CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67199/01
by Alžbeta CSEPYOVÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 8 April 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 12 March 2001,

Having regard to the partial decision of 14 May 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Alžbeta Csepyová, is a Slovakian national, born in 1922, and living in Komárno. She is represented before the Court by Mrs Alíz Bödök, a lawyer practising in Komárno. The respondent Government are represented by Mr P. Vršanský, their agent.

A. The circumstances of the case

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

Several members of the applicant's family jointly owned an agricultural plot in Komárno. This property was registered on the certificates of ownership (*list vlastníctva*) nos. 7514 and 7515 of the Land Register (*kataster nehnuteľností*) maintained by the Komárno Land Register Office (then *Katastrálny úrad*, now *Okresný úrad, odbor katastra nehnuteľností*). At some unspecified time, the applicant obtained a 1/3 share in the joint ownership of this plot.

In 1946, a 1/2 share in the joint ownership belonging to the applicant's grandmother was formally confiscated. This confiscation was duly recorded in the Land Register. In a subsequent administrative decision, taken without a proper verification of the factual and legal situation, the ownership of this part of the plot was allocated to third parties (*prídeloví vlastníci* – "the assigned owners"). This allocation was, however, not officially recorded in the Land Register.

In 1950, a 1/6 share in the joint ownership belonging to the applicant's uncle was also formally confiscated. This confiscation was, however, never recorded in the Land Register.

The 1/3 share owned by the applicant was never formally confiscated.

The assigned owners never used the plot. As from the early 1950s, the plot was in fact used by an agricultural co-operative.

The applicant's grandmother and uncle died before the events complained of.

In November 1991, following the entry into force on 24 June 1991 of the Land Ownership Act no. 229/1991 Coll. (*Zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku* – "the Act 229/91"), the applicant lodged a claim under this Act for restitution of the 1/2 share that had been confiscated from her late grandmother ("the first restitution claim").

In January 1992 the applicant submitted additional information in support of her first restitution claim and lodged a further claim for restitution of the 1/6 share that had been confiscated from her late uncle ("the second restitution claim").

Proceedings on the first restitution claim

On 23 March 1992, the applicant concluded a restitution agreement (*dohoda o vydaní*) with the agricultural co-operative that was using the plot on the modalities of transfer of the 1/2 share that had been confiscated from her late grandmother.

On 14 May 1992, in accordance with Act 229/91, the Komárno Land Office (then *Pozemkový úrad*, now *Okresný úrad, odbor pozemkový, poľnohospodárstva a lesného hospodárstva*) approved the restitution agreement. When this approval became final on 16 June 1992, the applicant acquired the 1/2 share in the joint ownership of the plot and the agricultural co-operative became her tenant. The applicant subsequently informed the co-operative that she wished to terminate the lease. On 30 September 1993, upon expiry of the statutory period of notice, the lease was terminated.

On 2 November 1993, the co-operative concluded an agreement with the applicant on the boundaries of the land to be attributed to her, i.e. a total of 846,422 m^2 corresponding to the 1/2 share in the joint co-ownership of the plot that had belonged to the applicant's late grandmother plus the 1/3 share already owned by the applicant. This part of the plot has been in the applicant's use ever since.

On 3 November 1994, in accordance with Section 15 § 2 of the Act on Land Consolidation no. 330/1991 Coll. (*Zákon o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách* – "the Act 330/91") and on the basis of the restitution agreement of 23 March 1992, the Land Office ordered the accelerated consolidation of the plot. Pursuant to Section 15 § 2 of the Act 330/91, this accelerated land consolidation was ordered for an interim period, namely until the completion of the ongoing general land consolidation proceedings in the area concerned or, alternatively, until the co-operative was dissolved without a legal successor; whichever would be earlier.

On 1 June 1995 the co-operative requested the Land Office to re-open the proceedings on the applicant's first restitution claim. In support of this request, it submitted that third persons (heirs of the assigned owners) had raised ownership claims to the plot. On 12 June 1995 the Land Office decided to re-open the restitution proceedings.

On 3 November 1995 the Ministry of Agriculture rejected the applicant's appeal against the Land Office's decision to re-open the proceedings on her first restitution claim. On the same day, the co-operative rescinded the restitution agreement of 23 March 1992.

