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. 62175/00
by Štefan TRENČIANSKÝ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 4 March 2003 as a Chamber composed of

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

Having regard to the above application lodged on 26 June 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Štefan Trenčianský, is a Slovakian national, who was born in 1948 and lives in Bratislava.

A. The circumstances of the case

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

On 5 January 1983 the applicant and his wife purchased a house situated in Michalovce from the applicant's parents-in-law. The purchase contract was registered with the State Notary's Office in Michalovce on the same day. In it the vendors were reserved the right to continue using the house until their death. In the contract the parties also declared that the purchase price of 123,330 Czechoslovakian korunas, which corresponded to the value of the house established by an expert, had been paid prior to its signature.

In March 1990 the applicant's mother-in-law filed an action with the Michalovce District Court claiming that the contract should be declared void. She mainly relied on Article 37 of the Civil Code and alleged that the applicant and his wife had not paid the purchase price and that they had forced her and her late husband to conclude the contract.

On 21 November 1990 the Michalovce District Court declared the contract void. It found, with reference to witness statements and documentary evidence, that the vendors had concluded it under psychological pressure, that the contract did not correspond to their free will, and that it did not address the right of use of the plot on which the house was built.

On 11 January 1991 and on 6 May 1991 the applicant and his wife appealed. They challenged the conclusions of the District Court with reference to documentary evidence.

On 31 May 1991 the Košice Regional Court quashed the first instance judgment as it did not specify what kind of psychological pressure the defendants had allegedly exercised on the vendors, and because it was not clear whether the contract corresponded to the genuine will of the parties. The Regional Court therefore instructed the District Court to hear the State Notary who had registered the contract and to establish whether the purchase price had been determined correctly. The judgment stated that it was for the claimant to prove that she and her late husband had been put under pressure.

On 6 December 1991 the Michalovce District Court again declared the contract void. After having taken further evidence, the District Court established that the applicant and his wife had exercised pressure on the vendors in that they had repeatedly pointed to their age and to their health problems, and that they had offered to take care of them subject to the

transfer of the house. The court noted that there existed no evidence as to whether the applicant and his wife had paid the purchase price as alleged by them. It therefore relied on the argument of the applicant's mother-in-law according to which the purchase contract had been concluded formally with a view to reducing the costs of the transfer. The transfer of the property had been motivated by the vendors' wish to ensure that the applicant and his wife take care of them in the future. The District Court concluded that the contract did not correspond to the genuine will of the parties and that it was therefore void within the meaning of Article 37 of the Civil Code.

On 18 December 1991 the applicant and his wife appealed. On 11 and 13 May 1992 they made further written submissions to the Regional Court.

On 31 June 1992 the Košice Regional Court quashed the District Court's judgment of 6 December 1991. The appellate court found that the evidence available did not suffice to conclude that the claimant and her late husband had been put under pressure by the defendants or that the contract in question was invalid. In its judgment the Regional Court instructed the District Court to hear the claimant thoroughly with a view to assessing the validity of the contract in the light of Article 37 of the Civil Code, that is whether the parties had concluded it of their own free will, with a serious intention to do so and in an unequivocal manner.

On 3 July 1993 the applicant's mother-in-law died. The District Court allowed two of her legal successors to join the proceedings as claimants.

In its third judgment on the case, delivered on 3 May 1994, the Michalovce District Court again decided that the purchase contract was void. The judgment referred to detailed statements by the applicant's mother-in-law according to which the applicant's wife had insistently incited her parents to transfer the house to her and the applicant. In doing so the applicant's wife referred to the bad health of her mother and to the age of her parents. She promised to move to Michalovce and to look after them if they accepted to transfer the house. The applicant's mother-in-law further stated before the court that she had accepted the proposal because she was an invalid and her health had deteriorated. She feared that she might not be properly looked after in the future. Her husband agreed to the transfer as he shared her anxiety.

The District Court had also regard to the opinion of a psychiatrist according to whom the applicant's mother-in-law had suffered from constant stress due to a lasting deterioration of her health. The expert expressed the view that, in 1983, her reaction to stress could have brought about a mental state which gave rise to great pressure on her to sign the contract. The District Court concluded that the vendors had not concluded the contract of their free will as required by Article 37 of the Civil Code.

The applicant and his wife appealed. They also challenged the District Court judge on the ground that he had been the classmate of one of the claimants at the elementary school.

On 8 May 1995 the Košice Regional Court dismissed the request for exclusion of the District Court judge. The decision stated that the mere fact that the judge and one of the claimants had attended together the same elementary school did not suffice for concluding that the judge lacked impartiality. Furthermore, there was no indication that the judge and the claimant entertained any contacts after they had graduated from that school.

