



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

THIRD SECTION

**CASE OF LISPUCHOVÁ AND LISPUCH v. SLOVAKIA**

*(Application no. 21998/14)*

JUDGMENT

STRASBOURG

15 October 2019

**FINAL**

**15/01/2020**

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



**In the case of *Lispuchová and Lispuch v. Slovakia*,**

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

Paul Lemmens, *President*,  
Georgios A. Serghides,  
Paulo Pinto de Albuquerque,  
Dmitry Dedov,  
Alena Poláčková,  
María Elósegui,  
Gilberto Felici, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 24 September 2019,

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

**PROCEDURE**

1. The case originated in an application (no. 21998/14) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Slovak nationals, Ms Alena Lispuchová and Mr Peter Lispuch (“the applicants”), on 24 February 2014.

2. The applicants were represented by Mr M. Uhaľ, a lawyer practising in Zvolen. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged, in particular, that the quashing of a final and binding judgment in their favour was contrary to their rights under Article 6 § 1 of the Convention.

4. On 10 May 2017 notice of that complaint was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants, who are former spouses, were born in 1965 and 1951 and live in Pezinok and Búca respectively.

6. On 17 March 2006 Ms Lispuchová brought an action against two individuals. The action was later amended so as ultimately to be directed by both of the applicants against three other individuals who were represented by a lawyer throughout the proceedings. The aim of the action was to obtain a declaratory ruling (*určovací žaloba*) to the effect that an indeterminate contractual instrument (*nepomenovaná zmluva*) dated 12 April 2002 was void and did not constitute a directly enforceable title.

Under Article 80 (c) of the Code of Civil Procedure (Law no. 99/1963 Coll., as applicable at the relevant time - “the CCP”), the type of declaratory ruling sought could only be made if a claimant could show that he or she had a “pressing legal interest” in obtaining it.

7. The instrument in question had been concluded by Mr Lispuch and two of the defendants in the settlement of differences related to certain shareholders’ rights and it included a commitment by Mr Lispuch to pay a sum in the equivalent of more than three million euros.

8. In parallel to the applicants’ action, a separate set of proceedings was being conducted against Mr Lispuch on the basis of that instrument under the provisions of the Enforcement Code (Law no. 233/1995 Coll., as amended), seeking to enforce his commitment to pay.

9. The applicants’ action was granted at first instance on 7 May 2010 with regard to two of the defendants and dismissed with regard to the remaining one. One of the two unsuccessful defendants appealed, contesting the findings of fact and law by the first-instance court and arguing that its judgment lacked adequate reasoning. His appeal was dismissed on 9 December 2010. The courts’ reasoning may be summarised as follows.

10. The courts noted that in order to settle their differences in respect of the shareholders’ rights, the parties had engaged a third party to act as an arbiter and that this was followed by the instrument of 12 April 2002. However, the courts found that there had been no valid arbitration clause; that it had not been established that any arbitration proceedings had actually taken place; and that, accordingly, there could not have been any arbitral award or an enforceable settlement reached in arbitration proceedings. The instrument of 12 April 2002 was accordingly an ordinary private-law contractual instrument. On account of its vagueness it was void and could not be enforced. The applicants’ pressing legal interest in obtaining a declaratory ruling to that effect lay in the fact that they could use such a ruling as a defence in the enforcement proceedings.

11. As an ordinary appeal (*odvolanie*) was unavailable, the matter became resolved under a final and binding judgment on 24 February 2011. In consequence, the enforcement proceedings were discontinued.

12. Nevertheless, one of the losing defendants asked the Prosecutor General to exercise his discretionary power to challenge the judgments of 7 May and 9 December 2010 by way of an extraordinary appeal on points of law (*mimoriadne dovolanie*) to the Supreme Court. In his application, the defendant contested the lower courts’ findings of fact and law and argued that their judgments lacked adequate reasoning.