On 5 March 1996 the applicant called upon the Land Office to carry on with the re-opened proceedings and to determine her first restitution claim in accordance with Section 9 § 4 of the Act 229/91.

Without formally joining the two sets of proceedings, the Land Office subsequently examined the applicant's first and second restitution claims in

proceedings that were conducted simultaneously (see below under "Simultaneously conducted proceedings").

Proceedings on the second restitution claim

On 11 August and 15 September 1992 the applicant submitted additional information in support of her second restitution claim filed in January 1992.

On 15 September 1992, the applicant and the co-operative concluded a restitution agreement in respect of the 1/6 share that had been confiscated from her late uncle. On 19 October 1992, in accordance with the Act 229/91, the Land Office approved the restitution agreement.

On 23 November 1992 the Land Office informed the applicant that a third person (an heir of one of the assigned owners) had filed an appeal with the Ministry of Agriculture, challenging this approval and claiming ownership of the plot. On 2 December 1992 the applicant submitted her observations in reply to the appeal.

By decision of 21 October 1993, the Ministry of Agriculture quashed the approval of the Land Office of 19 October 1992. On 6 December 1995 the co-operative rescinded the restitution agreement of 15 September 1992.

The Land Office, being obliged to take a new decision, examined the applicant's second restitution claim simultaneously with her first restitution claim.

Simultaneously conducted proceedings

In its decision of 25 November 1996 the Land Office withheld its approval of the restitution agreements of 23 March 1992 (first restitution claim) and 15 September 1992 (second restitution claim).

On 30 November 1998 the Nitra Regional Court (*Krajský súd*) rejected the applicant's administrative law appeal against the decision of 25 November 1996 and upheld this decision. As a result, the Land Office became obliged, by virtue of Section 9 § 4 of the Act 229/91, to determine *ex officio* the applicant's two restitution claims.

The applicant requested the Land Office repeatedly, *inter alia* by letters of 19 April, 3 May, 18 May and 11 December 1999, to determine her two restitution claims speedily.

On 21 February 2000 the Land Office ordered preparatory measures to be taken with a view to opening land consolidation proceedings under the Act 330/91 in respect of the plot.

On 15 August 2000 the Land Office opened the land consolidation proceedings. In this decision it noted, *inter alia*, that third parties (heirs of the assigned owners) had submitted competing ownership claims to the plot and held that, consequently, it had to determine the different ownership claims before it could determine whether any part of the ownership of the plot was to be restored to the applicant and, if so, which part. The applicant

filed an appeal to the Nitra Regional Office (*Krajský úrad*). In her appeal, she argued *inter alia* that, under Section 16 of the 330/91 Act, the Land Office had no jurisdiction to determine the ownership claims at issue in the framework of land consolidation proceedings. She further submitted that, under this provision, the Land Office was to refer the heirs of the assign owners to a general court for a determination of their claims.

On 8 September 2000, in accordance with Section 29 § 1 of the Administrative Proceedings Act (*Správny poriadok*), the Land Office decided to stay the proceedings on the applicant's two restitution claims pending the outcome of the consolidation proceedings opened on 15 August 2000. In accordance with Section 51 of the Administrative Proceedings Act, this decision was served on the applicant on 25 September 2000. No appeal lies against it.

On 2 January 2001 the Nitra Regional Office, having found factual inaccuracies and inconsistencies in the reasoning given, quashed the Land Office's decision of 15 August 2000 to open land consolidation proceedings in respect of the plot. It sent the case file back to the Land Office for reconsideration. The decision of 8 September 2000 was not affected by this decision.

On 13 February 2001 the applicant lodged a complaint with the Head of the Land Office (*Prednosta okresného úradu*) about the delays in the administrative proceedings on her two restitution claims. She demanded that the proceedings be resumed and her claims determined. On 28 February 2001 the Head of the Land Office informed the applicant that the Land Office would determine the applicant's claims following the determination of the preliminary question in the consolidation proceedings, i.e. the ownership claims filed by third parties.

On 13 March 2001 the applicant inquired at the Land Office about the state of the restitution proceedings on her two restitution claims.

On 19 March 2001 the Land Office informed the applicant that the restitution proceedings were still stayed pending the determination of the preliminary question that was being dealt with by the Land Office.

