AS TO THE ADMISSIBILITY OF

Application No. 25189/94
by Ivan PRELOZNÍK
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 15 January 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 April 1994 by Ivan PRELOZNÍK against the Slovak Republic and registered on 19 September 1994 under file No. 25189/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 14 February 1996 and the observations in reply submitted by the applicant on 14 March 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Slovak citizen born in 1956. He is a businessman and resides in Bratislava.

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

A. The particular circumstances of the case:

On 16 June 1991 the applicant bought a business at a public auction. At the same time he acquired the right to a five year lease of the premises.

On 23 August 1991 the applicant was informed that the building where his business was situated would undergo reconstruction. For this reason the grant of the lease was delayed. Since the lease comprised a break clause, the applicant could not run his business properly.

On 22 May 1992 the applicant lodged a claim for damages with the Bratislava 1 District Court (Obvodny súd). On 23 July 1992, at the court's request, he quantified the damage he had suffered. The applicant also asked the Bratislava City Court (Mestsky súd) to waive court fees on the ground of his indigence.

On 8 September 1992 the Bratislava 1 District Court informed the applicant that under the rules in force the President of the Bratislava City Court could only waive or reduce court fees if they did not exceed 20,000 Czechoslovak crowns, whereas the fees in the applicant's case amounted to 54,544 crowns.

The applicant was further informed that he could request a waiver of court fees under Section 138 para. 1 of the Code of Civil Procedure. The court asked him either to pay the fees within 15 days or to lodge, within the same time limit, a completed request for waiver including documents proving his indigence.

On 19 October 1992 the Bratislava 1 District Court stayed the proceedings as the applicant had failed either to pay the fees or to lodge, within the time limit, an appropriate request for their waiver.

On 16 November 1992 the applicant appealed against the aforesaid decision to the Bratislava 1 District Court. He claimed that he could not pay the fees because of his indigence, and that he had not applied for a waiver since he had been informed by the first instance court that fees could only be waived if they did not exceed 20,000 crowns.

On 21 June 1993 the applicant complained of the length of the proceedings concerning his case with the Ministry of Justice. On 20 January 1994 the Vice-President of the Bratislava 1 District Court, to whom the complaint had been transmitted, dismissed it on the ground that the decision of 19 October 1992 had become final on 23 November 1992 as the applicant had failed to lodge an appeal against it.

The applicant then lodged a complaint with the President of the Bratislava City Court. On 23 May 1994 the latter found that the applicant was justified in his complaint. She apologised to the applicant, and the fees for the complaint were paid back to him. The applicant was also informed that the President of the Bratislava 1 District Court would be requested to arrange for submitting the case to the Appellate Court.

On 24 June 1994 the Vice-President of the Bratislava 1 District Court transferred the case to the Bratislava City Court.

On 12 September 1994 the Bratislava City Court dealing with the applicant's appeal quashed the decision of the Bratislava 1 District Court and ordered the District Court to deal with the case again. On 23 September 1994 the Bratislava 1 District Court received this ruling. On 31 October and 7 November 1995 the applicant was served in persona and by mail with the ruling.

On 21 December 1994 the applicant requested the Bratislava 1 District Court to change the defendant. Upon this request, the Vice-President of the Court summoned the applicant for a meeting on 22 March 1995. On 10 March 1995 the applicant received the summons.

On 22 March 1995 the applicant appeared and the meeting in question was held.

On 7 June 1995 the applicant asked the Bratislava 1 District Court to add another defendant to the proceedings, to amend the amount of interest of the late payments and to disclaim the waiver of court fees.

On 9 February 1996 the Bratislava 1 District Court dismissed the applicant's request to add a further defendant and stayed the proceedings as the original defendant did not have legal status.

From the applicant's most recent submissions it appears that he appealed to the Bratislava City Court, which on 25 April 1996 confirmed the Bratislava 1 District Court's decision.

On 16 May 1996 the Constitutional Court (Ústavny súd) declared inadmissible the applicant's "podnet" introduced in March 1996 as he was not represented by a lawyer.

B. Relevant domestic law and case-law:

Article 48 para. 2 of the Constitution provides:

> "Every person has the right to have his or her case tried publicly without unreasonable delay ..."

Pursuant to Section 6 of the Code of Civil Procedure, when examining cases the courts are to proceed in cooperation with all participants so that, inter alia, the protection of rights is expeditious and effective.

Under Section 6 of the Courts and Judges Act (Zákon o súdoch a sudcoch) complaint about delays in court proceedings may be put to the authorities responsible for the State administration of courts.