13. On 19 April 2012 the Prosecutor General agreed to the application and lodged an appeal. He noted that the contested instrument had been enforced in a separate set of proceedings and argued that any challenges to it had therefore to be made and examined exclusively within the framework of those proceedings. Moreover, in such circumstances, the applicants could

not have had any pressing legal interest in obtaining the declaratory ruling made.

14. In her observations in reply, the applicant, Ms Lispuchová, argued that since the instrument of 12 April 2002 qualified neither as an arbitral award nor as a settlement reached in arbitration proceedings, it was an ordinary private-law instrument and as such challengeable as any other in the ordinary courts.

15. On 26 February 2013 the Supreme Court allowed the extraordinary appeal by quashing the relevant part of the contested judgments and remitting the matter to the first-instance court for re-examination. It observed that the enforcement of the instrument of 12 April 2002 was based on the premise that, in its legal effect, it amounted to an arbitral award. The validity of such awards was to be challenged by means of a special action under the Arbitration Act (Law no. 218/1996 Coll., as amended) and not, as in the applicants' case, by a general action aimed at obtaining a declaratory ruling. In addition, the Supreme Court concurred with the Prosecutor General that any challenges to the enforceability of the instrument had to be made and examined within the framework of the enforcement proceedings and not as part of a general action for a declaratory ruling.

16. On 11 June 2013 the applicants challenged the Supreme Court's decision by way of a complaint under Article 127 of the Constitution. They alleged, *inter alia*, that there had been a violation of their right to a fair hearing under Article 6 § 1 of the Convention on the grounds that the quashing of the final and binding judgment in their favour had been arbitrary and contrary to the principles of legal certainty and equality of arms. Among other arguments, they pointed out that the Supreme Court's judgment had been delivered after the defendants had already had an opportunity to assert their rights before two levels of jurisdiction, but that after that judgment there was no further right of appeal available to the applicants.

17. On 10 September 2013 the Constitutional Court dismissed the complaint as manifestly ill-founded. Citing extensively from the Supreme Court's reasoning, it found no arbitrariness that raised issues of constitutional importance. In particular, it observed that the defendants had had no standing to challenge the lower courts' judgments by way of an ordinary appeal on points of law and held that extraordinary remedies available to parties against final and binding decisions, the availability of which was limited to defined instances and subject to strict time-limits, were not, as such, incompatible with the principle of legal certainty.

The Constitutional Court's decision was served on the applicants on 21 November 2013 and was not amenable to appeal.

18. Following the quashing of their judgments by the Supreme Court, it became incumbent on the lower courts to determine the applicants' action

anew, which they accordingly did in line with the Supreme Court's position by dismissing the action at first instance and then an appeal on 11 November 2014 and 17 December 2015 respectively.

19. A subsequent appeal on points of law lodged by the applicants was declared inadmissible on 22 March 2017 and the applicants challenged that decision by way of a complaint to the Constitutional Court. The Court has not been informed of its outcome.

20. Meanwhile, a creditor under the instrument of 12 April 2002 applied anew for its judicial enforcement against the applicant, Mr Lispuch, and courts at two levels of jurisdiction (on 22 August 2016 at first instance and on 27 July 2017 on appeal) found the application for enforcement inadmissible on the grounds that the claim had become statute-barred. The creditor then challenged those decisions by way of an appeal on points of law of the outcome of which the Court has not been informed.

## II. RELEVANT DOMESTIC LAW AND PRACTICE AND EUROPEAN TEXTS

21. The relevant domestic law and practice and European texts have been summarised in the Court's judgment in, *inter alia*, the case of *DRAFT - OVA a.s. v. Slovakia* (no. 72493/10, §§ 39-56 and 58-61, 9 June 2015).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicants complained that the quashing of the final and binding judgment in their favour had been contrary to the principles of legal certainty and equality of arms and that as such it had violated their rights under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

#### A. Admissibility

23. The Government pointed out that once the first set of judgments in the applicants' action had been quashed (in the contested decision), the action had been re-examined and dismissed by a new set of judgments. They further submitted that as the applicants' constitutional complaint in relation to the new set of judgments was still pending, the application was premature.

