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

SECOND SECTION

CASE OF MATTER v. SLOVAKIA

(Application no. 31534/96)

JUDGMENT

STRASBOURG

5 July 1999

In the case of Matter v. Slovakia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr C. L. ROZAKIS, *President*,
Mr M. FISCHBACH,
Mr B. CONFORTI,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr A. BAKA,
Mr E. LEVITS, *Judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 29 June 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 2 November 1998. It originated in an application (no. 31534/96) against the Slovak Republic lodged with the Commission under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr Wilibald Rudolf Matter ("the applicant"), on 7 August 1993. The Slovak Government are represented by their Agent, Mr R. Fico.

2. On 14 January 1999 a Panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court assigned the case to the Second Section. The Chamber constituted within the Section included *ex officio* Mrs V. Strážnická, the judge elected in respect of Slovakia (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr C. L. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr M. Fischbach, Mr B. Conforti, Mr G. Bonello, Mr A. Baka and Mr E. Levits (Rule 26 § 1 (b)).

3. On 10 February 1999 the President invited the parties to submit memorials on the issues arising in the case (Rule 59 § 3). The applicant was further invited to submit his claim for just satisfaction under Article 41 of the Convention (Rule 60 § 1). The Government replied on 8 April and 7 May 1999. The applicant failed to respond.

4. On 30 March 1999 the Court (Second Section) decided, pursuant to Rule 59 § 2 *in fine*, not to hold a hearing in the case.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Slovak citizen, born in 1925 and resident in Čadca.

6. In 1976 the applicant's legal capacity was restricted. In 1983 the Čadca District Court (*Okresný súd* - "the District Court") deprived the applicant of legal capacity entirely on the ground that he suffered from an explosive and vexatious form of paranoid psychosis. The District Court noted that the applicant had been undergoing out-patient psychiatric treatment for twenty years and that his personality had been deteriorating due to an increased syndrome of dementia.

7. On 18 February 1987 the District Court started, at the applicant's request of 2 February 1987, proceedings pursuant to Section 81 (1) of the Code of Civil Procedure (see paragraph 41 below) with a view to determining whether the applicant's legal capacity could be restored. The applicant refused to be examined by several experts and on 23 February 1989 the District Court decided that legal capacity could not be restored to him.

8. On 30 May 1990 the Supreme Court (*Najvyšší súd*) quashed the judgment on the ground that the District Court had not obtained an expert opinion as required by the law. The Supreme Court pointed out that the District Court had failed to avail itself of its rights under Section 52 of the Code of Civil Procedure and that it had disregarded, *inter alia*, Sections 6, 127 (1) and 187 (1) of the Code of Civil Procedure in conjunction with Section 10 (1) of the Civil Code. It ordered the District Court to examine the case again on the basis of a relevant expert opinion. The District Court appointed an expert on 26 June 1990.

9. As the applicant refused to be examined as an out-patient, the expert informed the District Court that an objective assessment of the applicant's health required an in-patient examination.

10. On 1 April 1992 the District Court ordered that the applicant should be examined in a mental hospital pursuant to Section 187 (3) of the Code of Civil Procedure and appointed a new expert. The latter was asked to submit an opinion as to whether the applicant's health had changed to such an extent that legal capacity could be restored to him.

11. On 13 May 1992 the District Court invited the applicant to come to the mental hospital in Sučany on 21 May 1992. The applicant was warned that he could be brought there pursuant to Section 52 (1) of the Code of Civil Procedure if he failed to comply. The applicant did not come to the hospital.

12. On 16 May 1992 the applicant lodged an appeal against the District Court's decision of 1 April 1992.

13. On 17 July 1992 the Banská Bystrica Regional Court (*Krajský súd* - "the Regional Court") informed the District Court that the aforesaid

decision was premature as it was first necessary to appoint a guardian to represent the applicant.

14. On 9 September 1992 the District Court appointed the Čadca District Office (*Obvodný úrad*) as the applicant's guardian. The applicant's appeal against this decision was dismissed by the Regional Court on 28 December 1992 on the ground that he lacked capacity to lodge it.

