CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MALEJČÍK v. SLOVAKIA

(Application no. 62187/00)

JUDGMENT

STRASBOURG

31 January 2006

FINAL

03/07/2006

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 Malejčík 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 K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 62187/00) 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 Andrej Malejčík ("the applicant"), on 6 June 2000.

2. The Slovakian Government ("the Government") were represented by their Agent, Ms A. Poláčková.

3. On 24 November 2004 the Court decided to communicate the complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the proceedings in the applicant's action under the State Liability Act 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 1930 and lives in Košice.

A. The action under the State Liability Act and related facts

5. In 1975 the applicant concluded a contract with a co-operative pursuant to which the latter was to build a family house for him.

6. In 1977 the applicant lodged a civil action against the co-operative with the Košice City Court (*Mestský súd*) seeking a judicial ruling determining the date when the house was to be handed over.

7. On 12 May 1978 the City Court discontinued the proceedings. It observed that, at a hearing held on 12 April 1978, the applicant had withdrawn the action. Although the applicant's lawyer was not present at that hearing, a copy of the decision was served on him. As no appeal was lodged, the decision became final and binding on 11 July 1978.

8. In 1981 the applicant and the judge dealing with the action of 1977 were found guilty of bribery in connection with the case and sentenced to imprisonment.

9. On 24 June 1992 the Košice Regional Court (*Krajský súd*) declared the applicant's "appeal" of 21 April 1992 against the decision of 12 May 1978 inadmissible as being out of time.

10. On 27 July 1995 the applicant lodged an action against the Ministry of Justice as the State with the Košice II District Court (*Okresný súd*). He alleged that the decision of 12 May 1978 was arbitrary. The District Court had intentionally overlooked that at the hearing of 12 April 1978, the applicant had withdrawn the power of attorney from his lawyer. The service on the lawyer of a copy of the decision of 12 May 1978 was thus unlawful. It deprived the applicant of the opportunity to challenge the decision by a timely appeal. Considering that these facts amounted to wrongful official conduct resulting in an unlawful decision, the applicant claimed damages under the State Liability Act of 1969 (Law no. 58/1969 Coll. - "the 1969 Act"). He later supplemented his claim four times, in particular, by claiming that the decision of 12 May 1978 should be quashed as being illegal.

11. In December 1995 the applicant informed the Košice II District Court that he had moved to another address. As his new address was in the judicial district of the Košice I District Court, the action was transferred to it in April 1996.

12. On 13 February 1997 and 11 November 1998 the Košice I District Court held hearings.

13. On 2 June 1999 the Košice I District Court dismissed the action. It observed that, pursuant to sections 3 and 4 (1) of the 1969 Act, damage resulting from a wrongful official decision could only be compensated if that decision had been quashed by the competent body in a prescribed procedure. As the decision of 12 May 1978 had not been quashed, compensation for any damage allegedly inflicted thereby was out of the question. The District Court further found that the applicant had failed to prove his allegation of having withdrawn the power of attorney from his

lawyer. The serving of the decision of 12 May 1978 on the applicant's lawyer had been in conformity with Article 49 § 1 of the Code of the Civil Procedure and no wrongful official conduct had been established in this connection. The District Court finally noted that, in any event, in the criminal proceedings leading to his conviction in 1981 the applicant had clearly stated several times that he had withdrawn his civil action of 1977.

14. In July 1999 the applicant lodged an appeal against the judgment of 2 June 1999. He objected to the factual findings and legal conclusions of the District Court.

15. On 6 February 2002, following a hearing of the appeal held on the same day, the Regional Court upheld the judgment of 2 June 1999. It fully endorsed the factual findings and the legal reasoning given by the District Court. A copy of the Regional Court's judgment was served on the applicant on 18 April 2002 and no appeal lay against it.

B. The action for damages and the underlying facts

16. On 29 January 1992 Mrs B.M., the mother of the applicant, brought an action against the Ministry of Justice as the State in the Košice II District Court. She claimed damages in connection with convictions, in the 1950s, of her late husband, Mr Š.M., for various offences against the socialist economic system. These convictions were later quashed under the Judicial Rehabilitations Act of 1990 (Law no. 119/1990 Coll. - "the 1990 Act"). Mrs B.M. submitted a power of attorney in favour of the applicant to represent her in the proceedings.

17. A part of the claim was dismissed by a final decision of the Regional Court on 21 November 1995 as it had no basis in law.

18. In a letter of 21 May 1996 Mrs B.M. submitted a further specification of the remainder of her claim. She divided it into partial claims concerning other family members. In a letter of 10 July 1996, however, she expressly stated that she was not seeking an admission of the other family members to the action as claimants.