24. The applicants disagreed, submitting, *inter alia*, that their ongoing constitutional complaint was unlikely to succeed since the Constitutional Court could be expected to take a similar stance to that taken in its previous decision of 10 September 2013.

25. In a further reply, the Government argued that the Constitutional Court's decision of 10 September 2013 did not prejudice the assessment of the applicants' pending complaint, in particular because the Constitutional Court would be bound to take into account the principles stemming from the Court's judgment in the case of *DRAFT - OVA a.s.* (no. 72493/10, 9 June 2015), which had been given after the decision of 10 September 2013.

26. The Court, for its part, acknowledges that in view of the applicants' ongoing constitutional complaint the proceedings as a whole cannot yet be considered complete.

27. However, in that connection, it notes first of all that this application does not concern the ultimate outcome of the applicants' action but rather the specific fact that a final and binding judgment in their favour was quashed, with the effect that a matter that had already been resolved judicially was remitted to the court of first instance for re-examination (see *COMPCAR, s.r.o. v. Slovakia*, no. 25132/13, § 51, 9 June 2015). Moreover, it notes that, as subsequent developments have confirmed, by virtue of its quashing judgment, the Supreme Court effectively predetermined the position as regards the legal questions of principle obtaining in the case, and thereby predefined its outcome (see *COMPCAR, s.r.o.*, cited above, § 50).

28. In these circumstances, as a matter of principle, the Court does not discern how a reconsideration of the case on its merits, in accordance with the applicable law as it has been established by the Supreme Court, can address the problem that a final and binding judgment was quashed allegedly arbitrarily, especially since, according to the view subsequently confirmed by the Supreme Court, that quashed judgment was substantively wrong in law.

29. Furthermore, the Court notes that the proceedings that are currently still pending in the domestic courts concern the applicants' complaint before the Constitutional Court against the decision made by the Supreme Court on 22 March 2017 to reject their appeal on points of law against the second round of judgments (dismissing their action). Even if the complaint were to be successful, it is unclear how this could lead to or assist with the restoration of the status quo before the quashing of the first round of judgments in which the applicants' action was successful.

30. Accordingly, the Government's prematurity plea must be dismissed.

31. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

32. The applicants argued that the quashing of the final and binding judgment in their favour had been contrary to the principles of legal certainty and equality of arms.

33. The Government reiterated their arguments and relied on the findings of the domestic courts, in particular those of the Supreme Court and the Constitutional Court. They argued that the main reasons for those courts finding against the applicants were that there had been other remedies that the applicants had failed to use in relation to the instrument of 12 April 2002 (such as a special action under the Arbitration Act or objections to the enforcement of that instrument under the Enforcement Code) and that the availability of those remedies had precluded an application for a declaratory ruling under Article 80 (c) of the CCP in the matter. If left uncorrected, the use of a declaratory ruling in the applicants' case would have interfered with the established interpretation of the scope of such actions, as well as with the purpose of arbitration proceedings and the public's trust in them. Moreover, as the instrument of 12 April 2002 had stemmed from arbitration proceedings and constituted a final and enforceable title for the person benefiting from it, enabling the applicants to challenge it by way of a general action in court would have unjustifiably interfered with the other parties' rights stemming from the principles of legal certainty and *res judicata*. It was on all these grounds that the Government sought to distinguish the present case from those of *DRAFT - OVA a.s.* (cited above), *COMPCAR, s.r.o.* (cited above), and *PSMA, spol. s r.o. v. Slovakia* (no. 42533/11, 9 June 2015).

Lastly, the Government pointed out that it had ultimately been found, at two levels of jurisdiction, that an application for the enforcement of the terms of the instrument of 12 April 2002 against the applicant, Mr Lispuch, was statute-barred. As a result, the fact that the first set of judgments (in the applicants' favour) had been quashed had not ultimately had any actual negative effect on them.

34. In response, the applicants disagreed, contested the domestic courts' findings of fact and law, as well as the Government's arguments based on those findings, and contended that the present case was essentially no different from those from which the Government sought to distinguish it.