15. On 28 September 1992 the Čadca District Prosecutor joined the applicant in the proceedings concerning the latter's legal capacity.

16. On 20 October 1992 a representative of the authority appointed as the applicant's guardian and the public prosecutor informed the District Court that they agreed with the applicant's examination in a hospital.

17. On 30 November 1992 the Regional Court dismissed the applicant's appeal against the District Court's decision of 1 April 1992 as the applicant lacked standing to lodge it. The Regional Court held that an examination in a hospital was necessary within the meaning of Section 187 (3) of the Code of Civil Procedure as the applicant had refused to be examined by an expert.

18. On 19 April 1993 the Čadca District Office informed the District Court that it agreed to legal capacity being restored to the applicant.

19. On 3 May 1993 the District Court invited the applicant to come to the mental hospital in Sučany on 12 May 1993. The applicant was informed that he could be brought to the hospital if he failed to appear. The applicant did not comply with the court's request.

20. On 19 August 1993 two policemen brought the applicant to the hospital in Sučany under an order by the president of the District Court. After a short period the applicant started co-operating with the expert. The examination was completed and the applicant was released from the hospital on 2 September 1993.

21. In his opinion submitted on 29 October 1993 the expert noted that the applicant, who had undergone a brain operation in 1984 and had had several heart attacks, suffered from a vexatious form of paranoid psychosis, from an organic psychosyndrome and from a heart disease. The expert concluded that legal capacity could partially be restored to the applicant and recommended a re-examination after two or three years.

22. On 23 November 1993 the District Court, following the expert's opinion, restricted the applicant's legal capacity in that he was not entitled to act before public authorities on his own, to conclude contracts, to assume obligations in writing and to work regularly.

23. In his appeal of 9 March 1994 the applicant requested that legal capacity should be restored to him entirely. He supplemented his appeal on 12 March, 28 April, 4 and 6 May as well as on 6 and 7 June 1994. He also requested that his case should be dealt with by another court.

24. On 30 August 1994 the Supreme Court dismissed the applicant's request to have his case transferred to another court. The Supreme Court returned the file to the Regional Court and ordered it to establish whether the applicant challenged the Regional Court judges.

25. On 28 September 1994 the Regional Court transmitted the Supreme Court's enquiry to the District Court which communicated it to the Čadca District Office. On 27 October 1994 the latter informed the District Court that it was not in a position to provide an answer. On 7 November 1994 the Regional Court asked the District Court for a reply. On 8 December 1994 the Regional Court addressed the request directly to the District Office.

26. On 9 February 1995 the Regional Court sent the file to the Supreme Court with the explanation that it had not been possible to obtain the requested information. The Regional Court expressed the view that the applicant had challenged all its judges.

27. On 6 March 1995 the Supreme Court decided that the Regional Court's judges were not excluded.

28. On 29 May 1995 the Ministry of Justice requested the District Court to submit the case-file to it.

29. On 30 October 1995 the Regional Court quashed the first instance judgment of 23 November 1993 on the ground that the District Court had failed to comply with the obligation to hear the expert as required by Section 187 (3) of the Code of Civil Procedure. In view of the time which had elapsed after the delivery of the first instance judgment, the Regional Court considered it necessary to update the expert opinion.

30. On 5 February 1996 the District Court decided to obtain a second expert opinion on the applicant's mental health and adjourned the proceedings.

31. On 31 October 1996 the District Court requested the Ministry of Health to indicate a medical authority which could prepare a second expert opinion. On 18 November 1996 the Ministry suggested that the applicant be examined at the psychiatric clinic of the University Hospital in Bratislava.

32. On 22 November 1996 the head of the Čadca District Office asked the District Court to discharge the District Office of the applicant's guardianship. On 7 January 1997 the District Office proposed that Mr J. Jašurek, a lawyer practising in Čadca, be appointed guardian instead. In a letter dated 31 January 1997 the lawyer accepted the proposal.

