



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

FOURTH SECTION

CASE OF PRELOŽNÍK v. SLOVAKIA

(Application no. 54330/00)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

23/05/2007

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 Preložník v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 54330/00) 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 Ivan Preložník (“the applicant”), on 21 December 1997.

2. The applicant was represented by Mr F. Pišút, a lawyer practising in Stuttgart (Germany). The Slovakian Government (“the Government”) were represented by Mrs A. Poláčková, their Agent.

3. On 2 December 2004 the President of the Court decided to communicate to the Government the complaints concerning the length of the proceedings, the lack of remedies in that respect and the equality between spouses. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Bratislava.

A. Proceedings concerning business premises (Bratislava I District Court file no. 12C 190/93)

5. On 22 October 1993 the applicant brought an action in the Bratislava I District Court (then *Obvodný súd*, at present *Okresný súd*). He claimed that substitute business premises should be given to him after he had been prevented from using other premises which he had acquired at a public auction.

6. On 26 October and 25 November 1993 the District Court invited the applicant to bring the action into line with the applicable procedural requirements and to pay court fees. The applicant responded on 18 November and 7 December 1993, respectively.

7. On 21 March 1994 the District Court sought the defendant's observations in reply. They were submitted on 5 April 1994.

8. On 19 December 1994 the District Court held a hearing at which it allowed the applicant's motion that the original defendant to his action be replaced by the Ministry for Administration and Privatisation of National Property ("the Ministry"). The District Court subsequently sought the Ministry's observations in reply.

9. On 25 May 1995 the District Court held a hearing at which it allowed the applicant's motion that a new defendant be admitted to the proceedings, the local municipality.

10. On 9 April 1996 the District Court requested that the applicant clarify the subject-matter of his action and on 3 June 1996 it held a hearing to establish its scope and legal nature. The applicant's submissions were then sent to the defendants for comment.

11. On 4 December 1997 the parties requested that the District Court adjourn a hearing, which had been scheduled for later that day, because they wanted to settle the case out of court. The hearing was adjourned until 28 January 1998, but no friendly settlement was reached.

12. Of the six hearings held between 28 January and 2 September 1998 four were adjourned due to the applicant's absence or his failure to submit documents.

13. On 9 October 1998 the District Court dismissed the action. The applicant appealed to the Bratislava Regional Court (*Krajský súd*).

14. The Regional Court held hearings on 29 April and 13 May 1999. The summonses were sent to the applicant and his lawyer, but neither of them appeared before the court.

15. Following the hearing of 13 May 1999, on the same day the Regional Court upheld the first-instance judgment and the matter became *res iudicata*. It was found established that following a public auction of 16 June 1991 the applicant had acquired the lease of commercial premises for his business. However, as he had let a third party use these premises without the owner's consent, the owner had terminated the lease by notice

in 1998. In these circumstances the applicant no longer had any right to have the original or other premises. He could possibly still claim damages, but that was not the subject-matter of the present action.

16. The applicant then requested that the case be re-opened. He argued that the power of attorney of his lawyer had expired prior to the conclusion of the appellate proceedings and that this had been overlooked by the court of appeal. The request was dismissed by the District Court on 8 June 2001.

B. Divorce and custody proceedings (Bratislava III District Court file no. 9C 161/94)

17. On 20 June 1994 the applicant petitioned for divorce before the Bratislava III District Court and asked that the court decide on the question of custody of the children, two sons, after the divorce had been pronounced.

18. The District Court sought the applicant's wife's observations in reply and, on 10 July 1994, appointed an *ex officio* representative (*opatrovník*) to act in the children's name in the proceedings.

19. Between 11 September 1995 and 31 October 2001 the District Court held nine hearings. Two of them were not attended by the applicant. As to one of these hearings his absence was the reason for the adjournment. On one occasion the applicant requested an adjournment in order to consult his lawyer.

20. In the said period the District Court sought information on five occasions from various public authorities concerning the situation of the family.

21. On 5 August 1999 the District Court appointed an expert in psychology to draw up a report on the children. The decision to seek expert evidence was upheld on appeal by the Regional Court on 29 October 1999. However, in the end, no report was produced despite several reminders.

22. On 10 December 1999 the applicant requested an interim measure granting him custody of the children. The request was dismissed on 26 January 1999 and, on appeal, on 25 May 2000.