35. The Court has reiterated the applicable principles recently in its judgment in *DRAFT - OVA a.s.* (cited above, §§ 77 and 78, with further references). With reference to it, the Court considers it appropriate to examine first whether there has been any circumstance of a substantial and compelling character to justify a departure from the principle of legal

certainty according to which, where the courts have finally determined an issue, their ruling should not be called into question.

36. The Court notes that the applicants' action for a declaratory ruling was originally examined by courts at two levels of jurisdiction, which examined the legal nature and validity of the contested instrument and congruently came to a conclusion that it was neither an arbitral award nor a settlement reached in arbitration proceedings but rather an ordinary private-law contractual instrument that was void on account of its vagueness.

37. The judicial debate of the case was expanded at the subsequent stage of the proceedings, by the Prosecutor General and the Supreme Court, to encompass the issue of whether the applicants' arguments advanced in their action for a declaratory ruling were to be examined in the framework of the proceedings for the enforcement of the terms of the instrument of 12 April 2002 against the applicant, Mr Lispuch, or in the framework of another set of civil proceedings to be initiated under the Arbitration Act.

38. It is mainly on that basis that the Government submit now before the Court that it had been necessary at the domestic level to correct the ordinary courts' erroneous original assessment of the applicants' action in order (i) to preserve the integrity of the established interpretation of the scope of actions for a declaratory ruling, (ii) to protect the purpose of arbitration proceedings and the public's trust in them, and (iii) to protect rights of the defendants of the applicants' action.

39. The Court for its part notes that in so far as the determination of the applicants' action involved any jurisdictional questions, these were not about the jurisdiction of the ordinary courts or the lack of it as such, but rather about whether the applicants' claim was to be examined as an action for a declaratory ruling, an objection in enforcement proceedings, or a special action under the Arbitration Act.

The determination of the appropriate procedural channel for contesting that instrument depended on its legal nature as an ordinary contract or an award or settlement stemming from arbitration proceedings.

40. While the question of the appropriate procedural channel may be seen as involving some systemic considerations, the question of the legal nature of the contested instrument is an ordinary legal question and the answer to it predetermined the answer to the question of the procedural channel.

41. The Court notes the very unusual context and features of the instrument of 12 April 2002. It is of the view that in so far as the Supreme Court may be understood as having found an error in the lower courts' assessment of the legal nature of that instrument, in the particular circumstances of the present case that error does not amount to a "fundamental defect or miscarriage of justice" warranting the reopening of the proceedings within the meaning of the Court's case-law

(see, *a contrario*, *Protsenko v. Russia*, no. 13151/04, §§ 30-33, 31 July 2008; *Tishkevich v. Russia*, no. 2202/05, § 25, 4 December 2008; *Lenskaya v. Russia*, no. 28730/03, § 40, 29 January 2009).

42. As to the Government's specific argument that it was necessary to correct the lower courts' erroneous original assessment of the applicants' action in order to preserve the integrity of established interpretation of actions for a declaratory ruling, the Court observes that such actions, including consideration of the issue of what constitutes a "pressing legal interest", fall within mainstream judicial activity in Slovakia (see, for example, *Sýkora v. Slovakia* [Committee], no. 26077/03, § 9, 18 January 2011; *Jakub v. Slovakia*, no. 2015/02, § 13, 28 February 2006; *Palisko and Palisková v. Slovakia* (dec.), no. 36909/02, 19 June 2007; *Bleyová v. Slovakia* (dec.), no. 69353/01, 17 October 2006; *Indrová and Indra v. Slovakia* (dec.), no. 46845/99, 11 May 2004; and many others). The one-off interpretation of the scope of the action brought in relation to the instrument of 12 April 2002 in a context that to a large extent depended on the very unusual parameters of that instrument thus appears unlikely to have any major systemic repercussions. The Court considers that the same goes *mutatis mutandis* for any jurisdictional questions referred to by the Government with regard to arbitration proceedings.