According to Section 17 para. 1 of the State Administration of Courts Act (Zákon o sídlach a obvodoch súdov Slovenskej republiky, státnej správe súdov, vybavovaní staznosti a o volbách prísediacich) No. 80/1992, any natural person or corporation can turn to State authorities responsible for the administration of courts (the Ministry of Justice, the President and Vice-President of the Supreme Court and the Presidents and Vice-Presidents of Regional and District Courts) with complaints only in cases of delayed proceedings or misconduct caused by improper performance of and/or undignified interference with the proceedings by officers of the court. According to Sections 24 - 27 of the Act the responsible authority is required to establish all relevant facts and, if necessary, hear the persons concerned. Examination of the complaint is to be terminated within two months, and the applicant is to be informed in writing of the conclusion. When the complaint has been dealt with by the President of a District Court, an applicant is entitled to request a review of the conclusion by the President of the appropriate Regional Court.

According to Article 130 para. 3 of the Constitution, the Constitutional Court can commence proceedings upon the "podnet" presented by any individual or a corporation claiming that their rights have been violated.

In a judgment of 25 October 1995, the Constitutional Court found a violation of the petitioner's right to have his case tried without unreasonable delay guaranteed by Article 48 para. 2 of the Constitution.

Pursuant to Section 18 of Act No. 58/1969 on Liability for Damage Caused by a State Organ's Decision or by an Erroneous Official Act ("the State Liability Act"), as amended, the State is responsible for the damage caused by erroneous official acts committed by persons who carry out tasks vested in State organs.

COMPLAINTS

The applicant complains of the length of the proceedings concerning his claim for damages. He alleges that by inactivity of the courts he has suffered further damage, and claims compensation. He

invokes Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 April 1994 and registered on 19 September 1994.

On 29 November 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 14 February 1996. The applicant's observations in reply were submitted on 14 March 1996.

THE LAW

The applicant complains, under Article 6 para. 1 (Art. 6-1) of the Convention, about the length of the proceedings concerning his claim for damages. He alleges that by the inactivity of the courts he has suffered further damage, and claims compensation.

Article 6 para. 1 (Art. 6-1) of the Convention provides, as far as relevant:

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

The Government submit that the applicant has not exhausted the domestic remedies which were at his disposal, and that the application should be declared inadmissible on this ground. The applicant has failed to file either a complaint under Section 17 para. 1 of the State Administration of Courts Act No. 80/1992 and/or a "podnet" as provided by Section 130 para. 3 of the Constitution. In support of their argument the Government invoke the Constitutional Court's judgment of 25 October 1995. They add that a Constitutional Court's finding of a violation of a fundamental right or freedom entitles the person concerned to claim damages pursuant to Act No. 58/1969.

The applicant has expressed doubts about effectiveness of these remedies.

The Commission observes that when the applicant lodged the present application the proceedings were pending before the first instance court. Thus, it is necessary to consider the effectiveness of the domestic remedies in question in the light of this fact.

The Commission recalls the Convention organs' case-law, according to which the decisive question in assessing the effectiveness of a remedy concerning a complaint about the length of proceedings is whether the applicant can raise this complaint before domestic courts by claiming specific redress; in other words, whether a remedy exists that could answer his complaints by providing a direct and speedy, and not merely indirect, protection of the rights guaranteed in Article 6 para. 1 (Art. 6-1) of the Convention (cf. Eur. Court HR, the Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 16, para. 29). It is incumbent on the Government claiming non-exhaustion of domestic remedies to show that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (cf. Eur. Court HR, the Akdivar and Others v. Turkey judgment of 16 September 1996, para. 68, Reports-1996).

As regards the administrative remedy referred to by the Government, i.e. the complaint under Section 17 para. 1 of the State

Administration of Courts Act No. 80/1992, the Commission observes that the applicant pursued this remedy in substance. The Commission is not required to determine whether the complaint is an effective remedy, as the Government's objection is based on an incorrect factual premise.

As regards the "podnet", the Commission observes that the applicant, in his observations in reply, informed the Commission that in February/March 1996 he had lodged a "podnet" before the Constitutional Court and that on 16 May 1996 it was rejected as he was not represented by a lawyer.

It is true that the "podnet" can give rise to a declaration of excessive length of proceedings and, according to the Government, to an award of damages in respect of the length. However, where proceedings are still pending at first instance, the Commission considers that a remedy must be capable of accelerating the proceedings if it is to be effective. It has not been suggested that the Constitutional Court in "podnet" proceedings, is capable of interfering with pending proceedings in any way. The Constitutional Court had held on several occasions that it could not interfere with the decisions of the general courts, nor could it act as an appellate court in matters which are within the jurisdiction of the general courts (cf. No. 26384/95, Dec. 26.6.96).

In these circumstances, the Commission finds that it has not been established that the applicant had or has any effective remedy at his disposal which could remedy his complaints under Article 6 para. 1 (Art. 6-1) of the Convention. Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

As regards the merits of the application, the Government submit that they cannot consider the length of the proceedings as the applicant's claim for damages is still pending. Nevertheless, they are of the opinion that in the present case the proceedings have not been unreasonably slow.

The applicant submits that the overall length of the proceedings exceeds any notion of reasonableness.

The Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of "reasonable time", and having regard to all the information in its possession, that an examination of the merits of the complaint is required.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber