



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

SECOND SECTION¹

CASE OF METALCO BT. v. HUNGARY

(Application no. 34976/05)

JUDGMENT
(Revision)

STRASBOURG

26 June 2012

FINAL

22/10/2012

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment and has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

1. In its composition before 1 November 2011.

In the case of Metalco Bt. v. Hungary (request for revision of the judgment of 1 February 2011),

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 34976/05) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian limited partnership, meanwhile liquidated, Metalco Bt. “f. a.” (“the applicant”), on 10 September 2005.

2. In a judgment delivered on 1 February 2011, the Court held that there had been a violation of Article 1 of Protocol No. 1 on account of the tax authority’s handling of the applicant’s assets and of Article 6 § 1 of the Convention on account of the unfairness of the ensuing compensation litigation. The Court also decided to award the applicant 50,000 euros (EUR) for pecuniary and non-pecuniary damage and dismissed the remainder of the claims for just satisfaction.

3. On 20 July 2011 the Government informed the Court that they had learned that the applicant had been liquidated on 2 December 2010. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court. These submissions were supplemented on 7 October 2011.

4. On 29 November 2011 the Court considered the request for revision and decided to give the applicant six weeks in which to submit any observations. Those observations were received on 19 December 2011.

THE LAW

I. THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 1 February 2011, which they were unwilling to execute because the applicant had been liquidated before the judgment was adopted.

6. They submitted in particular that on 10 October 2008 an assignation contract was executed, ceding any claims flowing from the present application to the applicant's manager, Mr Dobos in person; and moreover, that on 14 October 2008 a petition for liquidation had been filed against the applicant. However, the latter had failed to inform the Court of these facts. On 16 October 2009 liquidation proceedings had been instituted against the applicant. From that moment onwards, the applicant's manager, Mr Dobos, had no longer been entitled to represent the company, and solely the liquidator had been entitled to do so. However, the first time that Mr Dobos had acknowledged the ongoing liquidation had been a letter to the Court dated 14 November 2010. It was only then that he indicated that due to the applicant's prospective termination, he would carry on the proceedings as a legal successor on the basis of the assignation contract of 10 October 2008. On 2 December 2010 the liquidation proceedings had been completed and the applicant had been deleted from the company register. After the Court's judgment had been adopted, on 8 February 2011 the Government had received a letter from Mr Dobos containing the information that the claim awarded by the Court had previously been assigned by the applicant to himself as an individual. After the judgment had become final on 20 June 2011, the Government had realised, in the course of executing the judgment, that the applicant company had indeed ceased to exist.

7. Against this background, the Government argued that Mr Dobos, in representing the applicant company, had omitted to inform the Court in a timely manner of both the assignation and the liquidation, essential elements in the circumstances, and had thereby abused the right of individual petition. Moreover, as to the assignation, the Government asserted that claims arising from an alleged violation of the Convention were linked to the person of the victim and could not be assigned.

As to the liquidation, there was no indication that the liquidator – the only lawful representative at this stage – intended to pursue the proceedings before the Court. Therefore, the case should have been struck out of the list of cases, since the applicant had ceased to exist before the adoption of the judgment and there was no valid succession or, in the alternative, since the applicant, as represented by the liquidator, did not intend to pursue it.

8. Mr Dobos argued in reply that the Government ought to have known of the liquidation from its very beginning and moreover that the assignation contract had never been challenged throughout the liquidation proceedings.

II. RELEVANT DOMESTIC LAW

9. Act no. V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings provides as follows:

Section 119

“(1) Upon conclusion of winding-up proceedings, property distribution proceedings shall be conducted upon request or *ex officio* with respect to a company wound up without succession if, following the conclusion of the winding-up proceedings, any assets are located that were owned by that company. ...

(4) The procedure may be requested by a former creditor, former member (shareholder) of the company or any other person who is able to substantiate legitimate grounds for claiming any property indicated.”

Section 121

“(1) In its ruling ordering the opening of property distribution proceedings published in the Company Gazette, the court shall appoint a property commissioner from the register of liquidators and shall indicate the property item to which the proceedings pertain.

(2) The court ruling shall contain a notice to the creditors and members (shareholders) of the cancelled company so that they file any claim they may have concerning the property in question with the property commissioner within thirty days, and to attach the documents in proof of their claim.”

Section 122

“(3) Proceeds from the sale of the property that remain after paying off the costs of the proceedings and the fee of the property commissioner shall be distributed among the creditors to satisfy their claims.

(4) Where any claim is unreported or the amount available is in excess of all creditors' claims, it shall be distributed, unless otherwise prescribed in the instrument of constitution, among the former members (shareholders) in accordance with their respective shares existing at the time the company's registration was cancelled.”

Section 123

“(1) Within thirty days following the liquidation of the asset, the property commissioner shall notify the court accordingly, and shall submit a proposal for the distribution of assets prepared according to section 122 (3)-(5).”

Section 124

“The provisions of sections 120-123 shall also apply where a company’s registration is cancelled following dissolution or liquidation proceedings if, following the conclusion of the winding-up procedure, any assets are recovered that were owned by the defunct company, and they were not provided for in the dissolution or liquidation proceedings.”

III. THE COURT’S ASSESSMENT

10. The relevant parts of Rule 80 of the Rules of Court provide as follows:

“1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment. ...

4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.”

11. In the present case, the Court shares the Government’s view that the assignation contract relied on by Mr Dobos is irrelevant from the perspective of benefiting from the just satisfaction awarded, since the violation found is closely related to the entity of the applicant company and cannot be assigned for the purposes of Article 34 of the Convention. On the same strength, no importance is attached to the date on which this contract was notified to the Court.

12. On the other hand, the Court considers that the belated information provided by Mr Dobos to the Court about the commencement of the liquidation cannot be regarded as having amounted to an abuse of the right of individual petition, given the fact that the institution of liquidation proceedings is undisputedly public information, readily available to the Government.

13. As regards the question of succession, the Court observes that the applicant company applied to the Court as early as on 10 September 2005. By the time its liquidation was ordered on 16 October 2009, the proceedings before the Court were already at an advanced stage. From that moment onwards, the applicant’s statutory representative was its liquidator rather than Mr Dobos. The liquidation proceedings were terminated and the applicant was deleted from the company register, ceasing to exist as a corporate entity, on 2 December 2010, that is, shortly before the adoption of the Court’s judgment.

14. The Court takes the view that had the liquidator lost interest in pursuing the case, he should have informed the Court accordingly. In the absence of such a statement – and without the Government objecting to the continuation of the proceedings after the liquidation had started and especially after its termination – the Court was not prevented from continuing the examination of the case. It is therefore satisfied that the applicant company's *locus standi* in the proceedings before the Court persisted until the judgment was adopted. The Court also notes that under the relevant rules of Hungarian insolvency law (see above), the award, once paid by the Government, would fall under the provisions governing property distribution proceedings.

15. In view of the above considerations, the Court concludes that the Government's revision request must be dismissed.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to dismiss the Government's revision request.

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President