23. On 6 March 2002 the District Court pronounced the divorce and approved a parental agreement concerning the care, education and maintenance of one of the sons. No ruling was made as regards the other son as he had reached the age of majority in the meantime. The parents waived their right of appeal and the judgment became final on 27 March 2002.

C. Custody and maintenance proceedings (Bratislava III District Court file no. Nc 47/94)

24. On 21 September 1994 the applicant's wife brought proceedings against him in the Bratislava III District Court. She claimed maintenance in

respect of their children and later extended the action to claim custody of the children in the period prior to the divorce.

25. On 2 November 1994 the District Court appointed an *ex officio* representative for the children in the proceedings.

26. Between 22 November 1994 and 13 May 1996 the District Court held seven hearings. The applicant did not attend four of them and in three cases his absence led to the hearings being adjourned.

27. On 27 July 1995 the District Court appointed a psychologist to prepare a report on the children within one month. The report was filed on 20 November 1995.

28. On 23 April 1996 the District Court decided on the expert's fees. The applicant challenged their amount. The Regional Court quashed the decision on 30 August 1996 and remitted the question of the fees to the District Court for re-examination.

29. On 5 February 1997 the District Court again decided on the expert's fees. The applicant again appealed.

30. On 13 March 1997 the District Court held a hearing which the applicant did not attend. Following the hearing, on the same day, the District Court decided that pending a final decision on the applicant's petition for divorce the custody of the children should be given to their mother. It further ordered the applicant to contribute towards their maintenance. In a separate decision the District Court issued an interim measure relating to one of the children. The applicant appealed against both the judgment and the interim measure.

31. On 16 January 1998 the Regional Court held a hearing and on 26 February 1998 it upheld the ruling of 5 February 1997 concerning the expert's fees and the interim measure of 13 March 1997. At the same time, the Regional Court quashed the judgment of 13 March 1997 and remitted the case to the District Court for re-examination.

32. On 24 November 1998 the case was adjourned as a second expert opinion was needed.

33. On 11 January 1999 the District Court requested the second expert opinion and ordered the parties to lodge a sum of money with the court in respect of the expert's costs. The ruling concerning the costs was upheld on appeal by the Regional Court on 29 April 1999.

34. On 10 December 1999 the applicant requested that he be given interim custody of the children. The request was dismissed on 10 January 2000 and the applicant appealed.

35. On 30 May 2000 the expert filed the second report and on 6 June 2000 the District Court decided on his fees.

36. The applicant appealed against the decision concerning the expert's fees and, on 25 August 2000, he challenged the District Court judge for bias.

37. On 18 October 2000 the Regional Court upheld the above decisions of 10 January and 6 June 2000. On 19 March 2001 it dismissed the challenge to the District Court judge.

38. On 11 October and 20 November 2001 the District Court held hearings. At the former hearing the applicant's wife withdrew her action in so far as it concerned one of the sons as he had reached the age of majority in the meantime. At the latter hearing the parents reached a parental agreement concerning the second son and the District Court adopted a judgment approving it. It became final on 15 February 2002.

D. Action for outstanding rent (Bratislava III District Court file no. 18Cb 268/98)

39. On 27 May 1998 the Bratislava – Staré mesto municipality sued the applicant for outstanding rent for his use of commercial premises.

40. On 28 May 1998, in summary proceedings, the Bratislava III District Court issued a payment order (*platobný rozkaz*) for the amount claimed.

41. The applicant challenged the order by way of a protest (*odpor*), as a result of which the order was *ex lege* vacated and the matter fell to be determined in ordinary proceedings.

42. On 13 May 2002 the District Court granted a major part of the action and dismissed the remainder.

43. On 27 March 2003, on the plaintiff's appeal, the Bratislava Regional Court changed the judgment of 13 May 2002 and allowed the action in full. Despite repeated attempts it was not possible to secure service of the judgment on the applicant as he could not be reached at any of his addresses. The matter is therefore legally still considered as pending.

E. Enforcement proceedings (ultimately Bratislava III District Court file no. E 577/97)

44. On 5 December 1991 the applicant requested that the Bratislava III District Court enforce its earlier judgment ordering a private individual to pay a sum of money to the applicant.

45. As the request was unclear, the District Court summoned the applicant to a hearing on 10 August 1993. The applicant failed to attend. The District Court invited him in writing to correct his submission and to pay court fees. The applicant responded on 19 August 1993.

46. On 26 November 1993 the Bratislava III District Court transferred the case to the Bratislava I District Court in the judicial district where the applicant lived.