On 18 September 2001 the Land Office recognised the applicant's second restitution claim. It noted that the allocation of the plot to the assigned owners had occurred after the confiscation of the 1/2 ownership of the applicant's grandmother but prior to the confiscation of the 1/3 ownership share of the applicant's uncle. It concluded that therefore the allocation solely concerned the 1/2 share and thus did not constitute an obstacle to the restitution of the 1/3 ownership share to the applicant. This decision became final on 26 October 2001.

On 9 May 2002 the Land Office decided not to pursue the land consolidation proceedings. Relying on the conclusions of a meeting held on 3 July 2001 between various administrative agencies about the general problem of resolving competing claims of original and assigned owners, the

Land Office adopted the position that any allocation of land to assigned owners, including the plot at issue, should be recorded automatically in the Land Register without any separate proceedings being required. It concluded that it was no longer necessary to finalise the land consolidation proceedings before a decision could be taken on the applicant's first claim in restitution proceedings. In the absence of any public or private interests in the realisation of land consolidation proceedings in the present case, the Land Office decided it was no longer necessary to pursue these proceedings.

On 26 September 2002, on the appeal filed by the heirs of some of the assigned owners, the Regional Office quashed the Land Office's decision of 9 May 2002. It noted that, contrary to the position adopted by the Land Office, the Land Register Office had in fact refused to record the allocation of the plot at issue to the assigned owners. It therefore considered that the assigned owners' interest in the land consolidation of the area concerned remained pertinent. It further held that the allocation in the past had in fact concerned the entire plot, that is including the 1/3 share that had never been confiscated. It remitted the case back to the Land Office for reconsideration.

The restitution proceedings on the applicant's first restitution claim are currently still pending and, to date, the Land Office has not taken a new decision on the issue of opening of land consolidation proceedings.

B. Relevant domestic law and practice

The Administrative Proceedings Act (no 71/1967 Coll.)

Section 29 § 1 in conjunction with Section 40 of the Administrative Proceedings Act provides that an administrative authority shall stay proceedings before it when other proceedings on a preliminary issue are pending.

In cases where administrative proceedings are re-opened, Section 64 § 4 of the Administrative Proceedings Act prescribes that the original substantive decision shall remain in force until a new decision based on the new facts and circumstances is delivered.

The Land Ownership Act (the Act 229/91)

Under the Land Ownership Act, which entered into force on 24 June 1991, claims can be lodged for the restitution of agricultural land and certain other agricultural assets (immovable as well as movable) which were confiscated between 25 February 1948 and 1 January 1990.

Under Section 9 § 1 of this Act, a claimant shall lodge a restitution claim with the competent Land Office and, at the same time, invite the person holding the assets at issue to restore them to him/her. If the legal or natural person holding the assets does not contest the restitution claim, the holder is

required to conclude, within sixty days, a restitution agreement with the claimant. Such an agreement must be approved by the Land Office in administrative proceedings.

Where no such agreement has been concluded, the Land Office shall determine the claim in administrative proceedings (Section 9 § 4).

According to Section 11 § 1 (a) of the Act 229/91, land owned or lawfully used by natural persons is not eligible for restoration. In such cases, other land of comparable size and quality owned by the State is to be transferred into the ownership of the persons entitled to restitution (Section 11 § 2 of the Act 229/91).

Final decisions of Land Offices on restitution under the Act 229/91 may be subject to an administrative-law appeal to a general civil court in accordance with provisions of Part 5 of the Code of Civil Procedure.

The Act on Land Consolidation (the Act 330/91)

Under the Act on Land Consolidation, which entered into force on 19 August 1991, the Land Office may – either of its own motion or acting on a request of land owners or land users – conduct administrative proceedings aimed at removing discrepancies in the arrangement of plots and at resolving questions of ownership and possession/occupancy in areas where such discrepancies exist. In these proceedings, Land Offices are competent, among other things, to rearrange plots (by joining, dividing etc.) and to determine any issues of ownership arising from such rearrangements.

According to Section 15 § 2, the Land Office shall, upon motion of owners or other persons with a title to the land concerned, order the accelerated consolidation of ownership and possession relations in a particular area. This consolidation shall be temporary until the general land consolidation in the area is completed, or until the legal entity possessing the land in question is dissolved with no legal successor, whichever is the sooner.

Section 16 § 2 in conjunction with Section 2 (a) of the Act 330/91 provides that if a person claims in pending consolidation proceedings to have ownership rights but is unable to substantiate this claim by any documents or other evidence, the Land Office shall refer such person to the general civil court for the establishment of his/her alleged ownership rights.

