CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55353/00
by Eleonóra WITKOVSKÁ
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 30 March 2004 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 Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 13 October 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Eleonóra Witkovská, is a Slovakian national, who was born in 1931 and lives in Smolník.

A. The circumstances of the case

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

1. Civil proceedings against a private company

On 3 April 1998 the applicant sued a private company before the Poprad District Court. She claimed that construction works carried out by the defendant in her house resulted in defects and that the defendant should be ordered to repair those defects.

On 22 May 1998 the judge asked the applicant to submit further information including the address of the defendant as a letter of 15 April 1998 could not be served on its representatives. The applicant replied on 16 June 1998.

On 16 July and on 14 September 1998 the judge asked the defendant to submit comments on the action.

On 27 October 1998 the District Court discontinued the proceedings as the defendant had not been indicated correctly in the action. On 30 November 1998 the applicant appealed.

The District Court unsuccessfully attempted to serve the decision of 27 October 1998 and the applicant's appeal against it on the representative of the defendant. On 1 March 1999 the police informed the court that the representative had moved and that his address was unknown. The District Court then unsuccessfully tried to have the above documents delivered at the registered address of the defendant company. The representative of the defendant company appeared at the District Court and was served with the documents on 18 May 1999. On 1 July 1999 the case file was transmitted to the Prešov Regional Court.

On 17 November 1999 the Regional Court quashed the District Court's decision of 27 October 1998. The Regional Court's decision was delivered to the District Court on 30 December 1999.

The District Court heard the parties on 11 February 2000 and on 10 March 2000. In the course of March 2000 the parties submitted further documents at the court's request.

On 19 October 2000 the District Court heard witnesses. It then decided to obtain an expert opinion.

An expert was appointed on 22 December 2000. The applicant was instructed to pay an advance on the expert's fees. The expert submitted the opinion on 30 January 2001.

On 16 February 2001 and on 5 April 2001 the District Court urged the applicant to pay an advance on the expert's fees. On 5 April 2001 the applicant replied that the bank account number of the District Court had not been notified to her. On 23 April 2001 the applicant paid the sum due after

she had received the relevant money transfer document from the District Court.

On 19 July 2001 the case was adjourned as the applicant's representative did not appear and the applicant was not in a position to comment on the expert opinion as the lawyer had not transmitted it to her.

The applicant submitted her written comments on the expert opinion on 11 September 2001.

Following the applicant's complaint about the conduct of the proceedings the file was sent to the Regional Court on 24 October 2001. It was returned to the District Court on 13 December 2001.

On 12 February 2002 and on 28 March 2002 the District Court adjourned the case with a view to obtaining further evidence. Such evidence was submitted in the course of May 2002.

On 12 July 2002 the judge requested the defendant to submit additional information.

A hearing was scheduled for 13 September 2002. The applicant's lawyer and a witness informed the District Court that they could not appear. The lawyer asked the court to proceed with the case in her absence. On 13 September 2002 the case was adjourned as the applicant insisted that it be proceeded with only in the presence of her lawyer.

On 26 September 2002 the District Court partly granted the applicant's action. The judgment was served on the parties on 15 and 26 November 2002 respectively.

On 29 November 2002 the applicant appealed against the part of the District Court's judgment by which her claim had been dismissed. The defendant appealed on 10 December 2002.

On 7 January 2003 the judge instructed the defendant to pay the court fee and to submit another copy of the appeal. The case file was submitted to the Regional Court on 7 March 2003.

On 23 September 2003 the Prešov Regional Court upheld the District Court's judgment of 26 September 2002.

2. Proceedings before the Constitutional Court

On 12 February 2003 the applicant complained to the Constitutional Court about the length of the above proceedings before the Poprad District Court.

On 12 March 2003 the Constitutional Court declared the complaint admissible.

On 2 July 2003 the Constitutional Court found that the applicant's right to a hearing within a reasonable time had not been violated. The decision stated that the case was not complex from the legal point of view. However, certain difficulties arose due to the fact that the contract between the applicant and the defendant concerning the repair of the applicant's house had been concluded orally and that its contents were disputed between the

parties. This required extensive evidence to be taken including an expert opinion.

The Constitutional Court held that the applicant and her representative had contributed to a certain extent to the length of the proceedings in that the lawyer had not transmitted the expert opinion to the applicant who was therefore not able to comment on it at the hearing held on 19 July 2001 at which her lawyer did not appear. In addition, the case had to be adjourned on 13 September 2002 as the applicant did not agree that it be proceeded with in the absence of her lawyer. The Constitutional Court's decision also stated that the applicant had paid an advance on the expert's fees belatedly and that she had not informed the District Court in time that she did not have at her disposal the information necessary for paying the fee.

As regards the conduct of the District Court, the Constitutional Court noted that it had remained inactive between 28 March 2000 and 13 September 2000, that is for five and a half months. However, apart from that period, the District Court had proceeded with the case in an appropriate manner in the particular circumstances of the case. The Constitutional Court noted, in particular, that the District Court had availed itself of all possibilities with a view to having documents served on the representative of the defendant company. It concluded that the overall length of the proceedings was not excessive in the light of the particular circumstances of the case.

3. Facts relating to persecution of the applicant, for political reasons, and to her subsequent rehabilitation

In 1971 the applicant was dismissed from her job for political reasons. The final decision on this issue was delivered by the Košice Regional Court on 9 February 1972.

The State-owned company concerned again employed the applicant as from 1 November 1990. The company's representatives apologised to the applicant for the wrongs which had been caused to her. On 25 July 1991 the employer issued a certificate to the applicant under Section 22(1) of the Extra-Judicial Rehabilitations Act.

