prešov District Court's decision of 4 June 1997, the Court is satisfied that the right claimed by the applicant can be said, at least on arguable grounds, to have been recognised under domestic law. The fact that the courts ultimately found that the arbitration court's decision could not be enforced by the means relied upon by the applicant cannot affect the position.

60. Article 6 § 1 is therefore applicable to the enforcement proceedings in question.

B. Compliance with Article 6 § 1

61. The Government contended that the courts dealing with the applicant's request for enforcement gave sufficient and relevant reasons for their decision to dismiss that request, and that that decision was not arbitrary. Article 6 § 1 of the Convention had therefore not been violated.

62. The applicant maintained that his right to a fair hearing and to effective access to a court had been violated in that the Prešov District Court had transferred the ownership of the property in question to another person in disregard of the fact that the applicant had earlier claimed the

enforcement of the arbitration court's decision which concerned the same property and that the proceedings concerning the applicant's request had been pending before it at the relevant time. He argued that, after the final effect of the judgment on transfer of the property to another person on 2 May 1996, he had no possibility under Slovakian legal order to have the arbitration court's decision enforced.

63. The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

64. In the present case courts at two levels of jurisdiction dismissed the applicant's request for enforcement of the arbitration court's decision of 16 July 1991, *inter alia*, on the ground that that decision replaced the declaration of intent of the defendant. In their view, Article 161(3) of the Code of Civil Procedure was relevant according to which, once they were of binding and final effect, such decisions replaced the intent of the party concerned. Enforcement of such decisions by other means was excluded.

65. In the light of the information available, the Court does not find to be arbitrary the conclusion reached by the Prešov District Court and Regional Court on the enforceability of the arbitration court's decision of 1991. In these circumstances, and noting that it has only limited power to deal with alleged errors of fact or law committed by the national courts, the Court finds no basis on which to substitute its view for that of the domestic courts on this issue.

66. The applicant further complained that his rights under Article 6 § 1 were violated in that the Prešov District Court allowed the transfer of the property to another person notwithstanding that at that time it also had before it his claim for enforcement of the arbitration court's decision of 1991 which concerned the same property. The District Court thus deprived him of the possibility of having his rights enforced against Kovošpracujúci podnik, that is the company which the arbitration court's decision of 1991 directly concerned.

67. The Court notes that the domestic courts found, for reasons set out above, that the arbitration court's decision of 1991 was not enforceable in the way claimed by the applicant, either against Kovošpracujúci podnik or against the new owner. In these circumstances, the Prešov District Court's failure to determine the applicant's request for enforcement filed against

Kovospracujúci podnik on 19 December 1995 prior to deciding on another party's claim for dissolution of joint ownership in respect of the property in question did not, in the Court's view, infringe the applicant's right of access to a court or any other rights under Article 6 § 1 in the context of the enforcement proceedings under consideration.

68. There has therefore been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. The applicant complained that he had had no effective remedy at his disposal as regards the alleged violation of his rights under Article 6 § 1 of the Convention. He relied on Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

70. The Government contended there had been no violation of Article 13.

71. The applicant disagreed, making reference to his arguments in respect of the above complaints under Article 6 § 1.

72. The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. Its effect is to require the provision of a domestic remedy capable of dealing with the substance of an “arguable complaint” under the Convention and of granting appropriate relief (see, amongst other authorities, *Aksoy v. Turkey*, judgment of 25 September 1996, *Reports* 1996-VI, p. 2286, § 95). The word “remedy” within the meaning of Article 13 does not, however, mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, *mutatis mutandis*, *Bensaid v. the United Kingdom*, no. 44599/98, § 56, ECHR 2001-I).

73. The Court notes that the applicant was able to challenge on appeal the decisions of the Prešov District Court on his enforcement request, albeit unsuccessfully. He thus had an effective remedy in respect of his complaint about unfairness of the proceedings in question.