Pursuant to Section 16 § 7 of the Act 330/91, disputes about ownership rights concerning real estate shall be determined by general civil courts.

Final decisions of Land Offices in land consolidation proceedings under the Act 330/91 may be subject to an administrative law appeal to a general civil court in accordance with the provisions of Part 5 of the Code of Civil Procedure.

The Complaints Act of 1998

The Complaints Act (*Zákon o sťažostiach*) was enacted on 14 May 1998 and entered into force on 1 June 1998. It governs the registration and examination of complaints lodged by individuals or legal persons who allege, *inter alia*, that their rights or legally protected interests have been violated or jeopardised as a result of an action of a public authority or its failure to act. However, no complaints can be filed in relation to matters already governed by other laws (Section 4 (c)), such as complaints about delays in judicial proceedings which fall to be examined under the State Administration of Justice Act of 1992 (*Zákon o štátnej správe súdov*).

Under Section 11 (1) of the Complaints Act, the head of the public authority concerned is responsible for the examination of a complaint.

Section 13 provides that a complaint is to be examined within 30 days from the date of its receipt. If the co-operation of other authorities or persons is required, a complaint shall be examined within 60 days. In exceptional circumstances the time-limit for examining a complaint may be extended by 30 days.

Pursuant to Section 18 (1) of the Complaints Act, a record must be drawn up of the examination of a complaint. The record shall contain, *inter alia*, a statement of the relevant facts and indicate, in case the complaint is well-founded, how, when and by whom remedial measures must be taken. The public authority concerned is obliged to report on the measures taken.

Complainants must be informed of the outcome of the examination of their complaints and, if accepted as well-founded, the remedial measures taken (Section 19 (1)).

Code of Civil Procedure (no. 99/1963 Coll., as amended)

According to Part 5 of the Code of Civil Procedure the general civil courts are competent to review the lawfulness of certain decisions given by administrative authorities. As from 1 January 2002, under the amendment no. 501/2001 Coll., the general civil courts are also competent to review the official conduct of bodies of public administration.

By virtue of Article 244 § 3 the notion "official conduct" also includes inactivity of the administrative authority concerned.

The Supreme Court's judgment of 23 May 2002 (file no. 7 Sž 24/02)

In this judgment, the Supreme Court concluded that the Ministry of Finance had been inactive in a set of administrative proceedings. It further considered that, although the wording of the amended Part 5 of the Code of the Civil Procedure did not provide for a specific measure to be imposed on an "inactive" administrative authority, interpreting the amendment in the sense that no measure could be taken would be contrary to the purpose of the amendment that had been construed in accordance with the

Constitutional Court's case-law concerning Article 48 (2) of the Constitution (the right to a trial without unjustified delay) and Article 6 § 1 of the Convention (reasonable time). The Supreme Court therefore decided to order the Ministry to deliver a final decision in the matter within 30 days from delivery of its judgment.

The Constitution

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

As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127, the relevant part of which reads as follows:

> "1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.
>
> 3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated." ...

The text of the above amendment was adopted on 23 February 2001 and published in the Collection of Laws on 17 March 2001.

The Constitutional Court Act of 1993 and the Constitutional Court's practice

The implementation of the above constitutional provisions is set out in more detail in Sections 49-56 of Act no. 38/1993 (the Constitutional Court Act), as amended with effect from 20 March 2002.

After that date the Constitutional Court delivered a number of decisions in which it found a violation of Article 48 (2) of the Constitution, ordered the general court concerned to avoid any further delays in the proceedings and awarded the successful complainants financial compensation in respect of delays which had already occurred, including delays prior to 1 January

2002. The Constitutional Court has held that it can examine complaints about delays in proceedings only when the proceedings complained of were pending at the moment when the constitutional complaint was filed.

According to an explanatory letter by the president of the Constitutional Court of 6 June 2002, nothing prevents the Constitutional Court from dealing with complaints about length of proceedings in cases in which proceedings have also been instituted before the European Court of Human Rights provided that the domestic proceedings complained of are still pending when the constitutional complaint is filed.