33. On 25 March 1997 the Regional Court requested the District Court, in the context of different proceedings, to submit the file concerning the guardianship of the applicant to it. The Regional Court reiterated its request on 30 June 1997.

34. On 21 October 1997 the District Court ordered that the applicant be examined at the psychiatric clinic of the University Hospital in Bratislava.

35. On 22 October 1997 the District Court appointed Mr Jašurek as the applicant's guardian.

36. On 3 November 1997 the applicant informed the head of the psychiatric clinic of the University Hospital in Bratislava that he disagreed with an examination.

37. On 16 October 1998 the District Court stayed the proceedings until the applicant's health permitted his examination in Bratislava.

38. In a report of 21 January 1999 the doctor treating the applicant stated that the applicant was immobile and that he was not able to undergo an examination of his mental health in Bratislava.

39. On 30 April 1999 the District Court discharged Mr Jašurek, at his own request, of his duties as the applicant's guardian. It appointed the Čadca County Office (*Okresný úrad*) as the guardian.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Civil Code

40. Section 10 of the Civil Code, so far as relevant, reads as follows:

> "1. An individual who, because of a lasting mental disorder, is entirely incapable of carrying out legal acts shall be deprived of legal capacity by a court.
>
> 2. A court shall restrict the legal capacity of an individual who, because of a lasting mental disorder ..., is not capable of carrying out certain legal acts. The extent of the restriction shall be specified in the court's decision.
>
> 3. A court shall modify or quash the decision on deprivation or restriction of legal capacity when the reasons on which it was based no longer exist."

B. Code of Civil Procedure

41. The relevant provisions are as follows:

Section 6

> "A court shall proceed with a case in co-operation with the parties so that a speedy and effective protection of rights be ensured and that the facts in dispute be reliably established."

Section 52

> "1. When a person summoned to an examination or before an expert fails to appear without an excuse, the president of the court's chamber can order to bring him or her there subject to prior notice."

Section 81 (1) provides that in cases concerning, *inter alia*, a person's legal capacity courts may start proceedings *ex officio* even if no formal action was brought.

Under Section 127 (1) a court shall, *inter alia*, appoint an expert after having heard the parties when the decision depends on an assessment of facts requiring special knowledge.

Pursuant to Section 187 (1), in proceedings concerning a person's legal capacity, a guardian is to be appointed to the person concerned by the president of the court's chamber. In such proceedings a court shall always

hear an expert. Upon the latter's proposal a court can order an examination of the person concerned in a hospital for no longer than three months if it is considered necessary for the determination of his or her state of health (Section 187 (3)).

C. Established judicial practice

42. When a court examines the question whether legal capacity can be restored to a person, it is not bound by the parties' submissions. It may quash the original decision on deprivation or restriction of legal capacity. The court may also restrict a person's legal capacity to such an extent as it deems it necessary even if it was not requested in the action or, as the case may be, in the initiative upon which it started the proceedings (Collection of judicial decisions and opinions, No. R 2/1984).

43. Courts should apply measures provided for, *inter alia*, in Section 52 of the Code of Civil Procedure rather than discontinue the proceedings when a participant remains inactive (Collection of judicial decisions and opinions, No. R 13/1977).

PROCEEDINGS BEFORE THE COMMISSION

44. Mr Matter applied to the Commission on 7 August 1993. He complained about the length and fairness of the proceedings concerning his legal capacity and that he was examined in a mental hospital against his will. He alleged, in substance, a violation of Articles 6 § 1 and 8 of the Convention.

45. The Commission declared the application partly admissible on 16 September 1997. In its report of 20 May 1998 (former Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1. The Commission further concluded, by 9 votes to 4, that there had been no violation of Article 8[1].

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

46. In their written submissions the Government informed the Court that they respected the conclusions reached by the Commission and that the applicant had failed to respond to their proposals to reach a friendly

1. *Note by the Registrar*. A copy of the Commission's report is obtainable from the Registry.

settlement in the case. They asked the Court "... to discontinue the proceedings in this matter by reason of the applicant's indifference".

