CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF VUJČÍK v. SLOVAKIA

(Application no. 67036/01)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

13/09/2006

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 Vujčík v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 29 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 67036/01) 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, Mr Anton Vujčík ("the applicant"), on 30 November 2000.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. On 10 November 2004 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. 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 1945 and lives in Stročín.

5. On 18 August 1992 the applicant's son claimed that the maintenance which courts had earlier ordered the applicant to pay should be increased. The plaintiff submitted that his living costs had increased as he had started studying at a university.

6. On 26 October 1992 the Košice 1 District Court heard the parties. On 29 October 1992 it asked a tax office for information on the applicant's income. The tax office submitted the information on 15 January 2003.

7. In the course of February and March 1993 the parties made further submissions and the court obtained fresh information on the applicant's income.

8. The plaintiff did not appear before the court on 22 March 1993. The case was adjourned. Further documentary evidence was obtained in April 1993.

9. On 10 May 1993 the Košice 1 District Court ordered the applicant to pay monthly 1,200 Slovakian korunas (SKK) to his son as from 1 September 1992. The applicant appealed on 4 June 1993. On 9 July 1993 the applicant submitted another copy of his appeal and paid the court fee. The file was transferred to the appellate court on 29 July 1993.

10. On 30 September 1993 the Košice Regional Court quashed the first instance judgment to the extent that it had been challenged by the applicant. The appellate court found that the first instance court had failed to establish the relevant fact of the case and that it had acted contrary to the relevant provisions of the Code of Civil Procedure and of the Family Act. Reference was made, *inter alia*, to Article 6 of the Code of Civil Procedure.

11. On 7 March 1994 the District Court made an inquiry about the plaintiff's studies. On 24 March 1994 the case had to be adjourned as both the plaintiff and the applicant had not appeared.

12. Between 15 April 1994 and 9 September 1994 the District Court held five hearings and it also obtained documentary evidence. On the latter date the court decided to determine the applicant's income on the basis of an expert opinion which had been ordered in a different set of proceedings concerning the maintenance of the applicant's other son. On 23 December 1994 the District Court found that the opinion had not been submitted as the applicant had refused to co-operate with the expert.

13. On 14 February 1995 the applicant proposed to settle the case. On 28 February 1995 the plaintiff agreed to a settlement. However, the parties refused to settle the case at a hearing held on 16 March 1995. The case was adjourned. On 22 April 1996 the court found that the applicant had not yet submitted the relevant documents to the expert in the context of the different set of proceedings.

14. On 7 March 1996 the President of the Košice 1 District Court admitted, in reply to the applicant's complaint, that there had been delays in the proceedings after the Regional Court had quashed the first instance judgment.

15. In January and in October 1997 the District Court asked for the file in the proceedings concerning the maintenance of the applicant's other son. The file could not be submitted to it as that case, which the first instance

court had determined in the meantime even in the absence of an expert opinion, was pending before the appellate court.

16. On 29 April 1998 the plaintiff modified the claim. He proposed that a criminal file against the applicant be examined by the District Court.

17. On 7 May 1998 a hearing was held. In May 1998 the District Court obtained further evidence. Another hearing was held on 1 October 1998. The hearing scheduled for 30 October 1998 had to be adjourned as the requested documentary evidence had not yet been submitted to the court.

18. On 26 November 1998 the Košice 1 District Court ordered the applicant to pay SKK 1,200 monthly to his son as from 14 September 1992. It further authorised the applicant to pay the arrears for the period from 14 September 1992 to 30 November 1998 in monthly instalments of SKK 5,000. On 3 February 1999 the applicant appealed. The plaintiff submitted his comments on 23 February 1999. The applicant submitted further reasons for his appeal on 28 June 1999.

19. On 29 March 1999 the District Court delivered a supplementary judgment by which it rejected the plaintiff's claim to the extent that it concerned the period from 1 to 13 September 1992.

20. In April and in July 1999 the District Court obtained further documentary evidence. The file was submitted to the appellate court on 17 June 1999.

21. The Košice Regional Court held hearings on 14 July 1999 and on 27 September 1999. On the latter date it upheld the first instance decision ordering the applicant to pay SKK 1,200 per month to his son. The Regional Court held that that obligation covered the period from 14 September 1992 to 31 August 1999. The decision on that issue became final on 23 November 1999.

The Regional Court further quashed the first instance decision concerning the payment of the sums in arrears and the costs of the proceedings as further evidence needed to be obtained with a view to determining the issue. Reference was made to Article 221(1)(c) of the Code of Civil Procedure.

22. On 2 December 1999 the District Court scheduled a hearing on the outstanding issue for 24 February 2000. On 15 February 1999 the applicant challenged the District Court judge involved in the case.

23. On 29 March 2000 the Košice Regional Court dismissed the applicant's request for exclusion of the District Court judge. On 24 May 2000 the Regional Court issued a decision by which it rectified a clerical error in its decision of 29 March 2000.