47. On 23 March and 14 November 1994 the Bratislava I District Court requested the applicant to submit further and better particulars.

48. Between 1994 and 1997 the Bratislava I District Court made several attempts to trace the defendant and to obtain information necessary for the enforcement. It *inter alia* sought assistance from the police and the Central Register of Inhabitants.

49. On 14 October 1997 the Bratislava I District Court returned the case to the Bratislava III District Court on the ground that, according to the most recent information, the defendant lived within the Bratislava III district.

50. On 5 November 1997, 8 January, 18 and 19 March and 11 May 1998 and 10 June 1999 the Bratislava III District Court made unsuccessful attempts to ascertain the defendant's whereabouts and to trace his assets.

51. On 8 July 1999 the President of the Bratislava III District Court admitted that the applicant's complaint about undue delays in the proceedings was justified.

52. On 26 July 1999 the Bratislava III Regional Court asked the applicant to eliminate formal shortcomings in his claim within ten days.

53. On 31 August 1999 the Bratislava III District Court discontinued the proceedings on the ground that the applicant had not complied with the above request. The applicant appealed.

54. On 31 May 2000 the Bratislava Regional Court upheld the decision of 31 August 1999. It thus became final. The Regional Court held that it was primarily the duty of the applicant to identify the defendant and to provide information necessary for the enforcement to be effected. The courts could be of assistance in ascertaining such information but they were not required to seek it of their own initiative. Since the applicant had been totally inactive, the enforcement could not be carried out. The Regional Court further observed that it had been a mistake on the part of the District Court not to address this problem at the initial stage of the proceedings.

F. Proceedings concerning lease contract (Bratislava I District Court file no. 26Cb 258/99)

55. In August 1999 the applicant challenged the validity of a lease before the Bratislava I District Court.

56. On 2 October 2001 the District Court dismissed the action. The applicant appealed.

57. On 19 June 2003 the Regional Court upheld the first-instance judgment. As it had been impossible to secure the applicant's presence, the Regional Court had appointed an *ex officio* representative for him under Article 29 of the Code of Civil Procedure and the proceedings had been conducted with the participation of the representative. The matter became *res iudicata* on 17 September 2003.

G. Action for damages (Bratislava I District Court file no. 26Cb 260/99)

58. On 18 August 1999 the applicant claimed compensation from three legal persons on the ground that he could not run a business which he had earlier acquired at a public auction.

59. On 27 June 2001 the Bratislava I District Court dismissed the action in respect of two of the defendants. It stayed the proceedings as regards the third defendant observing that bankruptcy proceedings had been brought against it. The bankruptcy proceedings and the applicant's action are still pending.

H. Proceedings concerning a public auction (Bratislava II District Court file no. 10C 169/00)

60. In 2000 the applicant brought proceedings against the Ministry before the Bratislava II District Court. He challenged the validity of a public auction at which a business had been sold in 1991.

61. On 16 January 2003 the District Court dismissed the action. The applicant appealed and the appeal is still pending.

I. The applicant's submissions to the Constitutional Court

62. On 6 July 2001 the applicant filed five submissions with the Constitutional Court alleging a violation of his constitutional rights in the context of several of the above proceedings.

63. By separate letters dated 12 and 13 September 2001 a constitutional judge informed the applicant under section 23a of the Constitutional Court Act that his submissions fell short of the formal requirements and that no proceedings could therefore be brought in their respect. The applicant did not pursue the matter.

J. Correspondence with the Court's Registry

64. In a letter of 5 August 2002 the Registry of the Court informed the applicant of the amendment to the Constitution of the Slovak Republic which had entered into force on 1 January 2002 and which provided for a new remedy under the amended Article 127 of the Constitution in respect of delays in court proceedings. The applicant was requested to inform the Court whether he had used or intended to use this remedy in view of the requirement to exhaust domestic remedies pursuant to Article 35 § 1 of the Convention.

65. In a letter of 14 January and a registered letter of 21 March 2003 the Registry informed the applicant about the Court's decision of 22 October

2002 to declare inadmissible the application in the case of *Andrášik and Others v. Slovakia* (app. nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, ECHR 2002-IX) about the length of court proceedings on the ground that the applicants had failed to raise this complaint before the Constitutional Court under Article 127 of the Constitution, as amended from 1 January 2002. Pursuant to the postal delivery report (*avis de réception*) the applicant received the Registry's registered letter on 28 March 2003.

