CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36570/97
by Jozef BOHUNICKÝ
against Slovakia

The European Court of Human Rights (Second Section) sitting on 9 March 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 February 1997 by Mr Jozef Bohunický against Slovakia and registered on 18 June 1997 under file no. 36570/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 18 November 1998 and the observations in reply submitted by the applicant on 21 December 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Slovak national, born in 1936 and living in Trnava.

He is represented before the Court by Mr P. Minich, a commercial lawyer practising in Trnava.

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

A. Particular circumstances of the case

Due to an administrative mistake the applicant did not receive sickness benefits for the period from 14 October to 12 November 1987. In 1989 he lodged a claim for damages against, *inter alia,* the Czechoslovak Railways represented by the Railways Health Institute in Bratislava. On 7 March 1990 the Trnava District Court (Okresný súd) partly granted the applicant's claim.

On 4 September 1990 the Bratislava Regional Court (Krajský súd) quashed the first instance decision and rejected the applicant's claim. In its judgment the Regional Court noted, with reference to Sections 25 and 9 (1) of the State Liability Act (see "Relevant domestic law and practice" below) that in the applicant's case the responsibility of the Slovak Republic was involved. The court found that the authority acting on behalf of the latter was the Ministry of Health and Social Affairs since the alleged erroneous acts were related to public health care. The judgment further stated that the applicant's claim would become statute-barred after three years and that the applicant could still claim damages from the "Ministry of Health and Social Affairs of the Slovak Republic".

On 2 October 1990 the applicant brought new proceedings against the "Ministry of Health of the Slovak Republic" before the Bratislava 1 District Court (Obvodný súd).

On 24 October 1990 the latter asked the Trnava District Court to instruct the applicant that he should designate the defendant as "Czechoslovak State - Ministry of Health of the Slovak Republic". The applicant was further invited to state whether he wished to extend his action also against the Railways Health Institute. On 23 November 1991 the applicant specified, in the presence of a judge of the Trnava District Court, that his action was directed against "Czechoslovak State - Ministry of Health of the Slovak Republic". The applicant further stated, with reference to the legal opinion expressed in the Bratislava Regional Court's judgment of 4 September 1990, that he would not, for the time being, extend his action against the Railways Health Institute.

On 11 April 1991 the Bratislava 1 District Court dismissed the action on the ground that the Ministry of Health lacked *locus standi* in the proceedings. In its judgment the District Court held that in the applicant's case the responsibility of the Federal Ministry of Transport in Prague was engaged. The District Court further held that it was not bound by the opinion expressed in the Regional Court's judgment of 4 September 1990.

On 21 June 1991 the applicant appealed.

On 18 September 1991 the Bratislava City Court (Mestský súd) quashed the first instance judgment as it considered that the applicant had rightly claimed damages from the

Ministry of Health of the Slovak Republic. The City Court sent the case back to the Bratislava 1 District Court and pointed out that the latter was under an obligation to examine the applicant's action and to decide on its merits. Finally, the City Court instructed the applicant that the correct designation of the defendant in his case should be "Slovak Republic - Ministry of Health of the Slovak Republic". The applicant rectified his action accordingly.

On 28 May and on 14 September 1992 the Bratislava 1 District Court held a hearing.

On 6 October 1992 the District Court heard two doctors.

On 11 January 1995 the applicant complained to the president of the Bratislava 1 District Court that the proceedings had lasted unreasonably long. On 17 February 1995 the president of the District Court admitted that there had been undue delays in the proceedings and apologised to the applicant.

On 13 January 1995 the Bratislava 1 District Court requested the Trnava District Court to submit the file concerning the applicant's case to it.

On 13 February 1995 the Bratislava 1 District Court scheduled a hearing for 13 March 1995. The hearing was adjourned at the applicant's request.

On 19 April 1995 the Bratislava 1 District Court dismissed the applicant's action. It established that in the applicant's case the competent Social Security Advisory Commission should have started, *ex officio*, proceedings with a view to ensuring payment of a temporary invalidity pension to the applicant. The court held that the aforesaid commission fell within the competence of the Ministry of Labour and Social Affairs which should be considered as the central authority acting on behalf of the State in the applicant's case. The District Court concluded, with reference to Section 18 (1) of the State Liability Act, that the damages should have been claimed from the aforesaid Ministry.

On 29 June 1995 the applicant appealed. He complained, in particular, that the first instance court had not dealt with the merits of his action.

On 24 July 1995 the defendant ministry submitted its observations on the applicant's appeal.

On 3 May 1996 the applicant complained that his case was not progressing. On 5 June 1996 the vice-president of the Bratislava 1 District Court apologised to the applicant for delays in the proceedings and explained that they had been caused by the backlog of cases due to a lack of judges.