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

47. The Government argued that the Court was not required to proceed with the case as the applicant remained inactive in the proceedings before it.

48. The Court, having regard to the applicant's situation and to the fact that the application was referred to it by the Commission, does not consider it appropriate to apply Article 37 § 1 of the Convention in the instant case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

49. The applicant complained of the length of the proceedings concerning his legal capacity. He alleged a violation of Article 6 § 1 of the Convention, which provides:

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

50. The Government contended that the applicant's own conduct had considerably contributed to the duration of the proceedings.

A. Applicability of Article 6 § 1

51. The purpose of the proceedings is to determine whether or not legal capacity can be restored to the applicant, i.e. whether or not he is entitled, through his own acts, to acquire rights and undertake obligations set out, *inter alia*, in the Civil Code. Their outcome is therefore directly decisive for the determination of the applicant's "civil rights and obligations". Accordingly, Article 6 § 1 is applicable.

B. Period to be taken into consideration

52. The proceedings were brought on 18 February 1987. However, the relevant period began only on 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition pursuant to former Article 25. As of 1 January 1993, the Slovak Republic, as one of the two successor States, took over, according to the territorial principle, all rights and obligations arising under international

treaties which had bound the Czech and Slovak Federal Republic and made relevant statements to this effect at the international level. The Court notes that the proceedings in question have not yet ended. The period to be taken into consideration has therefore exceeded seven years and three months.

53. In order to determine the reasonableness of the time that elapsed after 18 March 1992, the Court must take account of the state of the proceedings at that time (see the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

C. Reasonableness of the length of the proceedings

54. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among other authorities, the Pélissier et Sassi v. France judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 67, and the Philis v. Greece (no. 2) judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35). In cases relating to civil status and capacity, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have (see, e.g., the Maciariello v. Italy judgment of 27 February 1992, Series A no. 230-A, p. 10, § 18).

55. The Court considers that the case is of some complexity due to the necessity to obtain an expert opinion on the applicant's mental health. However, this cannot, as such, justify the length of the proceedings.

56. As to the applicant's conduct, the Court notes that he has contributed to the length of the proceedings in that he was unwilling to co-operate with experts, by challenging the Regional Court judges and by requesting that his case should be dealt with by another court.

57. In respect of the conduct of the Slovak authorities, the Court notes that the Regional Court found the District Court's decision of 1 April 1992 to examine the applicant in a mental hospital premature as at that time a guardian had not been duly appointed. The District Court could effectively proceed with the case only after this shortcoming was remedied on 9 September 1992, i.e. after more than five months (see paragraphs 13 and 14 above).

58. Another more than five months elapsed between the dismissal, on 30 November 1992, of the applicant's appeal against the District Court's decision of 1 April 1992 and the District Court's order of 3 May 1993 that the applicant should report in a hospital (see paragraphs 17 and 19 above).

59. More than seven months elapsed between 6 March 1995, when the Supreme Court decided on the applicant's request for exclusion of the Regional Court's judges, and the Regional Court's decision of

30 October 1995 to quash the first instance judgment delivered on 23 November 1993. In this respect, the Court has noted that the Regional Court's decision was motivated by the fact that the District Court had failed to hear the expert as required by the relevant law (see paragraph 29 above).

60. Because of the time elapsed after the first expert opinion, it was necessary to update it. The District Court formally took a decision to obtain a second expert opinion on 5 February 1996. It appointed a medical authority for this purpose on 21 October 1997, i.e. after more than one year and eight months (see paragraphs 30 and 34 above). The Government have not explained this delay.

61. In the light of the foregoing the Court considers that the domestic courts failed to act with the special diligence required by Article 6 § 1 of the Convention in cases of this nature. In these circumstances, and having regard to what was at stake for the applicant and to the state of the proceedings at 18 March 1992, the Court finds that the "reasonable time" requirement has not been respected. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

62. The applicant maintained that his forcible examination in a mental hospital was in violation of his rights under Article 8 of the Convention which, in so far as relevant, provides:

> "1. Everyone has the right to respect for his private ... life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

63. The Government disagreed.

64. The Court finds that the forcible examination of the applicant in a hospital from 19 August to 2 September 1993 amounted to an interference with his right to respect for his private life as guaranteed by Article 8 § 1. Such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society" to achieve the aim or aims concerned.

