CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KOPECKÁ v. SLOVAKIA

(Application no. 69012/01)

JUDGMENT

STRASBOURG

31 May 2005

FINAL

31/08/2005

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 Kopecká v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 69012/01) 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, Mrs Gabriela Kopecká ("the applicant"), on 21 February 2001.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Kresák, succeeded by Ms A. Poláčková.

3. On 5 October 2004 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Pusté Uľany.

5. In 1991 the applicant sustained an injury at work as a result of which she has been handicapped.

6. On 8 January 1992 she sought compensation from her former employer before the Galanta District Court. The applicant also submitted an expert opinion.

7. In the course of 1992 and 1993 the District Court held 12 hearings.

8. On 8 April 1994 the District Court decided to obtain a second expert opinion. The defendant challenged the decision ordering him to pay an

advance on expert's fees. On 31 August 1994 the appellate court determined that issue.

9. On 22 September 1994 the District Court decided to obtain an opinion from a different expert. On 1 December 1994 and on 9 March 1995 the court urged the expert to submit the opinion.

10. On 11 July 1995 the case was assigned to a different judge.

11. Between 28 November 1995 and 12 October 1999 the District Court requested the expert five times to submit the opinion or to return the file to it. The letter of 12 October 1999 was returned to the court with a remark indicating that the addressee had died. It was later established that the expert had died in December 1995.

12. Between 26 October 1999 and 3 May 2000 the District Court unsuccessfully attempted to locate and obtain the case file which had been sent to the expert. On 16 June 2000 it requested the parties to submit all relevant documents to it as the file had been lost with the expert. The court reiterated its request on 10 August 2000 and, as regards the applicant, also on 7 September 2000.

13. In the meantime, on 31 March 1999, bankruptcy proceedings were brought against the defendant.

14. On 17 August 2000 the administrator in bankruptcy informed the District Court that he did not possess the documents which the court had requested. The administrator asked the District Court to stay the proceedings due to the defendant's bankruptcy.

15. On 20 September 2000 the applicant informed the District Court that she possessed no further documents relating to the case.

16. On 22 March 2001 the Galanta District Court stayed the proceedings concerning the applicant's claim pending the outcome of the bankruptcy proceedings against the defendant company.

17. On 8 September 2003 and on 5 December 2003 the District Court requested the Bratislava Regional Court to submit to it the latter's decision of 9 July 2003 under which the bankruptcy proceedings had been discontinued. In the meantime, on 27 October 2003, the defendant company had been deleted from the companies register whereby it had ceased to exist.

18. On 29 December 2003 the Galanta District Court received the above Bratislava Regional Court's decision of 9 July 2003. On 19 January 2004 the District Court discontinued the proceedings in the applicant's action of 8 January 1992 on the ground that the defendant had ceased to exist without any legal successor. The decision became final on 7 February 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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.

20. 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 had been violated.

21. 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 had been violated.

22. 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 a person whose constitutional right has been 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).

23. It has been the Constitutional Court's practice to examine alleged violations of the right to a hearing without undue delay only where the relevant remedy was filed with it at a time when the alleged violation occurred or still lasted (decisions I. ÚS 34/99 of 20 May 1999 or III. ÚS 20/00 of 12 April 2000). It has not examined complaints about length of proceedings in which a final decision had been delivered at the moment of introduction of such complaints.

24. In case registered before the Constitutional Court under file number I. ÚS 122/03 the plaintiff complained, *inter alia*, about the length of enforcement proceedings relating to a sum which his former employer owed him. The proceedings were stayed, in 1999, as bankruptcy proceedings had been brought against the defendant. In its decision of 18 June 2003 the Constitutional Court expressed the view that, where civil proceedings are lawfully stayed, there is a legitimate legal obstacle to proceeding to a resolution of the matter in issue. Referring to its case-law, the Constitutional Court held that inactivity of a court which is due to such a legal obstacle cannot be considered as unjustified delay in the proceedings contrary to Article 48(2) of the Constitution. To the extent that the plaintiff complained about delays in the proceedings prior to the decision to stay the enforcement proceedings given in 1999, his complaint had been lodged after the expiry of the two months' time-limit laid down in Section 53(3) of the Constitutional Court Act. In addition, at that time a different means of

protection of individuals' constitutional rights existed (petition under Article 130(3) of the Constitution) and the plaintiff had not used that remedy without invoking any relevant reason for such failure. The complaint under Article 127 of the Constitution, introduced with effect from 1 January 2002, was not intended to be a substitute for remedies which had been available to individuals until 31 December 2001. The Constitutional Court therefore rejected the plaintiff's complaint. It confirmed the above position in its decision I. ÚS 162/03 given on 17 September 2003.

25. In decision IV. ÚS 205/03 of 18 February 2004 the Constitutional Court held that undue delays in proceedings may also result from an ordinary court's decision to stay proceedings where such a decision is not justified in the particular circumstances of the case.

THE LAW

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

26. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, 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 ... hearing within a reasonable time by [a] ... tribunal..."

27. The Government did not contest that argument. They submitted, however, that the applicant had not exhausted domestic remedies as she had not sought redress by means of a complaint under Article 127 of the Constitution, as in force since 1 January 2002.

28. The period to be taken into consideration began only on 18 March 1992, when the recognition by the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor States, of the right of individual petition took effect. The period in question ended on 19 January 2004. It thus lasted 11 years and 10 months and 1 day. During this period the case was pending before the first instance court for 7 years (one procedural decision having been given by the appellate court), and subsequently the proceedings were stayed for 4 years and more than 9 months due to the bankruptcy proceedings which had been brought against the defendant.

A. Admissibility

29. The Government argued that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They

submitted, mainly with reference to the Constitutional Court's decision IV. ÚS 205/03 of 18 February 2004, that the applicant could have complained under Article 127 of the Constitution about delays in both proceedings concerning her action of 1992 and the bankruptcy proceedings against the defendant.

30. The applicant disagreed.

31. The Court recalls that in cases concerning the length of proceedings the protection of a person's right granted by the Constitutional Court of the Slovak Republic is compatible with the protection afforded under the Convention only where the Constitutional Court's decision is capable of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account their overall length (see *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

32. It has not been argued and it does not appear from the documents submitted that the District Court's decision to stay the proceedings in issue pending the outcome of bankruptcy proceedings against the defendant was unjustified in the particular circumstances of the case. The practice of the Constitutional Court (decisions I. ÚS 122/03 and I. ÚS 162/03 referred to above) indicates that the applicant could not effectively complain, either under Article 127 of the Constitution (as operational since 1 January 2002) or under any other provision of Slovakian law, about the length of a substantial part of the proceedings, namely about the period between the introduction of her action in 1992 and the Galanta District Court's decision to stay the proceedings given on 22 March 2001. In these circumstances, the Government's objection relating to the applicant's failure to exhaust domestic remedies cannot be upheld.

33. The Court further 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

34. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

36. Having examined all the material submitted to it, the Court finds no fact or argument capable of persuading it to reach a different conclusion in

the present case. Having regard to its case-law on the subject and to what was at stake for the applicant, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 200,000 euros (EUR) in respect of damage which she had allegedly sustained.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 6,000 under that head.

B. Costs and expenses

41. The applicant made no claim in respect of her costs and expenses.

C. Default interest

42. 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.

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 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 31 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President