CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 74456/01
by Mária HORVÁTHOVÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 7 September 2004 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 5 September 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Mária Horváthová, is a Slovakian national, who was born in 1950 and lives in Bratislava. She 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. Enforcement proceedings brought on 1 March 2000

On 1 March 2000 the applicant requested the Bratislava IV District Court to enforce a judgment, which had become final on 28 January 1998, concerning the use of a flat. Under that judgment, the applicant's former husband was obliged, *inter alia*, to provide accommodation to the applicant. The judgment stated that, pending his compliance with the above obligation, the applicant was entitled to use the flat in which she had lived together with her former husband.

On 18 January 2002 the President of the Bratislava Regional Court admitted, in reply to the applicant's complaint, that the case had not been proceeded with effectively between 1 March 2000 and 10 January 2002.

On 9 December 2002, on 16 and 31 January 2003, on 31 March 2003 and on 28 April 2003 the Bratislava IV District Court adjourned the case as the defendant failed to appear. The judge had unsuccessfully attempted to have the defendant brought by the police to the hearings held between January and April 2003. The applicant submits that there is no information in the file indicating that the defendant had been duly summoned to the hearing held in January 2003. According to the applicant, the attempts to have the defendant brought by the police were unsuccessful also due to the fact that the court had incorrectly indicated the address of the defendant's employer to the police.

A hearing was held on 26 May 2003. Both the applicant and the defendant attended. The defendant challenged the District Court judge.

On 6 October 2003 the Bratislava Regional Court decided on the request for exclusion of the District Court judge. The decision was served on the defendant on 28 November 2003.

A hearing scheduled for 4 March 2004 was adjourned as the District Court judge was ill.

On 22 April 2004 the applicant filed an enforcement request under a different provision of the Code of Civil Procedure under which a court can, where possible, authorise the person seeking the enforcement of a judicial decision to have a service carried out by a third person at the expense of the debtor. She also withdrew the authority of her lawyer.

The enforcement proceedings are pending.

2. Proceedings before the Constitutional Court

On 8 April 2002 the applicant filed a complaint about delays in the proceedings pursuant to Article 127 of the Constitution. She also claimed 200,000 Slovakian korunas (SKK) as just satisfaction.

On 10 July 2002 the Constitutional Court found that the applicant's right to a hearing without undue delay guaranteed by Article 48(2) of the Constitution and by Article 6 § 1 of the Convention had been violated. The Constitutional Court held that the case was not complex and that no delays could be imputed to the applicant's conduct. It noted that the only action taken by the Bratislava IV District Court had been a request that the applicant pay the court fee dated 16 November 2001.

The Constitutional Court granted the applicant SKK 18,000[1] as just satisfaction. The decision stated that the amount was determined on an equitable basis with regard to the particular circumstances of the case similarly to the practice of the European Court of Human Rights under Article 41 of the Convention. Its purpose was to attenuate the non-pecuniary damage sustained by the applicant. The sum was to be paid by the Bratislava IV District Court within two months after the final effect of the Constitutional Court's decision. In the decision the Constitutional Court also ordered the Bratislava IV District Court to proceed with the applicant's case without further delay. The decision became final on 12 August 2002.

On 28 October 2002 the applicant filed a new complaint with the Constitutional Court. She alleged a violation of her right to a hearing within a reasonable time in that the Bratislava IV District Court had failed to proceed with the case without delay. She further alleged a violation of her right to a fair hearing within a reasonable time and of her property rights in that the District Court had not paid the sum to her as ordered by the Constitutional Court's decision of 10 July 2002.

On 29 January 2003 the Constitutional Court dismissed the applicant's second complaint. It found that the applicant had, in separate proceedings, requested the enforcement of the sum granted to her and that it therefore could not examine her complaints in that respect. The Constitutional Court further held that, following the final effect of its first finding on 12 August 2002, there had been a delay of more than two months in the enforcement proceedings brought in 2000. However, the overall length of the period under consideration, that is after the delivery of the first finding of the Constitutional Court, was not excessive in the particular circumstances of the case.

3. Other relevant facts

As the sum granted to her by the Constitutional Court's finding of 10 July 2002 was not paid to her, the applicant requested that that sum be enforced on 19 November 2002.

On 17 December 2002 the District Court paid the sum indicated in the Constitutional Court's decision to the applicant. However, she did not have

[1] The equivalent of approximately 450 euros.

expenses reimbursed which she had incurred in connection with the above request for enforcement of the sum due to her.

On 4 June 2003 and on 17 July 2003 the applicant complained to the police that her former husband had denied her access to the flat in which she is entitled to live. The police found that the conduct of the applicant's former husband could be qualified as a minor offence and transferred the case to the Bratislava IV District Office. The applicant unsuccessfully complained about the way in which the police had dealt with the case to public prosecutors at two levels.