74. Accordingly, there has been no violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

75. The applicant complained that he had been prevented from acquiring the ownership of real property to which he was entitled pursuant to the

Košice Regional Arbitration Court's decision of 16 July 1991. He alleged a violation of Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

76. The Government submitted that the applicant had not acquired the ownership of the property in question as the purchase contract which he had concluded in 1991 had been declared void *ex tunc* on the ground that it did not comply with the relevant law. They maintained that, when concluding the contract of 1991, the applicant had acted in bad faith, as it comprised more property than the arbitration court's decision of 1991 provided for.

77. In the Government's view, the courts' decision to quash *ex tunc* the purchase contract concluded between the applicant and Kovošpracujúci podnik had rendered the arbitration court's decision of 1991 *de facto* void. The right to have a purchase contract concluded under the relevant provisions of the State Property Transfer Act of 1990 was not an absolute one. It was therefore questionable whether the applicant had the right to have another purchase contract concluded after the original contract of 1991 had been declared void.

78. The Government concluded that the applicant himself was responsible for the situation of which he complained as it was the result of his failure to conclude a valid purchase contract with Kovošpracujúci podnik.

79. The applicant argued that the Košice Regional Arbitration Court's decision of 16 July 1991 remained in force even after the purchase contract of 1991 had been quashed. It entitled to him to purchase the real property in question. He disputed the Government's argument that he had acted in bad faith and maintained that the alleged violation of his rights resulted from the fact that, following the decision to quash the original purchase contract, he had not been able to conclude a valid purchase.

80. The Court notes that the Košice Regional Arbitration Court's decision of 16 July 1991 did not, as such, give the applicant title to the property in question. It rather imposed a contractual obligation on the defendant to conclude a purchase contract with the applicant in respect of that property and gave the applicant the right to have such a contract concluded.

81. Assuming that under the arbitration court's decision the applicant was still entitled to have a new purchase contract concluded after the original contract had been declared void and that his claim can be

considered as an asset attracting the guarantees of Article 1 of Protocol No. 1 (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31 and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII), the Court will examine whether the facts complained of gave rise to a violation of that provision.

82. In respect of the applicant's claim for enforcement of the arbitration court's decision, the domestic courts at two levels of jurisdiction held, *inter alia*, that that decision replaced the declaration of intent of the defendant to conclude a contract. In their view, Article 161(3) of the Code of Civil Procedure was relevant according to which, once they were of binding and final effect, such decisions replaced the intent of the party concerned. Enforcement of such decisions by other means was excluded. The Court has found above that this conclusion was not arbitrary and that, as it has only limited power to deal with alleged errors of fact or law committed by the national courts, it cannot substitute its view for that of the domestic courts on this issue.

83. In these circumstances, the Court cannot accept the applicant's argument according to which, by dismissing his request for enforcement of the arbitration court's decision of 1991, the domestic courts acted contrary to the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

84. The Court considers that the applicant is partly at fault for the situation of which he complains. In fact, the purchase contract which the applicant had concluded with KovoSpracujúci podnik in 1991 was declared void as the parties had failed to comply with the statutory requirements when concluding it. However the purchase contract, concluded pursuant to the arbitration court's decision of 16 July 1991, was also open to challenge on the grounds that the parties had included in it a substantial amount of property which was not covered by the operative part of the arbitration court's decision, that being limited to two premises having a surface area of 47.7 and 34.9 square metres respectively (see paragraphs 12 and 13 above).

85. Furthermore, it appears from the Prešov District Court's decision of 6 November 1997 that the arbitration court's decision of 16 July 1991 did not expressly specify all essential elements for concluding a valid purchase contract. In the District Court's view, that shortcoming prevented the arbitration court's decision from being directly implemented under Article 161(3) of the Code of Civil Procedure, and that shortcoming could not be remedied by other means of enforcement (see paragraph 27 above). In this respect the Court notes that the arbitration court's decision of 1991 was delivered following proceedings in which the terms of the decision which he sought to obtain had been framed by the applicant himself, and that the applicant did not challenge that decision in any appeal.

86. There has therefore been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that, by reason of the six-month rule, it is unable to take cognisance of the merits of the complaints in so far as they concern the alleged misconduct of the liquidator of the defendant company and the fact that the applicant could not defend his rights in the proceedings concerning the transfer of the property to another individual;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been no violation of Article 13 of the Convention;
4. *Holds* that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 9 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President