CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60227/00
by Alojz BAKO
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 15 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 29 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Alojz Bako, is a Slovakian national who was born in 1938 and lives in Dolné Vestenice. He was represented before the Court by Mr I. Gažík, a lawyer practising in Prievidza.

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

1. Proceedings concerning the applicant's claims for lost salary

On 16 August 1993 the applicant sued his employer for salary before the Prievidza District Court. On 6 September 1994 the applicant filed another claim for compensation for unpaid salary relating to a different period of time.

The above claims were dealt with in two separate sets of proceedings until 30 January 2004 when the District Court decided to examine them in a single set of proceedings.

Before the actions were joined on 30 January 2004, the District Court had held two hearings in the case concerning the applicant's action of 1993.

As regards the action filed in 1994, the District Court delivered a judgment on 14 September 1996. The Banská Bystrica Regional Court quashed that judgment on 6 February 1996. Subsequently the District Court ordered two expert opinions and took further evidence. On 30 September 1999 the District Court delivered an interim judgment acknowledging that the applicant's claim for compensation for salary was justified as regards the period from 1 February to 31 August 1994.

The defendant appealed and the file was submitted to the Trenčín Regional Court on 27 September 1999. At the end of April 2000 the Regional Court returned the file to the District Court, at the latter's request, for a decision on the applicant's request for an interim measure.

On 19 May 2000 the District Court issued an interim measure ordering the employer to pay a part of the salary to the applicant.

The file was sent to the Regional Court on 11 August 2000. Between 13 March 2001 and 27 April 2001 the file was again with the District Court for a decision on expert's fees. On 25 September 2001 the Trenčín Regional Court quashed the interim judgment of 1999. The file was returned to the District Court on 29 November 2001.

On 20 June 2002 the District Court dismissed a part of the action and discontinued the proceedings in respect of the claim for compensation relating to two periods in 1993 and 1994.

The applicant appealed and the file was submitted to the Trenčín Regional Court on 2 October 2002. On 27 January 2003 the applicant challenged the Regional Court judges. The objection was submitted to the Supreme Court on 10 February 2003 and, after the objection had been dismissed, the file was returned to the Regional Court on 18 February 2003.

On 18 March 2003 the Trenčín Regional Court quashed the first instance decision to discontinue the proceedings in respect of the claim relating to a specific period in 1994 and the relevant compensation. It further upheld the first instance finding that the applicant had no right to compensation for the period subsequent to 3 August 1994.

On 23 September 2003 the Supreme Court dismissed the applicant's appeal on points of law relating to the lower courts' refusal to dismiss a part

of his claims. The Supreme Court's decision was served on the applicant on 7 November 2003.

On 30 January 2004, after it had joined both sets of proceedings brought by the applicant, the Prievidza District Court dismissed the outstanding claims. The applicant appealed. On 28 September 2004 the Trenčín Regional Court quashed the judgment of 30 January 2004. The proceedings are pending.

2. Proceedings before the Constitutional Court

On 6 March 2000 the applicant filed a complaint to the Constitutional Court. He complained, *inter alia*, that his right to a fair hearing within a reasonable time as well as his right to peaceful enjoyment of his possessions had been violated in the above proceedings before the Prievidza District Court and the Trenčín Regional Court.

On 10 December 2003 the Constitutional Court declared admissible the complaint concerning the alleged violation, by the Prievidza District Court, of the applicant's right to a hearing within a reasonable time. It rejected the remainder of the applicant's constitutional complaint.

As regards the complaint under Article 1 of Protocol No. 1 relating to the fact that the employer had not paid the salary due to the applicant, the Constitutional Court noted that the issue fell within the jurisdiction of the general courts. It further noted that the proceedings complained of were still pending before ordinary courts and held that it could not prejudge the outcome of those proceedings. In this respect the Constitutional Court also pointed out that it could not take the role of ordinary courts and that its task exclusively consisted of supervising whether the results of interpretation and implementation of law by ordinary courts were compatible with the Constitution or the relevant international treaty.

The Constitutional Court further found that the applicant's complaint about alleged arbitrariness of the Trenčín Regional Court's decision of 25 September 2001 had been filed after expiry of the statutory two months' time-limit.

Finally, in its admissibility decision the Constitutional Court held that, despite certain delays, the period during which the Trenčín Regional Court had dealt with the case was not excessively long.

In a finding delivered on 5 May 2004 the Constitutional Court concluded that in the above proceedings the Prievidza District Court had violated the applicant's right to a hearing within a reasonable time.

As regards the applicant's action of 1993, the Constitutional Court held that the proceedings were not complex and that the applicant by his conduct had caused no particular delays. It found that the District Court had failed to effectively proceed with the case for more than 8 years.

As to the proceedings concerning the claim of 1994, the Constitutional Court held that the case was not complex and that the applicant, despite the

fact that he had availed himself of his procedural rights, was not responsible for their overall length. It found several periods of inactivity imputable to the District Court and held that the overall length of the proceedings was excessive given the nature of the case.