The State Liability Act of 1969 and the domestic courts' practice

Section 18 (1) of Act No. 58/1969 on the liability of the State for damage caused by a State organ's decision or by its erroneous official action (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* – "the State Liability Act") renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from erroneous official actions of persons entrusted with the exercise of these functions. A claim for compensation under this provision can only be granted when the plaintiff shows that he or she suffered damage as a result of an erroneous action of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the erroneous action in question.

Under the domestic courts' practice, the State Liability Act of 1969 does not allow for compensation for non-pecuniary damage unless it is related to deterioration of a person's health. In such cases the amount of compensation is governed by Regulation No. 32/1965.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the length of the proceedings on her two restitution claims has exceeded a "reasonable time".

2. The applicant further complains under Article 1 of Protocol No. 1 that, pending a final outcome of the re-opened proceedings on her first restitution request, she is effectively prevented from alienating her property. According to the applicant, the decision of the Land Office of 14 May 1992 accepting her first restitution claim is still in force as, by virtue of Section 64 § 4 of the Administrative Proceedings Act, it remains valid until the Land Office has taken a new decision in the re-opened proceedings.

THE LAW

1. The applicant complains that the length of the proceedings on her two restitution claims has exceeded a "reasonable time". She relies on Article 6 § 1 of the Convention which, insofar as relevant, provides as follows:

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

The Government submit in the first place that the proceedings on the applicant's first restitution claim fall outside the scope of Article 6 § 1 of the Convention since the right to restitution *in natura* asserted by the applicant has not even an arguable basis in domestic law. They conclude that, as regards the proceedings on the first restitution claim, the complaint under Article 6 § 1 of the Convention is to be rejected as incompatible *ratione materiae*.

The Government further submit that the applicant has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. Referring to the Supreme Court's judgment of 23 May 2002 (file no. 7 Sž 24/02), the Government consider that the applicant could have taken proceedings against the Land Office under the Part 5 of the Code of Civil Procedure. The applicant could also have filed a constitutional complaint under Article 127 of the Constitution as in force since 1 January 2002.

Finally, relying on the Court's decision of 1 February 2001 in the case of *Kuráková v. the Slovak Republic*, (no. 37895/97, unreported), the Government submit that the applicant failed to complain under the Complaints Act of 1998 about undue delays in the proceedings at issue.

As regards the Government's objection *ratione materiae*, the applicant submits that her first restitution claim is based on the 229/91 Act and that it was granted by the Land Office on 14 May 1992.

As to the civil action under Part 5 of the Code of the Civil Procedure and the constitutional complaint under Article 127 of the Constitution, the applicant considers that she could not avail herself of these remedies in the proceedings on her first restitution claim because these proceedings are stayed, i.e. there is no "official conduct" that could be reviewed. She further submits that she could not have made use of these remedies in the proceedings on her second restitution claim since the final decision in this set of proceedings was taken on 18 September 2001, whereas these remedies became only available on 1 January 2002. As regards the possibility to file a complaint under the Complaints Act of 1998, the applicant submits that she did in fact avail herself of this possibility, in that she filed such a complaint on 13 February 2001.

The Court reiterates that for Article 6 § 1, in its "civil" limb, to be applicable there must be a dispute (*contestation*) over a "right" that can

be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII).

In the present case the applicant had the right to claim restitution of ownership rights under the 229/91 Act. The applicant's first restitution claim was in fact initially granted by the Land Office on 14 May 1992. Although the proceedings of her first request have been re-opened on 12 June 1995, the decision of 14 May 1992 remains in force until a final decision has been taken in the re-opened proceedings which, to date, has not yet taken place. The applicant's second restitution claim was granted on 18 September 2001.

The Court considers that the ownership right claimed by the applicant is civil by its very nature and that the outcome of the proceedings on the applicant's claims is directly decisive for the right concerned. The Court is therefore considers that the proceedings at issue fall within the scope of Article 6 § 1 of the Convention.

The Court notes that, since 1 January 2002 and under Part 5 of the Code of Civil Procedure, general civil courts are competent to review the lawfulness of the official conduct of public administration bodies, including whether such bodies have conducted proceedings with the required diligence. It appears from the Supreme Court's judgment of 23 May 2002 (file no. 7 Sž 24/02) that civil courts can order an administrative authority to proceed with and determine a case within a fixed time-limit.