19. On 27 March 1997 Mrs B.M. died. On 14 November 1997 the applicant requested that he and 7 other members of the family be allowed to continue the action in her stead.

20. The inheritance proceedings in respect of the estate of Mrs B.M. were ended by a decision of a public notary on 25 January 1999. The sole heir to the estate was Mrs A.M., a daughter of Mrs B.M.

21. On 28 January 2002 the District Court dismissed the remaining part of the action as unsubstantiated. It noted that Mrs A.M. had succeeded to the rights and obligations of the original plaintiff, Mrs B.M, and continued the litigation in her place. The applicant and other family members were not parties to the proceedings, although the applicant continued to be involved as the plaintiff's representative.

22. On 15 March 2002 Mrs A.M. challenged the judgment of 28 January 2002 by an appeal. The appeal was signed by the applicant and indicated expressly that he was acting as the representative for Mrs A.M.

23. On 10 February 2003, on the plaintiff's appeal, the Regional Court upheld the judgment of 28 January 2002. No further appeal was available.

24. In July 2003 the applicant turned to the Constitutional Court with a complaint under Article 127 of the Constitution. In his own name, he alleged a violation of various aspects of his right to judicial protection set forth in Articles 46 et seq. of the Constitution in the proceedings in the action of 1992.

25. On 19 November 2003 the Constitutional Court declared the complaint inadmissible. It observed that the formal claimants in the action had been Mrs B.M. and Mrs A.M. The applicant was merely their representative. No procedural rights of his own were at issue. There could thus be no interference with his constitutional rights which he had invoked.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

26. Article 48 § 2 provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

27. 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.

28. 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 (for further details see, e.g., *Bánošová v. Slovakia* (dec.), no. 38798/97, 27 April 2000).

29. As from 1 January 2002 the Constitution has been amended in that, *inter alia*, natural 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, ECHR 2002-IX).

B. The Constitutional Court Act

30. The implementation of the amended Article 127 of the Constitution is set out in more detail in Sections 49 to 56 of Constitutional Court Act (Law no. 38/1993 Coll., as amended). The relevant amendment (Law no. 124/2002 Coll.) was published in the Collection of Laws and entered into force on 20 March 2002.

31. Section 53 (3) provides that a constitutional complaint can be filed within a period of two months from the date on which the decision in question has become final and binding or on which a measure has been notified or on which a notice of other interference has been given. As regards the measures and other interferences, the above period commences when the complainant could have become aware of them.

C. The Constitutional Court's Practice

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 eight decisions given by the Constitutional Court between March and August 2002. In them the Constitutional Court decided on complaints under Article 127 of the Constitution about the length of proceedings which had been filed between 7 January 2002 and 18 February 2002. The complaints concerned proceedings before ordinary courts which had been brought prior to 1 January 2002. All those proceedings were pending before the first instance court at the moment when the complaint under Article 127 of the Constitution was filed.

THE LAW

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

34. The applicant complained that he had not had a "fair hearing" within a "reasonable time" by an "impartial tribunal" in the determination of the actions of 1992 and 1995. He 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 within a reasonable time by an ... impartial tribunal..."

35. The Government contested those arguments.

A. Admissibility

1. As regards the proceedings in the action for damages

36. The Court observes that the original plaintiff in the action of 1992 was Mrs B.M., the applicant's mother. On her death in 1996 her estate passed to Mrs A.M., her daughter. Both the District Court and the Regional Court then considered Mrs A.M. the plaintiff in the action and the applicant merely as her representative. The applicant has not shown that he has ever raised any objections against this interpretation of his role in the proceedings. Quite the opposite, in the appeal of 15 March 2002 against the District Court's judgment of 28 January 2002, the applicant specifically stated that he was acting as the plaintiff's representative (see paragraph 22 above).

37. The Court further notes the finding of the Constitutional Court in its decision of 19 November 2003 that the applicant was merely a representative in the court proceedings and that no procedural rights of his own were at issue. The Court finds no reasons to doubt this conclusion.

38. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. As regards the fairness of the proceedings and impartiality of the tribunal in the action under the State Liability Act

39. The applicant has not shown that he has ever raised objections as to the impartiality of his tribunal. The action was examined by courts at two levels of jurisdiction. The courts found against the applicant as the decision of 1978 had never been quashed as being unlawful and the applicant had failed to establish any wrongful official conduct in this respect. The courts

based their findings on reasoning that does not appear to have been manifestly arbitrary or wrong.