On 28 November 1995 the Regional Court quashed the District Court's judgment of 3 May 1994. The decision was served on the applicant's lawyer on 12 March 1996. It stated that the District Court had repeatedly failed to establish the relevant facts of the case and that it had not followed the views expressed in the Regional Court's decision of 31 June 1992. The Regional Court pointed out, in particular, that the District Court had disregarded the fact that the applicant's mother-in-law had started challenging the contract seven years after it had been concluded. The Regional Court also referred to evidence submitted by the defendants indicating that in 1983 the applicant's mother-in-law had been in good health. The Regional Court further noted that the expert opinion related to facts which had occurred ten years earlier and that the expert had not examined the medical documents concerning the applicant's mother-in-law. The appellate court instructed the District Court to take further evidence in this respect.

Subsequently the District Court held several hearings. On 21 August 1997 the applicant unsuccessfully requested that he be allowed to tape-record the hearing. The court heard three doctors who had treated the applicant's mother-in-law. Both parties put questions to the witnesses. The record indicates that, after one of the doctors had answered several questions put by the applicant, the judge prevented the applicant from asking futher questions to the doctor.

On 25 August 1997 the applicant challenged the District Court judge. He alleged, in particular, that the judge had not allowed him to record the oral submission made at the hearing held on 21 August 1998, that he had been prevented from putting further questions to one of the doctors, and that the judge had refused to take further evidence with a view to establishing the state of health of the applicant's mother-in-law at the relevant time.

On 29 October 1997 the Košice Regional Court found that the fact that the applicant disagreed with the way in which the District Court judge had conducted the hearing was not a sufficient reason for concluding that the judge lacked impartiality.

On 18 December 1997 the Michalovce District Court delivered its fourth judgment declaring the contract void. The court held, with reference to the statements which the applicant's mother-in-law had made before it prior to her death in 1993, that she had feared not to be looked after in an appropriate manner in the future and that she had agreed, mainly upon the insistence of the applicant's wife, to transfer the house subject to the

condition that the applicant and his wife would live in it and provide assistance to her and her husband.

The District Court had further regard to the above opinion submitted by a psychiatrist and to statements of the doctors who had treated the applicant's mother-in-law. In particular, the doctor who had treated the applicant's mother-in-law between 1982 and May 1983 confirmed that she had suffered from a cancer, from coxarthrosis and also from a disease of the vertebrae.

The doctor who had treated the applicant's mother-in-law from June 1983 to 1990 confirmed that she had suffered from several serious diseases affecting her mobility as a result of which she had needed assistance in everyday life. The doctor also stated that the patient had complained to him that she had problems with her daughter.

The District Court found no discrepancy in the statements of the applicant's mother-in-law, the statements of the doctors and the above expert opinion. In its judgment it therefore relied on the arguments put forward by the applicant's mother-in-law and noted that she had expressly stated before it that the contract had not corresponded to her and her husband's genuine will and that they had signed it as a result of pressure which had been exercised on them.

The court also noted that the applicant's mother-in-law had alleged that the contract had been concluded formally and that she and her husband had not asked the applicant and his wife to pay the price. The District Court held that the defendants had not shown that they had paid the purchase price. Accordingly, the purchase contract was void within the meaning of Articles 37 (1) and 39 of the Civil Code.

On 19 February 1998 the applicant and his wife appealed. They argued that the first instance court had disregarded the views earlier expressed by the Regional Court and that it had failed to establish the relevant facts correctly.

On 8 December 1998 the Košice Regional Court upheld the first instance judgment after having examined further documentary evidence. The judgment stated that the evidence available was not sufficient to conclude that the vendors had signed the contract under pressure. However, the Regional Court noted, with reference to the statements by the applicant's mother-in-law made before the District Court on 12 November 1990, 13 May 1991, 19 July 1991 and on 17 November 1991, that she and her late husband had not expected the applicant and his wife to pay the price to them as they had had sufficient means, and that they had agreed to formally conclude a purchase contract with a view to reducing the transfer costs. The Regional Court also noted that the applicant and his wife were not in a position to show that they had actually paid the purchase price or that they had possessed such a sum at the relevant time.

The Regional Court concluded, with reference to Article 37 of the Civil Code, that the purchase contract concluded on 5 January 1983 was void as it did not correspond to the genuine will of the parties.

On 11 February 1999 the applicant and his wife filed an appeal on points of law. They alleged, without submitting further details, that the District Court had failed to correctly record witness statements, that they had not been allowed to put questions to witnesses at the hearings held at first instance, and that the Regional Court had not taken the necessary evidence with a view to establishing whether or not they had possessed the sum in question.