In these circumstances, the Court considers that proceedings under Part 5 of the Code of the Civil Procedure is a remedy which, in principle, is capable of expediting pending administrative proceedings. It is therefore a remedy that should be tried in such proceedings for the purposes of Article 35 § 1 of the Convention.

The Court further recalls that proceedings under Article 127 of the Constitution is an effective remedy, both in law and in practice, in the sense that it is capable of preventing the continuation of a violation of the right to a hearing within a reasonable time and of providing adequate redress for any violation already having occurred. It has held that applicants in cases against Slovakia which concern the length of proceedings should have recourse to this remedy notwithstanding that it was enacted after their applications had been filed with the Court or the European Commission of Human Rights (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002).

The Court notes that the proceedings on the applicant's first restitution request are currently still pending before the Land Office, whereas it does not appear that the applicant has filed an action under the Part 5 of the Code

of the Civil Procedure or a constitutional complaint under Article 127 of the Constitution.

In these circumstances, the Court considers that, as regards this set of proceedings, the applicant has not availed herself of the remedies available to her under Slovakian law in respect of her complaint of the duration of the proceedings on her first restitution claim. Consequently, this part of the application must be rejected under Article 35 § 4 of the Convention for non-exhaustion of domestic remedies.

As regards the proceedings on the applicant's second restitution request, the Court notes that these proceedings have ended on 26 October 2001, that is before the entry into force on 1 January 2002 of the amendment of Part 5 of the Code of the Civil Procedure and the amendment of the Constitution allowing individuals and legal persons to complain about a violation of their fundamental rights and freedoms, including the right to judicial proceedings without unjustified delay. Consequently, this part of the application cannot be rejected for non-exhaustion of domestic remedies.

The Court finds that, in the light of the parties' submissions, the complaint of the length of the proceedings on the applicant's second restitution request raises issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant further complains that, pending a final outcome of the proceedings on her first restitution request, she is effectively prevented from alienating her property. She relies 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."

The Government submit at the outset that, as the original expropriation took place in the 1940s and 1950s and thus before the Convention entered into force in respect of the Slovak Republic, this complaint is incompatible *ratione temporis*. The Government further argue that the applicant's restitution claim does not even have an arguable basis in the domestic law and therefore cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1.

The Government further submit that this complaint is in fact substantially the same as the applicant's complaint under Article 6 § 1 of the Convention

of the length of the proceedings. Referring to their arguments in relation to that complaint, the Government are of the opinion that the present complaint should therefore also be rejected for non-exhaustion of domestic remedies.

The applicant submits that her complaint is not directed against the original expropriation of the 1940s and 1950s. She further submits that her first restitution claim is based on the 229/91 Act, and that it was granted by the Land Office on 14 May 1992. As to the exhaustion of domestic remedies the applicant reiterates her arguments stated above in respect of her complaint of the length of proceedings.

The Court recalls that, according to its established case-law, "possessions" within the meaning of Article 1 of Protocol No. 1 can be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see the recapitulation of the relevant principles in *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000, ECHR 2000-XII and *Gratzinger and Gratzingerová v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002–VII, with further references).

In the present case, the applicant's first restitution claim was granted by the Land Office on 14 May 1992, when it approved the restitution agreement between the applicant and the agricultural co-operative. Although the proceedings on this claim have been re-opened in the meantime, the decision of 14 May 1992 remains in force until a new decision is taken in the re-opened proceedings. So far, no such decision has been taken. In these circumstances, the Court is of the opinion that the applicant can be considered as having at least a "legitimate expectation" of obtaining effective enjoyment of a property right and that, therefore, her first restitution claim can be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Kopecký v. Slovakia* , no. 44912/98, § 29, 7 January 2003, unreported).

The Court notes that the Constitutional Court, in the context of complaints filed under Article 127 of the Constitution, may award successful complainants financial compensation for undue delays in proceedings. Insofar as, in consequence of the duration of the still pending proceedings on her restitution claims, the applicant has incurred non-pecuniary or pecuniary damage as a result of loss of opportunities, the Court finds no indication that the applicant would be unable to claim in respect of such non-pecuniary damage in a complaint under Article 127 of the Constitution or in respect of such pecuniary damage, in proceedings

under Section 18 (1) of the State Liability Act of 1969, or that such claims would be bound to fail.

As the applicant has failed to avail herself of this remedy, the Court finds that this part of the application must also be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that the proceedings on her second restitution request have exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President