THE LAW

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

66. The applicant complained that he had not had a “fair” hearing in his civil action concerning the business premises (the Bratislava I District Court file no. 12C 190/93) in that the courts had arbitrarily found against him. He further complained that the length of all of his proceedings had been incompatible with the “reasonable time” requirement. 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 [a] ... tribunal...”

A. Admissibility

1. Fairness of the proceedings in the action file no. 12C 190/93

67. The Court observes that in his action of 22 October 1993 the applicant sought a judicial order that business premises be made available to him so as to compensate him for the business premises the lease of which he had won in a public auction. In his action the applicant was represented by a lawyer. In so far as the applicant may be understood as arguing that the power of attorney of his lawyer expired prior to the conclusion of the proceedings and that the court of appeal wrongly dealt with the lawyer in the applicant's stead, the applicant failed to raise this argument by way of an appeal on points of law (*dovolanie*) in the Supreme Court (see, for example, *Indra v. Slovakia*, no. 46845/99, §§ 32-33 and 35, 1 February 2005).

68. Notwithstanding the above considerations, the applicant's action was examined by courts at two levels of jurisdiction which found that he had lost the right to use the original premises and that, therefore, he could not claim any replacement premises. In so far as he might have any claim for

damages, he should assert it by way of a separate action. The courts' conclusion and reasoning do not appear manifestly arbitrary or wrong. To the extent the complaint has been substantiated, there is no indication of any procedural unfairness within the meaning of Article 6 § 1 of the Convention (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

It follows that, in so far as domestic remedies have been exhausted pursuant to Article 35 § 1 of the Convention, the present complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. *Length of the proceedings*

(a) **Action file no. 12C 190/93**

69. The Government submitted that the subject-matter of these proceedings had not called for special diligence. They accepted that there had been some delays imputable to the State at the initial stage of the proceedings. However, afterwards the proceedings had been as speedy as possible notwithstanding the applicant's conduct.

70. The applicant disagreed and reiterated his complaint.

71. The period to be taken into consideration began on 22 October 1993 and ended on 13 May 1999. It thus lasted less than 5 years and 7 months for 2 levels of jurisdiction.

72. The reasonableness of this period 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).

73. The Court observes that the applicant's action and his subsequent submissions were unclear and that the applicant had to be instructed several times (26 June 1993, 9 April and 3 June 1996) to bring them into line with the applicable procedural rules and established practice. The applicant failed to pay court fees and did so only upon request (7 December 1993). He changed the defendant to his action (19 December 1994) and later directed the action against another defendant (25 May 1995). One hearing was adjourned at his request (4 December 1997) and four others had to be adjourned due to his absence or failure to submit documents. The Court observes that these facts contributed to the length of the proceedings and considers that they are imputable to the applicant.

74. Having regard to its case-law on the subject and the applicant's contribution to the length of the proceedings, the Court concludes that there is no indication of a violation of the "reasonable time" requirement under Article 6 § 1 of the Convention.

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

(b) Divorce and custody proceedings file no. 9C 161/94

75. The Government considered that the applicant had failed to exhaust domestic remedies in that he had not complained of the length of these proceedings to the Constitutional Court under Article 127 of the Constitution (see *Andrášik and Others*, cited above). They pointed out that the proceedings had ended in March 2002 when the remedy under Article 127 of the Constitution had already been available to the applicant. The Government also considered that, moreover, and in any event, this part of the application was manifestly ill-founded given the factual complexity of the case, the applicant's conduct and the fact that the case was closely related to the issue of custody and maintenance which had been dealt with in parallel in another set of proceedings.

76. The applicant disagreed and reiterated his complaint.

77. The Court observes that the application was introduced on 21 December 1997 and the proceedings in question ended with a decision that became final on 27 March 2002.

78. The Court has found before that where applications had been introduced prior to 1 January 2002 and where the proceedings in question ended by a final decision prior to 22 October 2002, applicants were not required under Article 35 § 1 of the Convention to raise the complaint of their length in the Constitutional Court (see, for example, *Malejčík v. Slovakia*, no. 62187/00, §§ 46 and 47, 31 January 2006, *Vujčík v. Slovakia*, no. 67036/01, § 50, 13 December 2005 and *Mikolaj and Mikolajová v. Slovakia*, no. 68561/01, §§ 41-42, 29 November 2005). The position in respect of the instant proceedings falls within this category and the Court has found no reasons for reaching a different conclusion.

It follows that the complaint of the length of the divorce and custody proceedings cannot be rejected for non-exhaustion of domestic remedies.