Following a request of 20 May 1996 the Bratislava 1 District Court submitted, on 6 June 1996, the file concerning the applicant's case to the Bratislava City Court. The latter scheduled a hearing for 6 August 1996.

On 8 July 1996 the applicant supplemented his action.

On 6 August 1996 the Bratislava City Court upheld the District Court's judgment of 19 April 1995. In its judgment the City Court pointed out that the first instance court had taken all necessary evidence, had stated which facts it had found established, on which

evidence it had based its findings, had assessed the facts of the case in accordance with the relevant legal provisions and had given sufficient reasons for its judgment. The City Court shared the District Court's opinion that the applicant should have lodged his claim against the Ministry of Labour and Social Affairs.

The City Court's judgment was served on the applicant in October 1996.

B. Relevant domestic law and practice

State Liability Act of 1969

Pursuant to Section 18 (1) of Act No. 58/1969 on Liability for Damage Caused by a State Organ's Decision or by an Erroneous Official Act (Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom - "the State Liability Act"), the State is responsible for the damage caused by erroneous official acts committed by persons who carry out tasks vested in State organs.

Section 25 in conjunction with Section 9 (1) provides that the central authority responsible for the branch of State administration within which the damage was caused acts on behalf of the State in proceedings under the Act.

Under the Supreme Court's case-law (Collection of Decisions and Notices of the Courts of the Czechoslovak Socialist Republic, 5/1967, pp. 307-309, No. 48; Collection of Judicial Decisions and Opinions, 9-10/1981, pp. 480-484, No. 20), courts should not dismiss an action brought against the State under the State Liability Act if the claimant fails to specify correctly the authority acting on behalf of the State. In similar cases the courts are under an obligation to establish the authority acting on behalf of the State and to ensure, *ex officio,* that such a formal shortcoming be remedied.

Code of Civil Procedure

Section 5 provides that courts shall advise the parties who are not represented by a lawyer or a commercial lawyer of their procedural rights and obligations.

Pursuant to Section 43 (1) and (2), the president of the court's chamber shall ask the parties to rectify or supplement any incorrect or incomplete submission and instruct them how it should be done. If the court subsequently cannot proceed with the case because such a request was not complied with, the proceedings shall be discontinued provided that the party concerned has been informed accordingly.

Under Section 104 (2), the courts shall take appropriate action with a view to eliminating formal shortcomings preventing them from proceeding with the case. If they fail to succeed, the proceedings shall be discontinued.

COMPLAINTS

The applicant complains about the dismissal of his claim for damages and that the proceedings concerning this claim were unreasonably long. He alleges a violation of Article 6 § 1 of the Convention.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 24 February 1997 and registered on 18 June 1997.

On 9 September 1998 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 18 November 1998. The applicant replied on 21 December 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 14 December 1998 the Court granted the applicant legal aid.

THE LAW

The applicant complains about the dismissal of his claim for damages and that the proceedings concerning this claim were unreasonably long. He alleges a violation of Article 6 § 1 of the Convention which provides, so far as relevant, as follows:

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

The Court first notes that there is no dispute between the parties as regards the applicability of Article 6 § 1 in the present case, which concerns a civil right to damages.

1. As to the applicant's complaint about the dismissal of his claim for damages, the Government submit that the Bratislava 1 District Court took all necessary steps with a view to having the formal shortcomings in the applicant's action eliminated. In their view, the dismissal of the action on the ground that the defendant authority designated by the applicant lacked standing in the proceedings cannot be considered as a violation of his right under Article 6 § 1 of the Convention to have his claim examined by a court.

The applicant contends that he claimed damages from the State and considers that the dismissal of his action for formal reasons amounts to a violation of his right to an effective access to a court.

Having examined these issues the Court finds that they raise serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. Accordingly, this part of the application cannot be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

2. As to the applicant's complaint about the length of the proceedings, the Government consider that the applicant has complied with the requirement as to the exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention. They further concede that

there were delays imputable to the courts between 6 October 1992 and 13 January 1995, as well as between 24 July 1995 and 20 May 1996.

The applicant maintains that the "reasonable time" requirement set out in Article 6 § 1 of the Convention was not respected.

The Court first notes that the relevant period for its examination began on 18 March 1992 when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition. In assessing the reasonableness of time that elapsed after 18 March 1992, account must be taken of the state of the proceedings at that time (see Eur. Court HR, Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, §§ 30-31). The proceedings ended on 6 August 1996 when the Bratislava City Court dismissed the applicant's appeal. Accordingly, the period to be taken into consideration lasted four years, four months and nineteen days.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

Accordingly, this part of the application cannot be regarded as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Erik Fribergh
Registrar

Christos Rozakis
President