65. The Court notes that the interference complained of had a legal basis, namely Section 52 (1) and Section 187 (3) of the Code of Civil Procedure. The Court further finds no reason to doubt that it pursued the legitimate aim of protecting the applicant's own rights and health. It remains to be determined whether the interference was "necessary in a democratic society".

66. The Court recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was "necessary in a democratic society" the Court will take into account that a margin of appreciation is left to the Contracting States. Furthermore, the Court cannot confine itself to considering the impugned facts in isolation, but must apply an objective standard and look at them in the light of the case as a whole (see, *mutatis mutandis*, the McLeod v. the United Kingdom judgment of 23 September 1998, to be published in *Reports of Judgments and Decisions* 1998-VII, § 52, and the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no. 130, pp. 31-32, §§ 67-68, with further references).

67. In the instant case, following a request by the applicant, the District Court decided to start the proceedings in the exercise of the powers conferred upon it under Section 81 (1) of the Code of Civil Procedure. In such proceedings, the courts are not bound by the applicant's submissions (see paragraph 42 above) and, consequently, the applicant is not free to control their scope or content. It is the duty of the courts to deal with the case so as to ensure a speedy and effective protection of the applicant's rights. This follows from Section 6 of the Code of Civil Procedure (see paragraph 41 above) and also from Article 6 § 1 of the Convention.

68. The applicant has been entirely deprived of legal capacity since 1983. There is no doubt that this is a serious interference with his rights under Article 8 § 1. In the Court's view, it may be appropriate in cases of this kind that the domestic authorities establish after a certain lapse of time whether such a measure continues to be justified. Such a re-examination is particularly justified if the person concerned so requests. Moreover, under Section 10 (3) of the Civil Code the courts can be said to have a duty to monitor the continued existence of the reasons justifying deprivation or restriction of legal capacity.

69. It is not for the Court to take the place of the competent national authorities in the exercise of their responsibilities when determining a person's legal capacity. The national authorities have the benefit of direct contact with the persons concerned and are therefore particularly well placed to determine such issues. The task of the Court is rather to review under the Convention the decisions taken by the national authorities in the exercise of their powers in this respect (see, *mutatis mutandis*, the Bronda v. Italy judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1491, § 59).

70. Because of the complexity of such an assessment and the special knowledge it requires, the Court finds that it was certainly justified that the District Court sought to obtain an expert opinion on the applicant's mental health as it had been instructed by the Supreme Court on 30 May 1990 (see paragraph 8 above).

71. The Court recalls that the expert appointed by the District Court first tried to examine the applicant on a voluntary basis. However, as the

applicant refused, the District Court ordered that the applicant should be examined in a mental hospital. This decision was later confirmed by the Regional Court after the applicant's guardian and the public prosecutor had agreed to such an examination (see paragraphs 16 and 17 above). The District Court invited the applicant twice to submit to the examination in the mental hospital and warned him that, if he did not comply, he could be brought there (see paragraphs 11 and 19 above). The applicant failed to comply and therefore the District Court ordered that the applicant should be brought to the hospital. The applicant was brought to the hospital on 19 August 1993 and he was discharged on 2 September 1993, when the examination was concluded.

72. Having regard to the case as a whole, the Court concurs with the opinion of the Commission that the interference in question was not disproportionate to the legitimate aims pursued. It was therefore "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention. Accordingly, there has been no violation of Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. The applicant did not submit any claim for just satisfaction under Article 41 of the Convention taken together with Rule 60 of the Rules of Court. In these circumstances, the Court is not called upon to determine this issue.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been no violation of Article 8 of the Convention;

3. *Holds* that it is not required to decide on the award of just satisfaction under Article 41 of the Convention.

Done in English, then sent as a certified copy on 5 July 1999, according to Rule 77 §§ 2 et 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President