The applicant sought to obtain compensation for her earlier persecution. She was informed by several authorities including the Constitutional Court and the General Prosecutor's Office that her claim for compensation could not be satisfied under the existing law.

On 28 August 1996 the applicant claimed compensation for lost income from the Ministry of Justice under the State Liability Act of 1969. The Ministry refused to satisfy the claim and the applicant sought redress before the Spišská Nová Ves District Court.

The District Court dismissed the action on 18 February 1997. The decision stated that the relevant judicial decisions concerning the applicant's dismissal had not been quashed in a separate set of proceedings as required

by Section 4(1) of the State Liability Act, and that that the applicant had no right to compensation under Section 22(6) of the Extra-Judicial Rehabilitations Act.

On 17 June 1999 the Košice Regional Court upheld the first instance judgment. The decision stated that in the applicant's case the Extra-Judicial Rehabilitations Act was a *lex specialis* with respect to the State Liability Act of 1969.

B. Relevant domestic law

Extra-Judicial Rehabilitations Act of 1991

The aim of the Extra-Judicial Rehabilitations Act (*Zákon o mimosúdnych rehabilitáciách*, in force as from 1 April 1991) is to redress certain infringements of property and social rights which occurred between 25 February 1948 and 1 January 1989. The following provisions are relevant in the present case.

Pursuant to Section 21(1), legal actions terminating a person's contract of employment for reasons of political persecution or in violation of generally recognised human rights and freedoms are to be considered void for the purpose of the Extra-Judicial Rehabilitations Act.

Section 22(1) provides that the former employer or its successor shall issue, at the request of the person concerned, a certificate that the latter's contract of employment was terminated for reasons mentioned in Section 21(1).

Pursuant to paragraph 6 of Section 22, the fact that a legal act is considered as void under Section 21 neither renews an earlier terminated labour contract nor does it give a right to compensation for lost income or other damage.

Under Section 24(1), when the termination of employment is considered void within the meaning of Section 21, the period between the termination of the contract of employment and the date when the person concerned acquired a right to an old-age pension or invalidity pension is to be considered as the period of employment for the determination of that person's social security rights.

State Liability Act of 1969

Section 1 of Act No. 58/1969 on the liability of the State for damage caused by a State organ's decision or by its erroneous official action ("the State Liability Act") provides that the State is liable for damage caused by unlawful decisions delivered by a public authority in the context of, *inter alia*, civil proceedings.

Pursuant to Section 4(1), a claim for damages can only be lodged after the decision by which damage was caused has been quashed by the competent authority as being unlawful.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that her right to a fair hearing within a reasonable time had been violated in the proceedings concerning her above claims. She also alleged a violation of Article 6 § 2 of the Convention in that her persecution had been based on unsubstantiated accusations.

THE LAW

The applicant alleged a violation of Article 6 §§ 1 and 2 of the Convention the relevant part of which provides:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by a[n] ... tribunal...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. As regards the applicant's complaint about the length of the proceedings concerning her action against a private company, those proceedings lasted from 3 April 1998 to 23 September 2003, that is 5 years, 5 months and 20 days. During this period the case was examined by courts at two levels of jurisdiction.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The Court finds no reason to question the view expressed by the Constitutional Court that certain difficulties in dealing with the case had been due to the fact that the contract in question had been concluded only orally and that its contents had been disputed between the parties. It accepts that the District Court by its conduct contributed to a certain extent to the length of the proceedings. Considering all relevant circumstances of the case the Court finds, however, that the overall length of the proceedings was

not contrary to the reasonable time requirement laid down in 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.

2. As to the applicant's complaint that the proceedings concerning her action against a private company were unfair, the Court notes that she did not raise it before the Constitutional Court in a complaint under Article 127 of the Constitution.

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

3. To the extent that the applicant alleged a violation of her right to a fair hearing in the proceedings concerning her claim for compensation for her political persecution, the Court notes that domestic courts at two levels of jurisdiction found, for reasons expressly set out in their judgments and with reference to Section 22(6) of the Extra-Judicial Rehabilitations Act, that her claim can be satisfied neither under that Act nor under the State Liability Act of 1969 the guarantees of which did not extend to the applicant's case. The Court finds no indication that this conclusion was arbitrary or that the proceedings complained of did not meet the requirements of a fair hearing within the meaning of Article 6 § 1.

To the extent that the applicant may be understood as complaining that the domestic law prevented her from obtaining compensation, the Court recalls that Article 6 does not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 46, § 81; the Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 70, § 192; the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301, p. 37, § 80).

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

4. The applicant further complained about the length of the proceedings concerning her claim for compensation.

The applicant filed her claim with the Ministry of Justice on 28 August 1996. The Ministry dismissed it and subsequently the case was examined by courts at two levels of jurisdiction. The final decision was delivered by the Košice Regional Court on 17 June 1999. In the light of the information before it, the Court considers that the overall length of the proceedings, namely 2 years, 9 months and 20 days, was not contrary to the reasonable time requirement laid down in 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.

5. To the extent that the applicant complained about a violation of her right to be presumed innocent due to her persecution for political reasons,

the Court notes that the relevant facts relate to a period prior to 18 March 1992 which is the date when the former Czech and Slovak Federal Republic (to which Slovakia is one of the successor States) ratified the Convention and recognised the right of individual application. However, the Convention only governs facts which are subsequent to its entry into force with respect to the Contracting Party concerned.

It follows that this complaint is incompatible *ratione temporis* 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

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President