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. 77153/01
by Ladislav BUKRAN
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 16 November 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ladislav Bukran, is a Slovakian national who was born in 1952 and lives in Rapovce. He is represented before the Court by Ms Z. Kupcová, a lawyer practising in Bratislava.

A. The circumstances of the case

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

1. Proceedings concerning the applicant's claim of 1997

In 1993 the applicant entered into a contract with a co-operative which the latter failed to comply with.

On 22 October 1997 the applicant brought proceedings, before the Zvolen District Court, claiming the sum of money which he had paid to the co-operative under the above contract, together with default interest.

On 19 November 1997 the Zvolen District Court issued a payment order granting the applicant's claim. On 9 December 1997 the defendant challenged the payment order which, as a result, was quashed *ex lege*.

The District Court held hearings in the case on 3 and 24 February 1998. At the latter hearing the court adjourned the case and invited the parties to settle the dispute within one month. No settlement was reached.

On 13 May 1998 the Zvolen District Court granted the applicant's claim. The defendant appealed on 8 July 1998. On 2 October 1998 the case file was transferred to the Banská Bystrica Regional Court.

On 24 November 1999 the Regional Court held a hearing, in the defendant's absence, where it overturned the first instance decision by dismissing the applicant's the action.

On 25 February 2000 the applicant lodged an appeal on points of law. On 19 December 2000 the Supreme Court quashed the appeal judgment holding that the Regional Court had not sufficiently examined the facts and that its decision had been premature. On 8 February 2001 the case file was returned to the Regional Court.

On 11 September 2001 the Banská Bystrica Regional Court quashed the first instance judgment of 13 May 1998 and returned the case to the District Court for further proceedings.

At the hearing held on 14 November 2001, the District Court adjourned the case until 19 December 2001 and invited the parties to settle the dispute.

On 19 December 2001 the District Court granted the applicant's claim. The defendant appealed.

On 30 October 2002 the Banská Bystrica Regional Court upheld the District Court's judgment which became final upon the service of the appeal judgment on the parties.

On 3 January 2003 the defendant lodged an appeal on points of law. On 30 September 2003 the Supreme Court rejected the appeal on points of law as such a remedy was not available against the Regional Court's judgment in issue.

2. Execution proceedings

On 30 December 2002 the applicant filed a motion with an executions officer and requested enforcement of the District Court's judgment of 19 December 2001. On 15 January 2003 the Zvolen District Court appointed an executions officer to enforce the judgment.

On 23 January 2003 the executions officer informed the debtor that execution proceedings had been instituted and that the sum due would be transferred to the applicant from the debtor's bank account.

On 10 February 2003 the debtor filed objections to the execution proceedings. The debtor withdrew those objections on 14 March 2003.

On 12 March 2003 the executions officer issued an execution order and ordered the debtor's bank to transfer the sum due from the debtor's bank account to the bank account of the executions officer.

On 17 March 2003 the debtor requested, under Section 56 (2) of the Judicial Executors and Enforcement Act of 1995, that the court should stay the enforcement of the District Court's judgment pending the Supreme Court's decision on the appeal on points of law of 3 January 2003.

On 20 March 2003 the Zvolen District Court granted the debtor's motion and stayed the enforcement holding that further execution of the sum in issue depended on the outcome of the cassation proceedings. No appeal was available against the District Court's decision.

On 24 March 2003 the executions officer lifted the block which he had earlier imposed on the debtor's bank account.

After the above Supreme Court's decision had been delivered to the District Court on 29 December 2003, the executions officer continued enforcing the debt as the reason for staying the enforcement had fallen away.

On 4 February 2004 the debtor undertook to pay the debt. On the same day the debtor paid the principal part of the debt to the applicant. An agreement was reached as regards the subsequent payment of the default interest. The remaining sum due to the applicant was paid by 7 September 2004.

3. Constitutional proceedings

On 19 May 2003 the applicant lodged a complaint under Article 127 of the Constitution to the Constitutional Court. He alleged a violation of Article 46 of the Constitution (right to judicial protection) and of Articles 6 § 1 and 13 of the Convention in respect of the Zvolen District Court's decision of 20 March 2003. In particular, the applicant complained that (i) the District Court had given the decision to stay the enforcement *in camera* without having informed the applicant about the debtor's motion, (ii) the District Court had decided on the motion within only three days without having considered whether there had been a reasonable relationship

of proportionality between the staying of the enforcement and the legitimate interest of the applicant, (iii) the District Court had not been independent and (iv) the applicant could not appeal against the District Court's decision. The applicant further complained under Article 20 of the Constitution and under Article 1 of Protocol No. 1 that, by staying the enforcement and by allowing the debtor to use freely the assets in its bank account, the District Court had interfered with his legitimate expectation that his claim would be enforced.

On 18 February 2004 the Constitutional Court declared the complaint admissible but for the alleged violation of Article 13 of the Convention – that part of the case was rejected as being manifestly ill-founded.

On 19 May 2004 the Constitutional Court found a violation of the applicant's rights in respect of the Zvolen District Court's decision of 20 March 2003 and quashed that decision. It held that the District Court had violated the applicant's rights to judicial protection and to a fair trial in that it had not held a public hearing in respect of the debtor's motion to stay the enforcement and as it had failed to sufficiently reason its decision. The Constitutional Court further stated that the introduction of an appeal on points of law could not as such influence the enforceability of a final court decision, and that it could not automatically constitute a reason for staying the enforcement. It also found that the District Court had interfered with the applicant's right under Article 1 of Protocol No. 1 as it had provided him with a lesser standard of protection of property as compared with the debtor.

