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. 2132/02
by Vladimír SIKA
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 10 May 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 27 December 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimír Sika, is a Slovakian national who was born in 1937 and lives in Trnava.

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

On 23 June 1993 the applicant brought a civil action against his neighbour, Mr P., in the Trenčín District Court (*Okresný súd*). He maintained that in 1991 P., with his truck, had damaged the applicant's fence. He sought an order that P. repair the fence and refrain from using the road adjacent to it.

On 30 May 1994 the applicant and P. reached a friendly settlement of the case before the District Court by which P. undertook to repair the fence, remove the damaged steel netting, and install and paint new netting of the same type.

On 10 January 1995 the applicant lodged a petition with the District Court for the judicial enforcement of the settlement, arguing that the way in which P. had repaired the fence did not comply with the settlement.

On 10 August 2000 the District Court dismissed the petition, finding that P. had repaired the fence properly.

On 30 November 2001, on the applicant's appeal, the Trenčín Regional Court (*Krajský súd*) quashed the decision of 10 August 2000 and remitted the matter to the District Court for re-examination. It found that the District Court had failed to establish the relevant facts adequately and that the evidence before it was not sufficient to justify the conclusion it had drawn.

On 9 December 2003 the District Court appointed a construction expert to inspect the site and assess whether there had been compliance with the settlement.

On 27 January 2004 the expert filed his report. He found that, in substance, P. had fulfilled the terms of the settlement except for some minor technical aspects.

On 29 January 2004 the District Court again dismissed the applicant's petition for judicial enforcement of the settlement. On the basis of the expert report, it concluded that P. had fulfilled his undertakings and that there was no cause for enforcement. The applicant appealed, arguing that the netting used by P. was not of the same make as the original, and that P. had failed to paint it.

On 29 April 2004 the Constitutional Court (*Ústavný súd*) found, following the applicant's complaint under Article 127 of the Constitution, that, in the enforcement proceedings, the District Court had violated the applicant's right under Article 48 § 2 of the Constitution to a hearing without unjustified delay, and his right under Article 6 § 1 of the Convention to a hearing within a reasonable time. The Constitutional Court further awarded the applicant 15,000[1] Slovakian korunas (SKK) by way of just satisfaction in respect of his non-pecuniary damage, and ordered the reimbursement of his legal costs. The Constitutional Court found no justification for the total length of the proceedings in the complexity of the case or the conduct of the parties. Moreover, it found that the District Court had been inactive without any justification from 12 January 1996 to 25 June 1997, from 20 August 1997 to 24 September 1999, and from 18 March 2002 to 9 December 2003, i.e. a total of 5 years and 2 months.

On 30 June 2004 the Regional Court upheld the decision of 29 January 2004, fully endorsing the factual findings and conclusions of the

[1] SKK 15,000 is an equivalent of approximately 380 euros

District Court. In addition, the Regional Court observed, *inter alia,* that the original netting of the applicant's fence was no longer made and that the netting installed by P. was of the same kind and even better quality.

On 21 October 2004 the Constitutional Court declared inadmissible as being manifestly ill-founded the applicant's complaint that the above enforcement proceedings and their outcome had been unfair, discriminatory or had violated his property rights. It found that the District Court and the Regional Court had properly examined and decided upon the applicant's petition for enforcement, that they had supported their decisions with adequate reasoning and that there was no appearance of a violation of the applicant's Convention rights in connection with the facts complained of.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that he had not had a fair hearing within a reasonable time.

2. Relying on Article 1 of Protocol No. 1, the applicant also complained that the repairs to the fence, which according to him had been arbitrarily approved by the courts, was aesthetically disturbing and insufficient to prevent domestic fowl from entering and damaging his property.

3. The applicant finally complained that he had been discriminated against, contrary to Article 1 of Protocol No. 12, in that the courts had arbitrarily found in favour of P.

THE LAW

1. The applicant complained of the lack of a fair hearing within a reasonable time, in violation of Article 6 § 1 of the Convention which, insofar as relevant, provides that:

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

(a) As to the complaint about the length of proceedings, the Court considers that it cannot, on the basis of the case file, determine its admissibility at the present stage 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.

(b) As to the complaint about the unfairness of the proceedings, the Court observes that the applicant's petition for enforcement was examined at two levels of jurisdiction. On 29 January and 30 June 2004, respectively, the District Court and the Regional Court found that P. had complied with the

terms of the settlement of 30 May 1994, and that there was accordingly no cause for enforcement. The courts based this finding on an expert opinion, and there is no indication that it was manifestly arbitrary or wrong. Furthermore, as noted by the Constitutional Court in its decision of 21 October 2004, the courts supported their findings by comprehensive reasoning. Thus the Court finds that the present case does not disclose any appearance of procedural unfairness contrary to Article 6 § 1 of the Convention.

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

2. The applicant further complained of a violation of his property rights contrary to Article 1 of Protocol No. 1 which reads as follows:

> "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 observes that the subject-matter of the enforcement proceedings was the determination of whether there had been compliance with the terms of a settlement. Courts at two levels of jurisdiction determined the matter in a procedure which, as the Court has found above, was fair. The determination of the disputed property rights of private individuals in such a manner does not give rise to an issue under Article 1 of Protocol No. 1.

It follows that this complaint is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant lastly complained of discrimination contrary to Article 1 of Protocol No. 12.

The Court observes that Protocol No. 12 has not been ratified by the Slovak Republic. It follows that this complaint in respect of Slovakia is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President