79. The period to be taken into consideration began on 20 June 1994 and ended on 6 March 2002. It thus lasted more than 7 years and 8 months for a single level of jurisdiction.

80. 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.

(c) Custody and maintenance proceedings file no. Nc 47/94

81. For reasons similar to those stated above (see paragraph 75), the Government considered that the applicant had failed to exhaust domestic remedies. Moreover, and in any event, the Government considered that the

complaint was manifestly ill-founded given the factual complexity of the case and the applicant's conduct.

82. The applicant contested these arguments.

83. The Court observes that the proceedings started on 21 September 1994 and ended with the decision of 20 November 2001 which became final on 15 February 2002. These proceedings thus fall within the category specified in paragraph 78 above. The complaint of their length likewise cannot be rejected for non-exhaustion of domestic remedies.

84. The period under consideration lasted 7 years and about 2 months for two levels of jurisdiction.

85. 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.

(d) Action for outstanding rent file no. 18Cb 268/98

86. The Government pointed out that the proceedings were still pending. They considered that the applicant should have complained of their length under Article 127 of the Constitution. As he had not done so, the complaint was inadmissible for his failure to exhaust domestic remedies.

87. The applicant reiterated his complaint.

88. The Court observes that the action of 1998 was pending on and after 1 January 2002 when the remedy under Article 127 of the Constitution became available. It was likewise pending on and after 22 October 2002 when the Court established an exception, in respect of cases such as the present, from the general rule that exhaustion of domestic remedies was assessed with reference to the situation at the time when an application was lodged (see *Andrášik and Others*, cited above). The 1998 action is in fact still pending today.

89. To the extent that the complaint has been substantiated, the Court has found no reasons for exempting the applicant from the obligation to submit it first to the Constitutional Court (see the summary in *Obluk v. Slovakia*, no. 69484/01, §§ 56-58, 20 June 2006).

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(e) Enforcement proceedings file no. E 577/97

90. The Government noted that the applicant's enforcement petition had been rejected due to serious formal shortcomings which had made it unenforceable. In their view the decision to reject the enforcement petition was merely of a procedural nature and did not involve the determination of the applicant's "civil rights or obligations" within the meaning of Article 6 § 1 of the Convention. The Government thus considered that the complaint was incompatible *ratione materiae* with the provisions of the Convention.

They admitted that, if this were not the case, the complaint could not be considered manifestly ill-founded.

91. The applicant reiterated his complaint.

92. The Court has previously found that execution of a judgment given by any court must be regarded as an integral part of the “trial” for the purposes of Article 6 (see, *inter alia*, *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, § 40 et seq.).

93. In the present case the applicant petitioned for a judicial enforcement of a final and binding judgment. Several courts dealt with the petition with a view to ascertaining the whereabouts of the defendant and tracing his assets. Although the petition was eventually declared inadmissible as falling short of the applicable formal requirements, the Court finds no grounds for reaching a conclusion that the applicant’s petition was deprived of the procedural protection under Article 6 § 1 of the Convention.

The Government’s plea of incompatibility *ratione materiae* therefore cannot be sustained.

94. The period to be taken into consideration began only on 18 February 1992, when the recognition of the right of individual petition took effect in respect of Slovakia. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at that time.

The period in question ended on 31 May 2000. It thus lasted more than 8 years and 3 months for two levels of jurisdiction.

95. 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.

(f) Proceedings concerning lease contract file no. 26 Cb 258/99

96. The Government objected that the applicant had not complied with the requirement to exhaust domestic remedies because he had not complained of the length of these proceedings under Article 127 of the Constitution. They further objected that the complaint was in any event manifestly ill-founded given the total length of the proceedings and the applicant’s contribution to it.

97. The applicant reiterated his complaint.

98. The Court observes that the 1999 action was pending both on 1 January 2002 when the remedy under Article 127 of the Convention became available and on and after 22 October 2002 when the Court established the rule that this remedy should be tried even in cases where an application had been submitted under the Convention prior of 1 January 2002.

99. The Court's Registry informed the applicant of the new remedy in its letter of 5 August 2002 and of the Court's approach to it in its letters of 21 January and 28 March 2003 (see paragraphs 64 and 65 above).

100. Observing that the present proceedings ended by a final decision no earlier than in September 2003 and that the applicant did not complain of their length to the Constitutional Court, the Court finds that he failed to exhaust domestic remedies. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention.