The Constitutional Court ordered the Prievidza District Court to proceed with the case without further delay. It also granted the applicant 120,000 Slovakian korunas[1] (SKK) as just satisfaction.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that his right to a fair hearing had been violated in that the domestic courts had failed to correctly determine his claims.

2. The applicant also alleged a violation of Article 6 § 1 of the Convention in that the length of the proceedings concerning his actions was excessive. As regards the Constitutional Court's decision on the issue, he argued that it had failed to take into account that the Trenčín Regional Court was responsible for delays totalling 17 months in the first set of appellate proceedings. He also argued that the just satisfaction awarded to him by the Constitutional Court was not appropriate.

3. Under Article 1 of Protocol No. 1 the applicant complained that the compensation for salary to which he considers himself entitled had not been granted to him.

THE LAW

1. The applicant complained that the ordinary courts had failed to correctly determine his claims and that the length of the proceedings was excessive. He alleged a violation of Article 6 § 1 of the Convention the relevant part of which provides:

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

a) The Court notes that the applicant did not raise before the Constitutional Court his complaint about unfairness of the proceedings in which the final decision was given by the Supreme Court on 23 September 2003, and that the proceedings concerning the outstanding claims are still pending.

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[1] 120,000 SKK was then the equivalent of approximately 3,000 euros.

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

b) As regards the complaint about the length of the proceedings, the Court notes that the Constitutional Court found a violation of the applicant's right to a hearing within a reasonable time. The question therefore arises whether the applicant can still claim to be a "victim", within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time.

In this respect the Court recalls that an applicant's status as a "victim" depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004, with further references).

In the present case the Constitutional Court examined, in accordance with its practice, separately the proceedings before the District Court and the Regional Court. This practice stems from the need for the Constitutional Court to separately identify the authorities which may be liable for a violation of the plaintiff's human rights and fundamental freedoms and which, as the case may be, it then orders to provide appropriate redress to the person concerned. This approach is different from that of the Court which consists in examining the overall length of the proceedings.

The Court has therefore to satisfy itself in each individual case whether the protection of a person's right granted by the Constitutional Court of the Slovak Republic is comparable with that which the Court can provide under the Convention. In cases concerning the length of proceedings this requirement will only be met where the Constitutional Court's decision, while structured so as to make a separate assessment of each of the individual stages of proceedings, is capable of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account their overall length.

In its decisions on the applicant's complaint about the length of the proceedings the Constitutional Court found that (i) the Prievidza District Court was liable for substantive delays in the proceedings contrary to the requirements of Article 6 § 1 of the Convention and (ii) any delays imputable to the Regional Court were not such as to justify the conclusion that the proceedings before that court had lasted an unreasonably long time. The Court finds no reason for disagreeing with this conclusion. In these circumstances, and since the constitutional review covers both levels of the domestic proceedings, the protection provided by the Constitutional Court cannot be said to have been inappropriate merely on the ground that no substantial delays were found at a particular stage of the proceedings.

The Court therefore takes the view that the Constitutional Court's finding of 5 May 2004 constitutes, in the particular circumstances of the case, a sufficient acknowledgment of the infringement of the applicant's right under consideration.

The applicant's status as a victim then depends on whether the redress afforded at domestic level on the basis of the facts about which he complains before the Court (see *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003) was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention. In this context the Court notes that, under the existing case-law, there is no requirement that the domestic authorities should award the same sum by way of compensation as the Court would be likely to award under Article 41 of the Convention. The level of just satisfaction granted at national level must nevertheless not be manifestly inadequate in the particular circumstances of the case, in which event an applicant could still claim to be a victim of a violation of his or her rights under the Convention.

In its finding the Constitutional Court ordered that the Prievidza District Court should proceed with the case without further delay and awarded the applicant the equivalent of approximately 3,000 euros by way of just satisfaction in respect of non-pecuniary damage resulting from the violation found.

The Court notes that the compensation granted in the present case is lower than the sums usually awarded for comparable delays under its case-law. It reiterates, in this respect, the importance of a reasonable amount of just satisfaction being awarded in the domestic system for the remedy in question to be considered as effective under the Convention. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These include not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the Court under Article 41 of the Convention.

In the light of all the material in its possession, including the promptness of the finding and award made by the Constitutional Court in the present case, the Court considers that the sum accorded to the applicant cannot be considered as unreasonable (see also *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004, with further references).

The Court therefore concludes that the applicant can no longer claim to be a “victim” within the meaning of Article 34 of the Convention of the alleged violation of his right to a hearing within a reasonable time.

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

2. The applicant complained that his property rights had been violated in that his claims were not granted. He relied on Article 1 of Protocol No. 1 which provides:

> "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."

a) To the extent that the applicant complained about a violation of his property rights in respect of those parts of his claims on which a final decision had been given, the Court finds, to the extent that the applicant exhausted domestic remedies and that this part of the application has been substantiated, that it discloses no appearance of a violation of the applicant's rights under Article 1 of Protocol No. 1 to the peaceful enjoyment of his possessions.

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) The Court further notes that the proceedings on the outstanding part of the applicant's claims are still pending.

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

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President