



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

FIFTH SECTION

**CASE OF RODINNÁ ZÁLOŽNA, SPOŘITELNÍ A ÚVĚRNÍ
DRUŽSTVO AND OTHERS v. THE CZECH REPUBLIC**

(Application no. 74152/01)

JUDGMENT
(Just satisfaction)

STRASBOURG

19 January 2012

FINAL

19/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rodinná záložna, spořitelní a úvěrní družstvo and Others v. the Czech Republic,

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

Dean Spielmann, *President*,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ann Power-Forde,

Angelika Nußberger,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 December 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 74152/01) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 14 September 2001 by Rodinná záložna, spořitelní a úvěrní družstvo, a credit union (“the applicant credit union”) and Mr Drahoslav Honek, Mr Jiří Halberštát, Mr Václav Vaněrka and Mr Jan Živný, members of the credit union and of its management and supervisory organs.

2. The applicants were represented by Mr M. Nespala, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, and Deputy Agent, Mr J. Kmec, of the Ministry of Justice.

3. In a judgment delivered on 9 December 2010 (“the principal judgment”), the Court held that there had been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of the applicant credit union. It further held that it was not necessary to rule on the allegation of a violation of Article 13 of the Convention and declared all the complaints of the individual applicants inadmissible (*Rodinná záložna, spořitelní a úvěrní družstvo and Others v. Czech Republic*, no. 74152/01, 9 December 2010, “the principal judgment”).

4. Under Article 41 of the Convention the applicants sought just satisfaction in the form of *restitutio in integrum* or compensation for pecuniary and non-pecuniary damage sustained and reimbursement of costs and expenses incurred.

5. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant credit union to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might have reached (ibid., § 74, and point 5. of the operative provisions). The limit for filing observations was later extended for another three months.

6. The parties did not reach an agreement on the question of just satisfaction.

7. The applicant credit union and the Government each filed observations.

THE LAW

8. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary Damage

9. The applicant credit union requested 1,059,030,000 Czech korunas (CZK) (44,126,250 euros (EUR)) in respect of pecuniary damage. The amount consisted of the value of its property at the time it was placed under receivership as calculated in a submitted expert report. It argued that the principal judgment differed from the judgment in the case of *Družstevní záložna Pria and Others v. the Czech Republic* (no. 72034/01, 31 July 2008) and that therefore the Court should award damages, in contrast to that case.

10. The Government on their part asked the Court to follow the example of *Družstevní záložna Pria and Others*, cited above, to which the present case was identical, and to find no causal link between the violation found and the damages claimed. Moreover, they noted that in any case the expert opinion submitted by the applicant credit union contained such serious deficiencies that its conclusion could not be considered relevant for the purpose of the proceedings before the Court.

11. The Court notes that in its principal judgment it found a violation of Article 1 of Protocol No. 1 on the ground that the applicant credit union was denied access to its business and accountancy documents and that it lacked access to court to challenge the imposition of receivership, which resulted in the interference with the applicant credit union's possessions not being surrounded by sufficient guarantees against arbitrariness and thus not being

lawful within the meaning of Article 1 of Protocol No. 1 (see the principal judgment, §§ 52-54). The inability of the applicant credit union to challenge the imposition of the receivership before a court was also found to be in violation of Article 6 of the Convention (§ 67 of the principal judgment). At the same time the Court did not find a violation of the Convention in the issuing of the receivership order as such, and indeed expressly found that the take-over of the applicant credit union by the interim receiver could in itself be regarded as compatible with that margin of appreciation in so far as the applicant credit union had failed to establish that the State's suspicions that its financial situation required its placement in interim receivership had been unreasonable (see the principal judgment, § 51).

12. Consequently, the Court does not see any difference between the violations found in the present case and those in the case of *Družstevní záložna Pria and Others*, cited above. It follows that for the purposes of the Convention no causal link has been established between the violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 found in the present case and any damage caused by the imposition of receivership (see *Družstevní záložna Pria and Others v. the Czech Republic* (just satisfaction), no. 72034/01, § 9, 21 January 2010). This conclusion is without prejudice to any possible reparation that the applicant credit union might be entitled to at the domestic level.

13. No award is therefore made under this head.

B. Non-pecuniary Damage

14. The applicant credit union claimed EUR 35,000 in respect of non-pecuniary damage.

15. The Government maintained that the finding of a violation of the Convention was itself sufficient satisfaction for the applicant credit union.

16. The Court reiterates its case-law that awarding compensation in respect of non-pecuniary damage to commercial companies is governed by specific criteria. In this context account should be taken of the company's reputation, uncertainty in decision making, disruption to the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, and *Forminster Enterprises Limited v. the Czech Republic* (just satisfaction), no. 38238/04, § 23 and 25, 10 March 2011).

17. Turning to the present case, the Court firstly notes that a credit union is an entity *sui generis* under the domestic law undertaking business activities of a banking nature for its members. It considers that it is a commercial company within the meaning of its above-mentioned case-law.

18. The Court next notes that the applicant credit union did not specify at all on what ground it was seeking non-pecuniary damage. It is unable to conclude on its own that the applicant credit union suffered any non-pecuniary damage based on any of the above-mentioned specific grounds.

19. No award is therefore made under this head and the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that the applicant credit union might have suffered.

C. Costs and expenses

20. The applicant credit union claimed CZK 1,316,364.45 (EUR 54,849) for costs and expenses before the Court, including: CZK 839,261.45 for legal services before the Court, including expert opinions; CZK 10,931 for an unspecified separate account maintenance; CZK 198,172 for travel expenses; CZK 46,500 for telephone costs; CZK 169,800 for postage, copying and other office costs including unspecified minor translations; and CZK 51,700 for translations of the Court's decisions in the present case into Czech and translations of the application and observations into English.

21. It further claimed CZK 608,000 for costs and expenses in the domestic proceedings, including: CZK 98,000 for the constitutional appeal; CZK 89,000 for the appeal on points of law; CZK 78,000 for an appeal; CZK 166,000 for postage, copying and other office costs including unspecified translations and expert opinions; and CZK 177,000 for telephone costs and unspecified travel expenses.

22. The Government argued that the applicant credit union had not properly corroborated all its claims.

23. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are also reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 283, ECHR 2006-V). Moreover, the Court cannot award those costs and expenses that are not supported by any documents (see *Husák v. the Czech Republic*, no. 19970/04, § 63, 4 December 2008).

24. Regarding the costs and expenses in the domestic proceedings, the applicant credit union failed to submit any supporting documents. Accordingly they cannot be reimbursed.

25. Regarding the costs and expenses before the Court, the Court considers that some of them are not linked to the violations found (costs of the expert reports), some are not corroborated or specified (costs for the separate account maintenance and costs for telephone, postage and other office costs save for CZK 369 for postage) and some were not necessarily

incurred (travel expenses to Strasbourg and translation costs of the application into English because according to Rule 34 of the Rules of Court valid at that time applications could have been sent in an official language of a Contracting Party). Therefore these expenses cannot be reimbursed.

26. The Court agrees with the applicant credit union that the present case was of certain complexity. Nevertheless, it considers the amount claimed for legal services excessive. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 20,000 under this head.

D. Default interest

27. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant credit union;
2. *Holds*
 - (a) that the respondent State is to pay the applicant credit union, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant credit union; the amount to be converted into Czech korunas at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant credit union's claim for just satisfaction.

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REPUBLIC (JUST SATISFACTION) JUDGMENT

Done in English, and notified in writing on 19 January 2012, pursuant to
Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President