On 10 March 2000 the Supreme Court dismissed the appeal on points of law. The decision stated that the courts are free to decide which evidence need to be taken. The Supreme Court examined the documents included in the case-file and found nothing to support the allegation that the records of hearings were incorrect or that the rights of the applicant and of his wife had been infringed at lower instances.

Throughout the proceedings the applicant and his wife were represented by a lawyer.

B. Relevant domestic law

Article 37 (1) of the Civil Code provides that legal acts must be carried out freely, with serious intention and in a clear and certain manner failing which they shall be void.

Pursuant to Article 39 of the Civil Code, a legal act the contents or purpose of which is contrary to law, immoral or which circumvents the law is void.

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that his right to a fair trial within a reasonable time was not respected. He alleges, in particular, that the District Court judge dealing with the case lacked impartiality and conducted the proceedings to the advantage of the claimants, that the judge dismissed the request for further evidence to be taken and disregarded the instructions of the Regional Court. The applicant further complains that in the proceedings leading to the judgment of 8 December 1998 the Košice Regional Court relied on contradictory statements of the original claimant, that it disregarded the relevant facts of the case and decided arbitrarily.

THE LAW

The applicant alleges that his right to a fair hearing by an impartial tribunal was not respected and that the length of the proceedings was excessive. 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 fair ... hearing within a reasoanble time by an independent and impartial tribunal established by law."

a) The applicant complains that the District Court judge dealing with the case lacked impartiality and that his requests for exclusion of that judge were not granted.

In the proceedings before the Slovakian authorities the applicant challenged the judge of the Michalovce District Court on the ground that the latter (i) had been the classmate of one of the claimants at elementary school, (ii) had not allowed the applicant to tape-record the submissions made at a hearing and (iii) had prevented the applicant from putting further questions to a witness and had disregarded the proposals for further evidence to be taken as regards the health of the original claimant.

The Court concurs with the Košice Regional Court's above findings according to which neither the fact that the judge and one of the claimants had attended together the same elementary school nor the applicant's dissatisfaction with the way in which the District Court judge had proceeded with the case were sufficient reasons for concluding that the judge lacked impartiality.

In any event, the judgments delivered by the judge in question were subject to subsequent control by the Košice Regional Court which was a judicial body that had full jurisdiction in the case. The applicant did not challenge the appellate court judges and there is no indication that they lacked impartiality. In these circumstances, the Court finds that any shortcomings relating to the alleged absence of an impartial tribunal at first instance were remedied in the appellate proceedings (see *De Haan v. the Netherlands,* judgment of 26 August 1997, *Reports* 1997-IV, § 52, with further references).

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

b) The applicant further complains that the proceedings in question were unfair in that his right to question witnesses and submit arguments and evidence was restricted, and that the courts failed to establish the relevant facts correctly and decided arbitrarily.

The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court

unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the present case the the Michalovce District Court, in its judgment delivered on 18 December 1997, found that the vendors had concluded the contract under pressure. It also held that the applicant's mother-in-law had repeatedly stated that the contract had been concluded formally with a view to reducing the costs of the transfer and that she and her husband had not asked the applicant and his wife to pay the price. Furthermore, the defendants had not shown that they had paid the purchase price. The District Court concluded that the purchase contract was void within the meaning of Article 37 (1) and 39 of the Civil Code.

In the judgment of 8 December 1998 the Košice Regional Court held that that the evidence available was not sufficient to conclude that the vendors had signed the contract under pressure. However, it concurred with the first instance court's finding, with reference to the evidence available, that the parties had concluded the contract formally and that it did not correspond to their genuine will. It was therefore void within the meaning of Article 37 of the Civil Code.

The Court notes that the alleged unfairness in the proceedings at first instance related to the taking and recording of evidence which concerned the state of health of the applicant's mother-in-law at the relevant time. That evidence was relevant for determining whether or not the vendors had concluded the contract under pressure. In its final decision on the case the Regional Court did not rely on the evidence thus obtained and found that the contract was void for a different reason. In these circumstances, the above shortcomings in the proceedings at first instance referred to by the applicant did not, in the Court's view, affect the fairness of the proceedings within the meaning of Article 6 § 1.

The Court further notes that in the proceedings the applicant was assisted by a lawyer and that the Regional Court gave sufficient and relevant reasons for its final judgment.

In view of the above, and given that it has only limited power to review alleged errors of fact or law committed by national courts, the Court considers that in the present case there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair trial within the meaning of Article 6 § 1 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.

c) To the extent that the applicant complains about the length of the proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint 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.

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.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President