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. 69484/01
by Alexander OBLUK
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 15 March 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 9 May 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Alexander Obluk, is a Slovakian national who was born in 1953 and lives in Martin. He is represented before the Court by Mr I. Siakeľ, a lawyer practising in Martin.

A. The circumstances of the case

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

The applicant concluded contracts concerning the lease of business premises with the following tenants: a private entrepreneur B., a private entrepreneur K., a private company M., a private entrepreneur M. and a private company D.

As the tenants failed to pay the rent, the applicant initiated the following proceedings against them.

1. Action against entrepreneur B.

On 18 June 1997 the applicant lodged the action with the Bratislava III District Court (*Okresný súd*). He sought an order for payment of unpaid rent, a contractual penalty for the late payment and compensation in respect of the costs of the defendant's eviction.

On 26 September 1997, in summary proceedings, the District Court issued a payment order (*platobný rozkaz*) in the applicant's favour.

On 12 February 1998 the District Court quashed the payment order under Article 173 §§ 1 and 2 of the Code of Civil Procedure as it had proven impossible to serve a copy of the order on the defendant in person.

On 26 January 2001 the District Court appointed an *ex officio* guardian to the defendant as the latter's whereabouts were unknown and it was not possible to secure her participation in the proceedings.

On 14 February 2001 the District Court granted the action. The judgment became final and enforceable in March 2001.

2. Action against entrepreneur K. and related constitutional complaint

The applicant filed the action on 16 May 1996 with the Martin District Court. He sought an order for payment of a contractual penalty for the late payment of rent.

On 1 December 1998, the defendant lodged a counterclaim.

On 15 November 2000 the District Court granted the action.

In a letter of 17 March 2003, in reply to the applicant's complaint, the President of the District Court accepted that there had been undue delays in the proceedings.

On 15 April 2003 the District Court gave a supplementary judgment in which it dismissed the defendant's counterclaim, a ruling which the District Court had omitted to make in the original judgment of 15 November 2000.

On 5 November 2003, on the defendant's appeals, the Žilina Regional Court (*Krajský súd*) overturned the judgment of 15 November 2000, dismissed the applicant's action and upheld the judgment of 15 April 2003.

In the meantime, on 9 June 2003, the applicant seized the Constitutional Court (*Ústavný súd*) with a complaint under Article 127 of the Constitution,

as in force from 1 January 2002. The applicant formally directed the complaint against the District Court and alleged that it had violated his right under Article 48 § 2 of the Constitution to a hearing without unjustified delay.

On 19 November 2003 the Constitutional Court declared the complaint inadmissible. It observed that the part of the proceedings before the District Court, against which the complaint was formally directed, had ended with its judgments of 15 November 2000 and 15 April 2003 and with its carrying out the related administrative tasks prior to submitting the case to the Regional Court for a decision on the defendant's appeal. At the time when the constitutional complaint was lodged, the District Court was no longer dealing with the case which was already with the Regional Court. In these circumstances, an examination of the part of the proceedings before the District Court could no longer serve to expedite the proceedings. Thus, in line with its established practice, the Constitutional Court found that it was not called upon to examine the complaint.

3. Action against company M. and related constitutional complaint

On 2 June 1997 the applicant lodged the action with the Martin District Court. He claimed an amount of money by way of compensation for unpaid rent and a contractual penalty for the late payment of the rent.

In a letter of 24 October 2002 the Registry of the Court informed the applicant of the amendment to the Constitution of the Slovak Republic which had entered into force on 1 January 2002 and which provided for a new remedy under the amended Article 127 of the Constitution in respect of delays in court proceedings. The applicant was requested to inform the Court whether he used or intended to use this remedy in view of the requirement to exhaust domestic remedies pursuant to Article 35 § 1 of the Convention.

On 10 December 2002 the District Court granted the action. The judgment became final and enforceable in February 2003.

In April 2003 the applicant lodged a complaint under the amended Article 127 of the Constitution with the Constitutional Court. He asserted that the District Court had violated his constitutional right to a hearing without unjustified delay.

On 25 June 2003 the Constitutional Court declared the complaint inadmissible. It observed that it had been its established practice to examine constitutional complaints only if the alleged violation occurred or was still continuing at the time when the complaint was lodged. Since at the time of the introduction of the applicant's complaint in April 2003 the proceedings at issue were already completed, the complaint could not be entertained.

