CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## SECOND SECTION

## FINAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 47804/99
by Karol HAVALA
against Slovakia

The European Court of Human Rights, sitting on 13 September 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced on 15 February 1999 and registered on 29 April 1999,

Having regard to the partial decision of 20 January 2000,

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, Mr Karol Havala, is a Slovakian national, born in 1929 and living in Trnava. 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.

On 26 March 1993 the applicant claimed damages resulting from the termination of his membership in a co-operative before the Trnava District Court (*Okresný súd*). On 20 September 1993 the latter granted a part of the applicant's claims. On 13 October 1993 the applicant appealed. On 13 December 1993 he submitted reasons for the appeal.

On 31 January 1994 the Bratislava Regional Court (*Krajský súd*) quashed the District Court's judgment on the ground that the reasons for it were insufficient.

The District Court held hearings on 30 March, 25 April and on 23 May 1994.

Another hearing scheduled for 13 June 1994 had to be adjourned as the applicant's lawyer had failed to appear. On 6 July 1994 the District Court again adjourned the case as the applicant's lawyer had failed to submit written observations in time.

On 15 July 1994 the applicant challenged the Trnava District Court judge dealing with his case. On 16 August 1994 the Bratislava Regional Court dismissed the request.

On 24 October 1994 the Trnava District Court delivered a new judgment partly granting the applicant's claim for damages. The parties appealed and the case was submitted to the appellate court on 12 December 1994.

On 31 July 1995 the Bratislava Regional Court quashed the first instance judgment on the ground that the District Court lacked jurisdiction to deal with the case. The case was transferred to another chamber of the Regional Court.

On 24 June 1996 the Ministry of Justice admitted, in reply to a complaint lodged by the applicant, that there had been undue delays in the proceedings.

Between 17 July 1996 and 25 December 1996 the judge dealing with the case took several procedural steps.

On 24 January 1997 the president of the Bratislava Regional Court apologised to the applicant for delays in the proceedings and informed him that a hearing was scheduled for 28 January 1997.

On the latter date the court heard the defendant and adjourned the case until 25 March 1997 as it was not clear whether the applicant's lawyer had

received the summons. On 24 March 1997 the applicant's lawyer informed the court that he no longer represented the applicant. On 25 March 1997 the Regional Court therefore adjourned the case until 22 April 1997.

On 22 April 1997 the Bratislava Regional Court dismissed the action on the ground that the applicant failed to show that he had suffered damage. On 2 May 1997 the applicant appealed. The case-file was transmitted to the Supreme Court (*Najvyšší súd*) on 26 May 1997. On 3 June 1997 the Supreme Court returned the case to the Regional Court and instructed the latter to decide on the fees for the appeal proceedings. The Regional Court delivered a decision on court fees on 14 June 1997 and sent the case to the Supreme Court on 1 August 1997.

On 22 December 1997 the Supreme Court quashed the first instance judgment. The Supreme Court held that the Regional Court had not established the relevant facts of the case.

On 4 February 1998 the applicant requested the exclusion of the Regional Court judges dealing with his case. He alleged, in particular, that the judges had decided on his claim erroneously and that they had caused delays in the proceedings. The Supreme Court dismissed the request on 24 August 1998. The case-file was returned to the Regional Court on 9 October 1998.

On 8 October 1998 the applicant lodged a petition with the Constitutional Court (*Ústavný súd*) in which he claimed compensation for erroneous actions of the courts dealing with his case. On 11 November 1998 the Constitutional Court rejected the petition on the ground that the applicant's claim fell within the jurisdiction of the general courts which were entitled to decide on it under the State Liability Act of 1969.

On 30 November 1998 the Bratislava Regional Court dismissed the applicant's action of 26 March 1993. On 29 December 1998 the applicant appealed. The case was submitted to the Supreme Court on 3 February 1999.

On 15 July 1999 the Supreme Court quashed the Regional Court's judgment of 30 November 1998. The Supreme Court found that the applicant was entitled to compensation and held that it was for the first instance court to determine the amount.

On 5 November 1999 the applicant claimed damages from the Ministry of Justice with reference to the State Liability Act of 1969. He alleged that the decisions delivered in his case were unlawful and that the courts proceeded erroneously in that, *inter alia*, there had been delays in the proceedings. On 11 November 1999 the Ministry acknowledged the receipt of the claims. The applicant was requested to submit copies of judicial decisions as a result of which he had suffered damage. The applicant was informed that he would be notified in writing of the position of the Ministry of Justice as regards his claims.