24. A hearing before the District Court was scheduled for 5 October 2000. It had to be adjourned as the judge was ill.

25. The District Court heard the parties on 18 January 2001. On 9 February 2001 it gave a judgment ordering the applicant to pay to his son the outstanding sum of SKK 82,880 for the period from 14 September 1992

to 31 August 1999. It authorised the applicant to pay the sum in monthly instalments of SKK 5,000.

26. On 30 March 2001 the applicant appealed and he submitted further reasons for his appeal on 15 October 2001. He alleged, in particular, that his son was not entitled to maintenance throughout the period in question. He further alleged that the courts should have taken into account that he had paid SKK 9,000 to his son between September 1991 and February 1992 when the latter had studied at a different school.

On 5 April 2001 the plaintiff also appealed.

The file was transmitted to the appellate court on 4 May 2001.

27. On 22 October 2001 the Košice Regional Court upheld the judgment of 9 February 2001. It noted that the applicant's obligation to pay maintenance to his son had been determined in proceedings which had ended with the Regional Court's judgment of 27 September 1999. With reference to the documents included in the file the appellate court held that the District Court had correctly determined both the sum which the applicant owed to the plaintiff and the monthly instalments for payment of that sum.

28. The appellate court's judgment with reasons was transmitted to the District Court on 17 January 2002. The District Court served it on the parties on 30 January 2002. On that day the decision on the point in issue became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Constitution and Constitutional Court's practice

29. 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.

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

31. 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 the event 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 rights have 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).

32. It has been the Constitutional Court's practice to entertain complaints about excessive length of proceedings only where the proceedings complained of are pending, at the moment when such complaints are lodged with it, before the authority liable for the alleged violation (e.g., decision IV. ÚS 96/02, with further references, or decision IV. ÚS 176/03).

33. The Government submitted to the Court several decisions given by the Constitutional Court between 24 January and 10 July 2002. In them the Constitutional Court decided on complaints under Article 127 of the Constitution about the length of proceedings which had been filed in January 2002. The complaints concerned proceedings before ordinary courts which had been brought prior to 1 January 2002.

B. Code of Civil Procedure

34. Pursuant to Article 6, the courts shall examine cases in co-operation with all participants so that the protection of rights is expeditious and effective and that the facts in dispute be reliably established.

35. Article 221(1)(c) provides that an appellate court shall quash the first instance decision, in particular, where the first instance judgment cannot be reviewed either as being incomprehensible or for lack of reasons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

36. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement and that the domestic courts' decisions regarding the maintenance of his son were arbitrary. He also alleged that he had no effective remedy at his disposal in respect of those complaints. The applicant relied on Articles 6 § 1 and 13 of the Convention, which, to the extent relevant, read as follows:

Article 6 § 1

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

Article 13

"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."

A. Admissibility

1. Alleged unfairness of the proceedings

37. The applicant complained under Article 6 § 1 of the Convention that the domestic courts' decisions in the above proceedings were arbitrary.

38. The Court notes that the final decision on the amount which the applicant was obliged to pay monthly to his son was given by the Košice Regional Court on 27 September 1999. Since the application was introduced on 30 November 2000, in this respect the applicant has not complied with the six month time-limit laid down in Article 35 § 1 of the Convention.

39. As to the complaint about arbitrariness of the decision on the remaining issue, namely determination of the sum in arrears, the Court recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. 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 (see *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I).

40. Having regard to the documents before it, the Court finds no appearance of unfairness, within the meaning of Article 6 § 1 of the Convention, in the manner in which the domestic courts dealt with the case in issue.

41. To the extent that the applicant complained that he had no effective remedy at his disposal in respect of his above complaint, the Court recalls that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

42. The Court has found above that the applicant's complaint under Article 6 § 1 of the Convention concerning the alleged unfairness of the

proceedings in issue was inadmissible. In this respect the applicant therefore has no arguable claim for the purposes of Article 13 and this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As regards the length of the proceedings

43. The period to be taken into consideration began on 18 August 1992 and ended on 22 October 2001 when the appellate court gave its judgment on the last point in issue. It thus lasted 9 years, 2 months and 4 days. During this period the case was examined three times by courts at two levels of jurisdiction.

44. The Government recalled that the decision on the claim of the applicant's son had become final on 30 January 2002 and argued that the applicant could have sought redress by means of a complaint under Article 127 of the Constitution enacted with effect from 1 January 2002. They relied on the relevant practice of the Constitutional Court. In their view, the application was in any event manifestly ill-founded.

45. The applicant disagreed.

46. The Court finds that issues as to the availability of redress or effectiveness of the remedy in question arise under the substantive complaint made by the applicant under Article 13 in conjunction with Article 6 § 1 of the Convention. It considers that the submissions made by the Government concerning non-exhaustion are closely connected with these aspects. They should therefore be joined to the merits of the application.