(g) Action for damages file no. 26Cb 260/99 and proceedings concerning public auction file no. 10C 169/00

101. According to the Government the complaint was inadmissible because the applicant had not raised it before the Constitutional Court before bringing it to Strasbourg.

102. The applicant reiterated his complaint.

103. The Court observes that the proceedings at stake are still pending and that the applicant has not complained of their length before the Constitutional Court. For reasons mentioned above (see paragraphs 88, 89, 98 and 99) it finds that the complaint of their length must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

104. The Court will now examine whether the length of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings was compatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. This matter must be examined with reference to the criteria established by the Court's case-law, as summarised above (see paragraph 72 above). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

105. 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, for example, *Frydlender*, cited above, and also *E.O. and V.P. v. Slovakia*, nos. 56193/00 and 57581/00, 27 April 2004, *Z.M. and K.P. v. Slovakia*, no. 50232/99, 17 May 2005 and *Bóna v. Slovakia*, 72022/01 17 June 2003).

106. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in respect of the divorce and custody proceedings, the custody and maintenance proceedings

and the enforcement proceedings in the present case. Having regard to its case-law on the subject, the Court considers that the length of those 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

107. The applicant further complained that he had had no effective remedy at his disposal in respect of his complaint about the excessive length of his proceedings. 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.”

A. Admissibility

1. *Action file no. 12C 190/93*

108. As regards the alleged absence of an effective remedy in respect of the complaint of the length of these proceedings, the Court reiterates 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).

109. The Court has found above that the complaint of the length of the proceedings in issue was manifestly ill-founded. For similar reasons, the applicant did not have an “arguable claim” and Article 13 is therefore inapplicable.

110. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

2. *Action file no. 18Cb 268/98, proceedings file no. 26 Cb 258/99, action file no. 26Cb 260/99 and proceedings file no. 10C 169/00*

111. The Court has found above that the applicant did have a remedy in respect of the length of these proceedings, namely a complaint under Article 127 of the Constitution.

112. 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. Divorce and custody proceedings, custody and maintenance proceedings and enforcement proceedings

113. The Government admitted that in the period prior to 1 January 2002 the applicant had no effective remedy at his disposal as regards the length of these proceedings.

114. The applicant reiterated his complaint.

115. The Court notes that this complaint is linked to the one concerning the length of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings, which was examined above. It must therefore likewise be declared admissible.

B. Merits

116. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It has found earlier that there were no legal remedies in Slovakia at the relevant time capable of effectively redressing alleged violations of the right to a hearing within a reasonable time (see, for example, *Macková v. Slovakia*, no. 51543/99, § 60, 29 March 2005) and sees no reason to reach a different conclusion in the present case.

117. Accordingly, the Court considers that in respect of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 17 OF THE CONVENTION AND OF ARTICLE 5 OF PROTOCOL NO. 7

118. Lastly, without further specification, the applicant also alleged a violation of Article 17 of the Convention and of Article 5 of Protocol No. 7.

119. To the extent that these complaints have been substantiated, the Court has found no indication of a violation of the applicant's Convention rights.

It follows that the remainder of the application is 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

120. 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

121. The applicant claimed 77,000 euros (EUR) in respect of pecuniary damage. This amount represented the profit that he had allegedly lost in connection with the outcome of the proceedings in the action file no. 12C 190/93. The applicant also claimed EUR 2,600 in respect of non-pecuniary damage.

122. The Government contested these claims.

123. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained some non-pecuniary damage and that it should award him the full sum he claimed under that head.

B. Costs and expenses

124. The applicant also claimed EUR 5,579.40 for his costs and expenses. This amount included EUR 16.40 for postal expenses, EUR 4,300 for expenses in connection with a public auction in Slovakia, EUR 63 for court fees and EUR 1,200 for legal fees incurred before the Court.

125. The Government contested these claims.

126. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads.

C. Default interest

127. 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* admissible the complaint under Article 6 § 1 of the Convention concerning the excessive length of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings and the complaint under Article 13 of the Convention of the lack of an effective remedy in respect of the length of these proceedings;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings;
4. *Holds* that in respect of the divorce and custody proceedings, the custody and maintenance proceedings and the enforcement proceedings there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his cases heard within a reasonable time, as set forth in Article 6 § 1 of the Convention;
5. *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 2,600 (two thousand six hundred euros) in respect of non-pecuniary damage and EUR 600 (six hundred euros) in respect of costs and expenses, the above amounts 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President