On 24 September 2003 the applicant asked the Bratislava IV District Office to order her former husband not to disturb her in her right to use the flat in question. On 29 December 2003 the Bratislava IV District Office set the case aside. The decision stated that the administrative authority could not deal with it as (i) enforcement proceedings on the point at issue were pending before the District Court and (ii) the Bratislava IV police department dealt with criminal complaints which the applicant and her former husband had filed against each other and on which no final decision had yet been taken.

On 24 October 2003 the applicant claimed compensation for pecuniary damage from the Ministry of Justice before the Bratislava IV District Court. She relied on the State Liability Act of 1969 and on the Constitutional Court's finding of 10 July 2002 and claimed a sum corresponding to the rent for the flat in which she had the right to live and which she could not use. The proceedings are pending.

B. Relevant domestic law and practice

1. The Constitution

Article 48(2) 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. Where 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." ...

2. The Constitutional Court Act of 1993

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. The relevant amendments entered into force on 20 March 2002 and they provide as follows.

Pursuant to Section 50(3), a person claiming adequate financial compensation shall specify its amount and explain the reasons for such a claim.

Section 56(3) provides that, where a violation of fundamental rights or freedoms is found, the Constitutional Court may order that the authority liable for such a violation proceed in accordance with the relevant rules. It may also return the case to such an authority for further proceedings, prohibit the continuation of such a violation or, as the case may be, order that the situation existing prior to the violation be restored.

Under Section 56(4), the Constitutional Court may grant adequate financial compensation for non-pecuniary damage to a person whose rights or freedoms have been violated.

Section 56(5) provides that the authority which violated a person's rights is in such a case obliged to pay the compensation within two months after the Constitutional Court' s decision has become final.

3. The State Liability Act of 1969 (Act no. 58/1969 Coll.)

Section 18(1) 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 can 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.

4. Constitutional Court's practice

In decision no. I. ÚS 24/02 of 30 October 2002 the Constitutional Court found a violation of the plaintiff's right to a hearing without undue delay.

The proceedings in issue concerned, *inter alia*, the plaintiff's right to use a flat in which she had lived with her former husband and they had then been pending at first instance for almost 32 months. The Constitutional Court awarded SKK 70,000[2] to the plaintiff.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about delays in the enforcement proceedings brought on 1 March 2000. She also alleged a violation of Article 13 of the Convention in that she had no effective remedy at her disposal in this respect.

2. Under Article 8 of the Convention and under Article 1 of Protocol No. 1 the applicant complained that, because of the Bratislava IV District Court's inactivity, she had no place to live albeit she was entitled to be provided with accommodation under the relevant judgment which had become final in 1998.

3. The applicant further alleged a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 in that the just satisfaction awarded to her by the Constitutional Court's finding of 10 July 2002 had been paid to her belatedly and that the costs incurred by her with a view to obtaining the sum in question were not reimbursed to her.

THE LAW

1. The applicant complained about delays in the enforcement proceedings brought on 1 March 2000 and alleged that she had no effective remedy at her disposal in this respect. She relied on Articles 6 § 1 and 13 of the Convention which, in so far as relevant, provide as follows:

Article 6 § 1

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

Article 13

> "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."

The applicant argued, in particular, that a complaint under Article 127 of the Constitution was not an effective remedy in her case as (i) the just

[2] The equivalent of approximately 1,750 euros.

satisfaction granted to her in the Constitutional Court's finding of 10 July 2002 was inadequately low and (ii) that finding did not bring about an acceleration of the proceedings in her case.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complained that, because of the Bratislava IV District Court's inactivity, she had no place to live although she was entitled to be provided with accommodation under the relevant judgment which had become final in 1998. She alleged a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1 which provide as follows:

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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.

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 Court notes that the applicant did not submit these complaints to the Constitutional Court in a procedure under Article 127 of the Constitution, together with a claim for compensation for any non-pecuniary damage which she may have suffered in this respect. In this respect she has therefore not exhausted domestic remedies.

Furthermore, the applicant has claimed compensation for pecuniary damage from the Ministry of Justice, relying on the State Liability Act of 1969 and on the Constitutional Court's finding of 10 July 2002, on the ground that the judgment giving her right to accommodation has not been duly enforced. The proceedings are pending and the applicant's complaint in this respect is premature.

It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicant further complained that the just satisfaction awarded to her by the Constitutional Court's finding of 10 July 2002 had been paid to her belatedly and that the costs incurred by her with a view to obtaining the sum in question were not reimbursed to her. She alleged a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

a) To the extent that the applicant complained under Article 1 of Protocol No. 1 that her property rights were violated, the Court notes that the applicant could have claimed compensation for any damage which she may have suffered in this respect under the provisions of the State Liability Act of 1969. As she did not avail herself of this possibility, domestic remedies have not been exhausted in respect of this part of the application.

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

b) The Court has also examined the complaint under Article 6 § 1 of the Convention which the applicant makes in respect of compliance with the relevant part of the Constitutional Court's finding of 10 July 2002 but finds, to the extent that such complaint was substantiated and falls within its competence, that it discloses no appearance of a violation of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the enforcement proceedings brought on 1 March 2000 and the alleged absence of an effective remedy in this respect;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President