On 17 February 2000 the Supreme Court excluded the Regional Court judge dealing with the case.

On 25 April 2000 the case was assigned to another judge. On 23 February 2001 the president of the Bratislava Regional Court assigned the case to a further judge as the judge appointed on 25 April 2000 had left the court.

On 22 February 2001 the Constitutional Court found that the applicant's constitutional right to a hearing without undue delays had been violated. In its finding the Constitutional Court pointed out, in particular, that there had been delays imputable to the Bratislava Regional Court amounting to an overall period of twenty-five months.

A hearing before the Bratislava Regional Court was scheduled for 31 May 2001. The applicant's representative could not attend due to illness and the case was adjourned until 20 September 2001.

## B. Relevant domestic law and 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.

When examining a petition about delays in domestic proceedings filed by a different person whose case is now pending before the European Court of Human Rights (application No. 51545/99), the Constitutional Court found a violation of the petitioner's constitutional right to a hearing within a reasonable time. As the Constitutional Court lacked jurisdiction to provide redress to the petitioner, the latter sought compensation from the Ministry of Justice under Section 18 of the State Liability Act. The Ministry of Justice dismissed the claim and the person concerned therefore filed an action to the Bratislava I District Court.

On 26 May 1999 the Bratislava I District Court dismissed the action (file No. 23 C 7/99-38) on the ground that the plaintiff had failed to show that he had suffered damage and that there was a causal link between any damage and undue delays in the proceedings concerning his case.

The plaintiff appealed and maintained, *inter alia*, that he had suffered non-pecuniary damage as a result of the court's failure to proceed with his case during six years. He explained that the court's inactivity had caused

him a trauma, that he had aged and could not rely on judicial protection as a result of which he had become a second-class citizen.

By a decision delivered on 16 November 1999 (file No. 15 Co 383/99-81) the Bratislava Regional Court upheld the first instance judgment. It found that the plaintiff's claim did not fall under the State Liability Act.

## COMPLAINT

The applicant complains under Article 6 § 1 of the Convention about delays in the proceedings concerning his claim for damages.

## THE LAW

The applicant complains that the proceedings concerning his claim for damages have lasted unreasonably long. He alleges a violation of Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

The Government object that the applicant failed to exhaust domestic remedies as he did not claim damages under the State Liability Act of 1969.

The applicant maintains that he exhausted all available remedies. He points out, in particular, that he filed a claim for damages under the State Liability Act of 1969 with the Ministry of Justice on 5 November 1999, and that the Ministry failed to decide on it.

The Court has noted that Section 18 (1) of the State Liability Act renders the State liable for damage caused by erroneous official actions of persons entrusted with functions vested in public authorities. However, in a different case the Bratislava 1 District Court and the Bratislava Regional Court dismissed an action against the Ministry of Justice concerning a claim for compensation for non-pecuniary damage caused by undue delays in judicial proceedings as they did not find it established that the plaintiff had suffered damage on account of the excessive length of the proceedings concerning his case (see "Relevant domestic law and practice" above).

Since there is no indication that decisions in favour of plaintiffs were delivered by domestic courts in similar cases, the Court is not persuaded that the Bratislava 1 District Court and the Bratislava Regional Court, to which the case would fall to be examined, would assess differently a claim for damages under Section 18 of the State Liability Act lodged by the applicant in the present case.

In these circumstances, the Court does not accept that this remedy offers reasonable prospects of success and that it is capable of providing direct protection for the right to a hearing within a reasonable time guaranteed by Article 6 § 1 of the Convention as required by the relevant case-law (see the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, pp. 16-17, § 29, and the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 68). Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

As to the merits, the Government submit that the length of the proceedings is due to objective reasons, namely to the complex character of the case and to a change in organisation of justice in Slovakia as a result of which the assignment of cases to judges had to be modified in 1997. In the Government's view, the applicant and his lawyer contributed to the length of the proceedings by their conduct. The Government point out, in particular that the lawyer failed to appear at hearings on several occasions, that several submissions by the applicant were unclear and that the applicant requested the exclusion of judges.

The applicant disagrees. He maintains that the case is not complex and that the length of the proceedings is imputable exclusively to the conduct of domestic courts.

The Court notes that the proceedings in question began on 26 March 1993 and are still pending. They have therefore lasted eight years and more than five months.

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, as well as what has been at stake for the applicant), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

For these reasons, the Court unanimously

*Declares* admissible, without prejudging the merits, the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President