47. In the light of the parties' submissions, the Court considers that the complaints under Articles 6 § 1 and 13 of the Convention relating to the length of the proceedings raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

B. Merits

1. The Government's preliminary objection

48. As indicated above, the Government argued that the applicant should have sought redress by means of a complaint under Article 127 of the Constitution enacted with effect from 1 January 2002.

49. The Court notes that the appellate court's decision was given on 22 October 2001. It was to be served on the parties through the first instance

court to which it was transmitted on 17 January 2002. The decision was served on the parties and became final on 30 January 2002. Considering that it has been the Constitutional Court's practice to examine complaints about the length of the proceedings only to the extent that the proceedings complained of are pending before the authority responsible for the alleged delays, it is questionable whether the applicant could effectively complain to the Constitutional Court of the overall length of the proceedings in issue. In this respect the Court notes, in particular, that between 1992 and 2001 courts at two levels of jurisdiction dealt with the case three times.

50. In any event, the application was introduced on 30 November 2000. At that time it was the Court's general practice to assess whether domestic remedies had been exhausted with reference to the date on which the application was lodged with it. The Court decided to make an exception to this rule in respect of cases against Slovakia which, as the present one, were submitted to it prior to 1 January 2002 in the *Andrášik and Others v. Slovakia* decision referred to above. That decision was adopted on 22 October 2002, that is at a time when a final decision had already been given in the proceedings brought by the first applicant.

51. In the above circumstances, the Government's objection relating to non-exhaustion of domestic remedies cannot be upheld.

2. Alleged violation of Article 6 § 1 of the Convention

52. The Government contended that the length of the proceedings had not been excessive in the particular circumstances of the case. In their view, the parties had by their conduct considerably contributed to the overall length of the proceedings. In particular, the parties had failed to appear at several hearings, they had made proposals for extensive evidence to be taken throughout the proceedings and they had refused to accept a settlement to which they had earlier agreed. In addition, the plaintiff had modified the action in the course of the proceedings, and the applicant had challenged a judge.

53. As to the conduct of domestic courts, the Government maintained that there had been a single significant delay in the proceedings, namely between 16 March 1995 and 25 March 1998 when the District Court was awaiting for an expert opinion which had been ordered in a different set of proceedings and had attempted to have before it the file concerning those proceedings. However, the fact that the expert opinion had not been prepared in the other set of proceedings was imputable to the applicant who had refused to co-operate with the expert.

54. The applicant submitted that the proceedings had become more complex and had been prolonged as a result of the courts' failure to correctly determine the case at the initial stage. He also maintained that the District Court had remained inactive between 9 September 1994 and 1 October 1998. In his view, the District Court should have stayed the

proceedings if it considered necessary to have before it an expert opinion ordered in a different set of proceedings. Furthermore, the District Court had disregarded the legal opinion previously expressed by the appellate court.

55. 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).

56. The present case was of certain factual complexity due to the necessity to establish the applicant's situation and his capacity to contribute to his son's maintenance. The Court accepts that the length of the proceedings was due, to a certain extent, to the conduct of the parties as argued by the Government. However, this does not account for the overall length of the proceedings.

57. As regards the conduct of domestic courts, the Court notes that the President of the Košice District Court admitted, on 7 March 1996, that there had been undue delays in the proceedings. Similarly, the Government admitted that a delay had occurred between 16 March 1995 and 25 March 1998 for which, however, the applicant was also partly responsible.

The Court also notes that the appellate court twice quashed the first instance judgment on the ground that the District Court had not dealt with the case in an appropriate manner. This undeniably had an impact on the length of the proceedings.

58. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

3. Alleged violation of Article 13 of the Convention

59. The Court has held that a complaint under Article 127 of the Constitution, as in force since 1 January 2002, is, in principle, an effective remedy which applicants complaining about unreasonable length of proceedings should use (see, for example, the *Andrášik and Others v. Slovakia* decision referred to above). In the present case it has found that the applicant was not required to use that remedy as (i) it was questionable whether the Constitutional Court could examine the overall length of the proceedings before the ordinary courts, the bulk of which dated back to a period prior to the enactment of the above remedy and (ii), in any event, the decision on the case took final effect prior to the Court's decision in the case of *Andrášik and Others* concluding that applicants who had introduced their

complaint prior to 1 January 2002 should also use that remedy provided that the proceedings complained of were still pending.

60. In view of the above facts and having regard to its conclusion under Article 6 § 1, the Court finds that it is not necessary to examine the applicant's complaint under Article 13 of the Convention (see also *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 3 million Slovakian korunas in respect of non-pecuniary damage.

63. The Government argued that a finding of a violation of Article 6 § 1 would in itself constitute sufficient just satisfaction in the particular circumstances of the case.

64. The Court considers that the applicant must have sustained non-pecuniary damage. Having regard to the particular circumstances of the case and ruling on an equitable basis, it awards him EUR 4,500 under that head.

B. Default interest

65. 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that a separate examination of the complaint under Article 13 of the Convention is not called for;

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 4,500 (four thousand five hundred 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;

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

Done in English, and notified in writing on 13 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President