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. 50216/99
by Vladislav HEJDA
against Slovakia

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

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 29 November 1998,

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 Vladislav Hejda, is a Slovakian national, who was born in 1936 and lives in Modra. The respondent Government were 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 28 February 1992 the applicant claimed restitution of real property before the Bratislava - vidiek District Court. The action was dismissed on 11 June 1992. The applicant appealed on 30 July 1992. On 10 February 1993 the Bratislava Regional Court ordered the defendant municipality to restore the property to the applicant within a month. The judgment became final and enforceable in April 1993.

On 6 May 1993 the defendant filed an appeal on points of law to the Bratislava - vidiek District Court.

On 12 July 1993 the applicant requested the Bratislava - vidiek District Court to enforce the Bratislava Regional Court's judgment of 10 February 1993.

On 10 October 1994 the District Court submitted the case to the Supreme Court for a decision on the defendant's appeal on points of law. On 27 October 1994 the Supreme Court returned the case to the District Court as the defendant had not paid the fees in full. An expert opinion was ordered with a view to establishing the value of the property in issue as it determined the amount of the court fee.

On 29 November 1995 the defendant municipality requested that the judgment should not be enforceable pending the outcome of the proceedings on the appeal on points of law.

On 26 February 1996 the defendant paid the fees of the proceedings concerning the appeal on points of law.

On 23 February 1999 the Bratislava III District Court, which had taken over the cases pending before the former Bratislava - vidiek District Court, granted the applicant's request for enforcement of the Regional Court judgment of 10 February 1993. On 17 March 1999 the defendant municipality challenged this decision.

On 27 October 2000 the Supreme Court dismissed the defendant's appeal on points of law.

On 13 February 2002 the applicant requested the Constitutional Court to order the enforcement of the Regional Court's judgment of 10 February 1993 and of the Supreme Court's judgment of 27 October 2000. The applicant further claimed 7,000,000 Slovakian korunas in compensation for the deterioration of the real property.

In a letter of 21 February 2002 a constitutional judge informed the applicant that his request for enforcement of a judicial decision and for damages fell within the jurisdiction of the general courts. The applicant was further informed that, as from 1 January 2002, the Constitutional Court had power to examine complaints under Article 127 of the Constitution concerning alleged violations of fundamental rights and freedoms and grant

just financial satisfaction in cases where such a violation was found. The constitutional judge noted that in his letter the applicant did not allege a violation of his constitutional rights. The applicant was informed that no further action would be taken in respect of his letter.

On 20 April 2002 the Bratislava Regional Court upheld the enforcement order of 23 February 1999.

On 16 September 2002 the applicant requested the President of the Constitutional Court, with reference to his above submissions of 13 February 2002, to ensure that the final decision on his claim be complied with.

B. Relevant domestic law and practice

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 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 20 March 2002 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.

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that the proceedings concerning his case lasted an unreasonably long time.

THE LAW

The applicant complains about the length of the proceedings. He relies on 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 ... hearing within a reasonable time by [a] ... tribunal..."

The Government object, *inter alia*, that the applicant failed to exhaust domestic remedies as he did not file a constitutional complaint under Article 127 of the Constitution after the relevant amendment had entered into force on 1 January 2002.

The applicant maintains that his application was introduced prior to the enactment of the remedy invoked by the Government and that it therefore falls to the Court to decide on it. He further argues that he addressed himself to the Constitutional Court on 13 February 2002 and that the latter refused to deal with his case.

The Court has found that the complaint 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 the alleged violation of the right to a hearing without undue delays and of providing adequate redress for any violation that has already occurred. It has held that the applicants in cases against Slovakia complaining about delays in proceedings which were still pending after 1 January 2002 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).

In the present case the applicant has not shown that after the entry into force of the relevant amendment on 1 January 2002 he lodged a complaint pursuant to Article 127 of the Constitution with a view to obtaining redress in respect of the alleged delays in the proceedings of which he complains before the Court.

The fact that the applicant requested the Constitutional Court to order the enforcement of the judicial decisions delivered in his favour and to compensate him for the deterioration of the real property in question cannot affect the position as the Constitutional Court lacked jurisdiction to deal with such claims, and the applicant's submissions did not meet the formal requirements for proceedings to be brought before the Constitutional Court.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President