CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## PARTIAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 38144/02
by Dagmar CIBULKOVÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 31 March 2005 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 regard to the above application lodged on 11 October 2002,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mrs Dagmar Cibulková, is a Slovakian national who was born in 1957 and lives in Bratislava.

## A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was a member of the Bratislava II Housing Cooperative (*Stavebné bytové družstvo*). As such, she had the exclusive right to use a one-room flat which was owned by the cooperative. She was living in this flat with her husband.

In 1989 the Bratislava II Housing Cooperative decided to grant the applicant a right to be allocated a new three-room flat. At that time the new flat was still under construction and was to be handed over to the applicant once finished and in return for her old flat.

The applicant subsequently paid an amount of money to the cooperative in order to increase her ownership share (*členský podiel*) to a level corresponding to her entitlement to the new flat. The new flat has however never been actually provided to her.

In the meantime, in 1991, the applicant had "exchanged" her above one-room flat for a two-room flat that was owned by the Bratislava V Housing Cooperative. The transaction was approved by the Bratislava II Housing Cooperative and on the applicant's part formally involved giving up her membership of the Bratislava II Housing Cooperative and taking up membership of the Bratislava V Housing Cooperative. The applicant with her husband and two newly born children then moved in the two-room flat.

On 26 October 1992 the Board of Directors (*predstavenstvo*) of the Bratislava II Housing Cooperative decided to cancel the decision of 1989 granting the applicant an entitlement to the three-room flat. On the applicant's appeal the cooperative confirmed the cancellation on 28 January 1993.

On 29 March 1993 the applicant, assisted by a lawyer, brought an action against the Bratislava II Housing Cooperative in the Bratislava II District Court (at that time *Obvodný súd*, at present *Okresný súd*). She contended that the decision of 26 October 1992 was illegal and that her appeal against it had not been determined by the assembly of delegates (*zhromaždenie delegátov*) as envisaged by the statute of the cooperative. She sought a ruling declaring the decision of 26 October 1992 "and all subsequent decisions" void.

On 30 July 1993 the applicant made a written submission to the District Court. She stated that on 15 and 31 May 1993 an assembly of delegates of the defendant had been held and that it had upheld the decision of its board of directors of October 1992. Relying on Article 242 of the Commercial Code the applicant in substance sought to challenge the delegates' decision.

On 13 January 1994 the District Court ruled that the applicant had a right to the three-room flat pursuant to the decision of 1989.

On 26 January 1995, on the defendant's appeal (*odvolanie*), the Bratislava Regional Court (at that time *Mestský súd*, at present *Krajský súd*) overturned the judgment of 13 January 1994 and dismissed the action. It came to a conclusion that the applicant was in fact asserting a right to be assigned a flat. It held that such a right could only be conferred by the cooperative and that courts had no jurisdiction to grant this right or to review decisions of cooperatives in this respect.

On 28 October 1997 the Supreme Court (*Najvyšší súd*) quashed the judgments of 13 January 1994 and 26 January 1995 on the applicant's appeal on points of law (*dovolanie*). It found that the lower courts had determined the action in a manner in which it had never actually been formulated. The Supreme Court interpreted the action, as worded on 29 March 1993 and amended on 30 July 1993, as being aimed at reviewing the decision of the defendant's assembly of delegates. The courts had the power of such review under Article 242 of the Commercial Code. The matter fell to be determined at first instance by the Regional Court and it was remitted to it.

On 23 October 2000 the Regional Court dismissed the action. In line with the Supreme Court's finding the Regional Court examined it as being directed against the decision of the assembly of delegates and found, above all, that it had been lodged outside the one-month time limit prescribed by Article 242 of the Commercial Code. The Regional Court further held that housing cooperatives could only allocate flats to its members. By leaving the Bratislava II Housing Cooperative for the Bratislava V Housing Cooperative the applicant had lost the right to the grant of new flat by the defendant.

The applicant challenged the judgment of 23 October 2000 by an appeal in which she argued *inter alia* that her action was not belated as already on 29 March 1993, i.e. even prior to the contested meeting of the assembly of delegates, she had challenged the decision of 26 October 1992 “and all subsequent decisions”. She could direct the action specifically against the decision of the assembly only after a copy of it had been served on her.

On 19 December 2001 the Supreme Court upheld the judgment of 23 October 2000. Its decision was served on the applicant's lawyer on 10 May 2002 and no appeal was available against it.

## B. Relevant domestic law and practice

### *The Constitution, the Constitutional Court Act and the Constitutional Court Practice*

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

Pursuant to Article 130 § 3, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon a petition (*podnet*) lodged by a natural or legal person claiming that their rights had been violated.

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.

As from 1 January 2002, the Constitution has been amended in that, *inter alia*, natural and legal persons can bring a complaint (*sťažnosť*) 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).

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

It has been the Constitutional Court's practice to examine alleged violations of the right to a hearing without undue delay only where the relevant remedy was filed with it at a time when the alleged violation occurred or was still continuing (see for example the decision of 20 May 1999 under the file no. I. ÚS 34/99) and to refuse to examine parts of proceedings (for example at first instance) which, as such, ended prior to introduction of the complaint under the amended Article 127 of the Constitution notwithstanding that the proceedings as a whole were still pending at that time (for example at the appellate level) (see for example the decision of 9 October 2003 under the file number IV. ÚS 176/03).

## COMPLAINTS

1. Invoking the right to a fair hearing before an impartial tribunal under Article 6 § 1 of the Convention the applicant complains that her action was arbitrarily dismissed. Under the same provision the applicant further complains that her action was not determined within a reasonable time.

2. The applicant also complains under Article 1 of Protocol No. 1 that, as a result of the negative outcome of her proceedings, there was an unjustified interference with her possessions in that she paid for but never received the three room flat, that someone else had received it for a regulated price at her expense and that at the present time she would have to pay a substantially higher marked price for a comparable flat.

## THE LAW

1. The applicant complains that she did not have a fair hearing within a reasonable time before an impartial tribunal contrary to Article 6 § 1 of the Convention which, in so far as relevant, provides that:

> "1. In the determination of his civil rights and obligations ... , everyone is entitled to a fair ... hearing within a reasonable time by an ...impartial tribunal..."

(a) In so far as the applicant complains of the length of her proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

(b) To the extent 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 that in the applicant's proceedings there is no appearance of procedural unfairness or of a lack of impartiality of the tribunal within the meaning of Article 6 § 1 of the Convention.

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

2. The applicant further complains of an interference with her entitlement to peaceful enjoyment of possessions in violation of Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Court reiterates that it has only limited power to review compliance with domestic law (see, for example, *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 16, § 47) as it is

in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 543-44, § 41). Only if the interpretation by the domestic courts is arbitrary or manifestly wrong can it be set aside by the Court (see *Bruncrona v. Finland*, no. 41673/98, § 75, 16 November 2004).

The Court observes that the applicant's action was examined at three levels of jurisdiction in a procedure which, as the Court has found above, was in compliance with the requirement of a fair hearing. It would point out that except for its belatedness, the action was dismissed also on the ground that by giving up her membership in the Bratislava II Housing Cooperative in 1991 the applicant had lost her right to the grant of a new flat by that cooperative. The Court does not find these reasons arbitrary or manifestly wrong.

The Court further notes that, in so far as the applicant has any claims for damages or compensation for unjustified enrichment or any other actionable claims against the cooperative or any other person, she has not asserted them in court.

In these circumstances the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicant's complaint concerning the length of her proceedings;

*Declares* the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President