The Constitutional Court awarded the applicant 15,000 Slovakian korunas *(equivalent of app. 375 euros)* as just satisfaction in respect of damage of a non-pecuniary nature. It considered that sum adequate having regard to the fact that (i) the applicant's substantive claim had not been jeopardised by the staying of the enforcement and (ii) the delayed enforcement of the sum due was compensated by higher default interest. It also noted that the execution had continued after 29 December 2003, and that an agreement on the payment of the debt had been reached between the parties on 4 February 2004.

B. Relevant domestic law

Pursuant to Section 56 (2) of the Judicial Executors and Enforcement Act of 1995, a court may stay the enforcement where it can be expected that the execution proceedings will be discontinued.

COMPLAINTS

1. The applicant alleged a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 in respect of the Zvolen District Court's decision to stay the execution proceedings. In particular, he alleged that (i) he had not had a fair and public hearing prior to the delivery of the decision in issue, (ii) the District Court had decided on the motion within only three days without having considered whether there had been a reasonable relationship of proportionality between the staying of the enforcement and the legitimate interest of protecting the applicant's property rights and (iii) the District Court had not been independent as it had decided on the request for the execution to be stayed with unusual celerity. He maintained that the Constitutional Court's finding of 19 May 2004 did not deprive him of his status as a "victim", within the meaning of Article 34 of the Convention, as the sum of just satisfaction granted by the Constitutional Court was disproportionately low.

2. The applicant also alleged a violation of Article 6 § 1 of the Convention in that the length of both the proceedings concerning his claim of 1997 and the execution proceedings was excessive.

3. Finally, the applicant alleged a violation of Article 13 of the Convention in that he had no effective domestic remedy at his disposal in respect of his above complaints under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1.

THE LAW

1. The applicant complained that his rights to a fair hearing by a tribunal and to the peaceful enjoyment of his possessions had been violated as a result of the District Court's decision to stay the execution proceedings. He relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 which in their relevant part read as follows:

Article 6 § 1

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 1 of Protocol No. 1

> "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."

As regards this part of the application, the question arises whether the applicant can still claim to be a victim, within the meaning of Article 34 of the Convention.

According to the applicant, the sum awarded to him as just satisfaction was inadequate. He disagreed with the Constitutional Court's reasoning, stating that the enforcement of his claim had not been jeopardised as a result of the unconstitutional ruling of the District Court. He maintained that, had the debtor emptied its bank account while the enforcement had been stayed, his claim would not have been satisfied and he would not have been able to claim damages before the Constitutional Court.

The Court recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive the applicant of his or her of status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France,* judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36 and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

The complaints in issue were examined by the Constitutional Court which found that the District Court had violated the applicant's rights to judicial protection and to a fair trial in that it had not held a public hearing in respect of the debtor's motion to stay the enforcement and as it had failed to sufficiently reason its decision which, in any event, was erroneous. It also found that the District Court had interfered with the applicant's right under Article 1 of Protocol No. 1 as it had provided him with a lesser standard of protection of property as compared with the debtor. The Constitutional Court quashed the District Court's decision in issue and it awarded the applicant the equivalent of approximately 375 euros as just satisfaction in respect of damage of non-pecuniary nature. It considered that sum adequate having regard to the fact that the applicant's substantive claim had not been jeopardised by staying the enforcement and as the delayed enforcement had been compensated by higher default interest payable to the applicant. The Constitutional Court also noted that the execution had continued after 29 December 2003, and that an agreement on the payment of the debt had been reached between the parties on 4 February 2004.

Having regard to the particular circumstances of the case, the Court is satisfied that, by the above decision, the Constitutional Court provided the applicant with adequate redress for the alleged breach of his rights in issue. In the particular circumstances of the case, the Court cannot accept the applicant's argument that the just satisfaction granted by the Constitutional Court was inadequate to an extent permitting him to claim to be still a victim within the meaning of Article 34 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 also alleged a violation of Article 6 § 1 in that the proceedings concerning his claim of 1997 and the execution proceedings were excessively lengthy.

The proceedings on the merits lasted from 22 October 1997 to 30 September 2003. In the course of the ensuing execution proceedings the parties reached an agreement on payment of the debt on 4 February 2004 and the debt was paid in full on 7 September 2004. Accordingly, the overall period under consideration lasted less than 7 years. During this period the merits of the case were examined twice by courts at three levels of jurisdiction (overall length 6 years less 22 days). Following the final decision on the merits of the case, the District Court and an executions officer dealt with the applicant's request for execution of the judgment in his favour, and the Constitutional Court addressed the constitutional aspects of the execution proceedings.

The Court has noted, in particular, that more than 16 months elapsed before the Regional Court decided on the appeal which the defendant had filed against the first instance judgment on 8 July 1998.

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). A delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, p. 16, § 37).

Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the overall length of the period under consideration was not contrary to the "reasonable time" requirement.

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. The applicant alleged a violation of 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."

According to the Court's case-law, 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).

The Court has above found that the applicant's complaints under Article 6 § 1 and under Article 1 of Protocol No. 1 were inadmissible as being manifestly ill-founded. For similar reasons, the applicant did not have

an "arguable claim" and Article 13 is therefore inapplicable to his case. This part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President