The President of the Chamber, however, did not share the majority view and gave a dissenting opinion. He observed that the practice of not examining constitutional complaints of length of proceedings where the

proceedings were no longer pending at the time of the introduction of the complaint had developed within the legal framework of the Constitution, as applicable prior to 1 January 2002. However, as from that date the Constitution was amended and the relevant rules were different. According to him, the continuous application of this practice under the new constitutional provisions had no basis in the applicable statutory rules, was contrary to the approach of the European Court of Human Rights and unacceptably impaired the complainant's right of access to Constitutional Court.

4. First action against entrepreneur M. and related constitutional complaint

On 19 April 1996 the applicant lodged the action with the Martin District Court seeking an order for payment of an amount of money which was due under a contract of lease of 21 August 1995 and a contractual penalty for the late payment of the rent.

On 20 January and again on 22 June 1998 the District Court ordered that a sworn expert examine the state of the defendant's mental health with a view to determining whether at the time of concluding the lease contract he had possessed the necessary mental capacity to assume legal obligations.

On 28 April 2004 the District Court dismissed the action. It noted that on 20 October 2003 the defendant had been deprived of his legal capacity to act and found that due to the lack of his legal capacity at the relevant time the contract of 21 August 1995 was not valid. No claims could thus be based on it.

In the meantime, on 14 January 2004, on the applicant's complaint, the Constitutional Court found that the District Court had violated his right to a hearing without unjustified delay in the proceedings in the action of 19 April 1996. The Constitutional Court ordered that the District Court proceed with the case without delays and awarded the applicant just satisfaction in money and a reimbursement of his legal costs.

5. Second action against entrepreneur M. and related constitutional complaint

On 20 December 1996 the applicant brought another action against M. in the District Court. He claimed a further amount of money on the basis of the above contract of 21 August 1995.

On 13 March 1997 the District Court issued a payment order in the applicant's favour. It was however quashed on a protest (*odpor*) by the defendant.

On 6 October 2000 the District Court stayed the proceedings pending the outcome of the above proceedings in the applicant's action of 19 April 1996. The District Court noted that in those proceedings the questions of the

defendant's legal capacity to act and of the validity of the contract of 21 August 1995 were being determined. The determination of these questions was directly relevant for the present proceedings. Although this decision could have been appealed against within 15 days from its service on the appellant, no appeal has been lodged.

In May 2003 the applicant filed a complaint of the length of the proceedings in his action of 20 December 1996 to the Constitutional Court.

On 1 October 2003 the Constitutional Court declared the complaint inadmissible on the ground that the applicant had failed to exhaust ordinary remedies by challenging the decision of 6 October 2000 by an appeal.

6. Action against company D.

On 26 March 1998 the applicant lodged the action with the Martin District Court. For reasons of territorial competence the action was transmitted to the Bratislava IV District Court and later to the Bratislava II District Court where it remained.

On 23 October 2000 the applicant extended the action by raising his claim. The proceedings appear to be still pending.

In addition to the above-mentioned letter of 24 October 2002, by a letter of 4 March 2003 the Registry informed the applicant about the Court's decision of 22 October 2002 to declare inadmissible the application in the case of *Andrášik and Others v. Slovakia* (app. nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, ECHR 2002-IX) about the length of court proceedings on the ground that the applicants had failed to raise this complaint before the Constitutional Court under Article 127 of the Constitution, as amended from 1 January 2002. Despite these letters the applicant has provided no information as to whether he filed or intended to file such a constitutional complaint in respect of these proceedings or, as the case may be, whether and why he considered such a complaint an ineffective remedy for the Convention purposes.

B. Relevant domestic law and practice

1. The Constitution and the Constitutional Court Practice

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

Pursuant to Article 130 § 3, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon a petition lodged by a natural or legal person claiming that their rights had been violated.

According to its case-law under the former Article 130 § 3 of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48 § 2 of

the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found.

As from 1 January 2002, the Constitution has been amended in that, *inter alia*, natural and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127. Under this provision, the Constitutional Court has the power, in the event that it finds a violation of Article 48 § 2 of the Constitution, to order the authority concerned to proceed with the case without delay. It may also grant adequate financial satisfaction to the person whose constitutional rights have been violated as a result of excessive length of proceedings (for further details see, e.g., *Andrášik and Others*, cited above).