40. To the extent that this part of the application has been substantiated and the requirement of exhaustion of domestic remedies pursuant to Article 35 § 1 of the Convention met, the Court finds no appearance of procedural unfairness or lack of impartiality of the tribunal within the meaning of Article 6 § 1 of the Convention.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. As regards the length of the proceedings in the action under the State Liability Act

42. The period to be taken into consideration began on 27 July 1995 when the action was lodged and ended on 6 February 2002 when the Regional Court dismissed the applicant's appeal. It thus lasted 6 years and more than 6 months for 2 levels of jurisdiction.

43. The Government objected that the applicant had not exhausted domestic remedies, as required under Article 35 § 1 of the Convention. In their view, he should have used the remedy under Article 127 of the Constitution, introduced with effect from 1 January 2002.

44. The applicant maintained that he had complied with the exhaustion rule pursuant to Article 35 § 1 of the Convention.

45. The Court notes that 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 time when complaints are lodged, before the authority liable for the alleged violation. Unlike in the cases on which the Government relied in their observations, the proceedings at issue were no longer pending before the court of first instance when the relevant amendment to the Constitution took effect. The Court is therefore not satisfied that the applicant could have successfully complained about the overall length of the proceedings in the action of 1995 under Article 127 of the Constitution, which has only been operative since 1 January 2002 (see *Ľ.R. v. Slovakia*, no. 52443/99, § 46, 29 November 2005).

46. The Court further notes that the application was introduced on 6 June 2000. At that time it was general Court 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* decision cited 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 applicant.

47. In the above circumstances, the Government's objection relating to non-exhaustion of domestic remedies cannot be sustained (see *Mikolaj and Mikolajová v. Slovakia*, no. 68561/01, §§ 41-42, 29 November 2005).

48. The Court notes that this complaint 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

49. 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).

50. 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).

51. Having examined all the material submitted to it, the Court discerns no facts or arguments capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

52. The applicant further complained that he had no effective remedy at his disposal in respect of his complaints of the lack of a fair hearing within a reasonable time by an impartial tribunal in the above two sets of proceedings. He relied on Article 13 of the Convention which provides that:

> "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. As regards the proceedings in the action for damages

53. The Court notes that this complaint is linked to the one examined above. It is therefore likewise incompatible *ratione personae* with the

provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. As regards the fairness of the proceedings and impartiality of the tribunal in the action under the State Liability Act

54. The Court notes that Article 13 guarantees the availability of a remedy at national level to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, its effect is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 135, ECHR 1999-VI). Article 13 does not however presuppose that the remedy or remedies resorted to must always be successful (see *Löffelmann v. Austria* (dec.), no. 42967/98, 1 February 2005).

55. Turning to the present case, the Court notes that the applicant could challenge his tribunal for bias. He could raise objections as to the fairness of the proceedings and impartiality of the tribunal by means of appeal (*odvolanie*) and, as the case may be, also by an appeal on points of law (*dovolanie*) (see summary of the relevant domestic law in, for example, *Indrová and Indra v. Slovakia* (dec.), no. 46845/99, 11 May 2004).

56. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. As regards the length of the proceedings in the action under the State Liability Act

57. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

58. 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, *Andrášik and Others*, cited 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 ordinary courts 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.

59. 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 separately the applicant's complaint under Article 13 of the Convention (see also *Žiačik v. Slovakia*, no. 43377/98, § 50, 7 January 2003).

III. ALLEGED VIOLATION OF ARTICLES 7 AND 17 OF THE CONVENTION

60. Without further specification the applicant also alleges a violation of his rights under 7 and 17 of the Convention.

61. In so far as this part of the application has been substantiated and falls within its competence, the Court has found no appearance of a violation of these provisions of the Convention It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 71,990,325 Slovakian korunas[1] (SKK) in damages. He did not identify whether the claim concerned pecuniary or non-pecuniary damage.

64. The Government contested the claim as grossly inflated, overstated, not supported by any evidence and lacking causal link to the alleged violation of Article 6 § 1 of the Convention.

65. In so far as the claim has been substantiated, the Court does not discern any pecuniary damage. On the other hand, it accepts that the applicant must have sustained non-pecuniary damage as a result of the violation found (see paragraph 51 above). Ruling on an equitable basis, it awards him EUR 2,000 under this head.

[1] SKK 71,990,325 is an equivalent of approximately 1,845,000 euros (EUR)

B. Default interest

66. 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 complaint under Article 6 § 1 both taken alone and in conjunction with Article 13 of the Convention concerning the excessive length of the proceedings in the action under the State Liability Act and the lack of an effective remedy in that respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings in the action under the State Liability Act;

3. *Holds* that that it is not necessary to examine separately the complaint under Article 13 of the Convention of the lack of an effective remedy in respect of the complaint under Article 6 § 1 of the Convention of the length of the proceedings in the action under the State Liability Act;

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 2,000 (two thousand 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;

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

Done in English, and notified in writing on 31 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President