It has been the Constitutional Court's practice to examine alleged violations of the right to a hearing without undue delay only where the relevant remedy was filed with it at a time when the alleged violation occurred or was still continuing (see for example the decision of 20 May 1999 under the file no. I. ÚS 34/99).

In its decision file number I. ÚS122/03 of 18 June 2003 the Constitutional Court expressed the view that, if civil proceedings are lawfully stayed, there is a legitimate legal obstacle to proceeding to a resolution of the matter in issue. Referring to its decisions file numbers II. ÚS 3/00, I. ÚS 78/02 and III. ÚS 42/02, the Constitutional Court held that inactivity of a court which is due to such a legal obstacle cannot be considered as unjustified delay in the proceedings contrary to Article 48 § 2 of the Constitution.

In the proceedings file no. IV. ÚS 176/03 the plaintiff complained to the Constitutional Court, *inter alia*, about the length of proceedings concerning her maintenance. The action was originally filed with the Košice II District Court in 1998. The question arose whether the first instance and the second instance court judges were impartial. On 24 May 1999 the Supreme Court decided that the question of impartiality of the judges at the first instance would be determined by the Žilina Regional Court. The latter decided on 28 January 2000 that the action would be examined at first instance by the Michalovce District Court which determined it on 11 December 2002. On 10 September 2003 the Žilina Regional Court upheld the first instance judgment. In her complaint to the Constitutional Court of 28 February 2003 the plaintiff alleged that the ordinary courts had violated her right to a hearing without undue delay. The Constitutional Court declared this complaint manifestly ill-founded on 9 October 2003. The decision stated that, insofar as the complaint related to the part of the proceedings leading to the Supreme Court's decision of 24 May 1999, it had been filed out of time since, at the moment of the introduction of the constitutional complaint, the relevant part of the proceedings was no longer pending. For similar reason the Constitutional Court rejected the complaint in respect of the subsequent proceedings before the Michalovce District Court which had

ended on 11 December 2002. As to the appellate proceedings before the Žilina Regional Court, the Constitutional Court noted that they had lasted less than five months and found that this period was not excessive.

2. Constitutional Court Act

The implementation of the above constitutional provisions enacted with effect from 1 January 2002 is set out in more detail in sections 49 to 56 of the Constitutional Court Act (Law no. 38/1993 Coll.), as amended. The relevant amending Act (Law no. 124/2002 Coll.) was published in the Collection of Laws and entered into force on 20 March 2002.

Section 53 (3) provides that a constitutional complaint can be filed within a period of two months from the date on which the decision in question has become final and binding or on which a measure has been notified or on which a notice of other interference has been given. As regards the measures and other interferences, the above period commences when the complainant could have become aware of them.

COMPLAINT

The applicant originally complained under Article 6 § 1 of the Convention about the length of all his proceedings. In a letter of 23 July 2004 he informed the Court that in view of the finding of the Constitutional Court of 14 January 2004 he no longer wished to pursue the complaint in relation to the proceedings in his first action against entrepreneur M.

THE LAW

The applicant complained that the length of his proceedings was unreasonable contrary to Article 6 § 1 of the Convention which, in so far as relevant, provides that:

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

1. To the extent the application concerns the proceedings in the actions against entrepreneurs B. and K., company M. and the second action against entrepreneur M., the Court considers that it cannot, on the basis of the case file, determine its admissibility 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. As to the part of the application concerning the proceedings in the first action against entrepreneur M., the Court observes that the applicant no longer wishes to pursue it within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocol which require the examination of this part of the application be continued. Accordingly, the relevant part of the application should be struck out of the Court's list of cases.

3. As regards the complaint of the length of the proceedings in the action against company D., the Court observes that the applicant has failed to show that he raised his complaint before the Constitutional Court by way of a complaint under Article 127 of the Constitution, as in force since 1 January 2002 (see *Andrášik and Others*, cited above), or to substantiate that in the specific circumstances this remedy was insufficient or inadequate for the purposes of Article 35 § 1 of the Convention.

The Court considers that, in these circumstances, the relevant part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the proceedings in the actions against entrepreneurs B. and K., company M. and the second action against entrepreneur M.;

Decides to strike the part of the application concerning the length of the proceedings in the first action against entrepreneur M. out of its list of cases;

Declares the complaint concerning the length of the proceedings in the action against company D. inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President