43. Moreover, to the extent that the Government sought to justify the interference with the final and binding judgment in the applicants' favour by the need to protect the rights of the defendants in the original proceedings, the Court notes that there is no indication that there was any obstacle in the original round of proceedings for them to raise the matters later raised by the Prosecutor General (see *DRAFT - OVA a.s.*, cited above, § 84 and *PSMA, spol. s r.o.*, cited above, § 78). However, no such argument appears to have been raised before the lower courts. In addition, the Court notes that one of the two losing defendants did not even make use of his right of appeal against the judgment of 7 May 2010 (see *PSMA, spol. s r.o.*, cited above, § 76) and that all of the defendants had another remedy at their disposal – that of an individual complaint under Article 127 of the Constitution – whereby they could arguably have pursued the arguments advanced for them by the Prosecutor General and any other Convention arguments without the intervention of a State body on their behalf (see, *mutatis mutandis*, *DRAFT - OVA a.s.*, cited above, § 85).

44. In these circumstances, the Court has established no particular grounds for departing from the general premise that under the principle of legal certainty where the courts have finally determined an issue, their ruling should not be called into question (*Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

45. As regards the principle of equality of arms, the Court further notes that the Prosecutor General's extraordinary appeal on points of law was triggered by an application by one of the losing defendants, in which he

disputed the ordinary courts' findings of fact and law and argued that their judgments lacked adequate reasoning (see paragraph 9 above). As already noted above, the litigation before the lower courts had essentially revolved around the validity of the instrument of 12 April 2002, and the existence of the applicants' pressing legal interest in obtaining a ruling on that matter.

46. However, as already noted above, the Prosecutor General in his extraordinary appeal and the Supreme Court in its judgment on that appeal embarked on an analysis leading to a conclusion that any challenges to the instrument of 12 April 2002 were to be examined exclusively within the framework of the proceedings for its enforcement or special proceedings under the Arbitration Act.

47. Irrespective of the fact that such a course of action on the part of the Prosecutor General and the Supreme Court does not appear to have been contrary to domestic law, the Court reiterates that an intervention by a State body on behalf of a party to a private dispute raises Convention concerns as a matter of principle (see *PSMA, spol. s r.o.*, cited above, § 78). In the present case, the intervention of the Prosecutor General and the Supreme Court in the proceedings under review clearly had as one of its effects the advancement of the cause of the defendants (see *PSMA, spol. s r.o.*, cited above, § 75). In that connection, it is to be noted that the defendants were private parties to a purely private-law dispute; that they were represented by a lawyer throughout the proceedings; and that, as already noted above, there has been no indication that the additional arguments of the Prosecutor General and the Supreme Court could not have been put forward by the defendants themselves during the earlier examination of the case at the two lower levels of jurisdiction.

48. In these circumstances, and in so far as the Government's case has been substantiated, the Court finds no fundamental distinction between the present case and those of *DRAFT - OVA a.s.* (cited above), *COMPCAR, s.r.o.* (cited above), and *PSMA, spol. s r.o.* (cited above).

49. The foregoing considerations are sufficient to enable the Court to conclude that the quashing of the final and binding judgment in the applicants' favour in this case was incompatible with the principles of legal certainty and equality of arms inherent in Article 6 § 1 of the Convention.

50. This conclusion is unaffected by whether or not this ultimately resulted in any real damage having been sustained by the applicants, an argument that the Government added without formulating it as a part of an objection under Article 35 § 3 (b) of the Convention.

51. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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. Damage

53. The applicants claimed 100,000 euros (EUR) in respect of non-pecuniary damage due to the “excessive length of the judicial and enforcement proceedings as well as the conduct of enforcement proceedings in relation to a substantial sum of money on the basis of a non-existent enforcement title”.

54. The Government contested the claim as overstated.

55. The Court does not discern any causal link between the violation found, which relates to the quashing of the final and binding judgment in the applicants’ favour, and the non-pecuniary damage, as formulated by them. It therefore rejects this claim.

### B. Costs and expenses

56. The applicants also claimed EUR 17,309.10 for legal fees before the Supreme Court and the Constitutional Court. This amount was calculated on the basis of the number of “acts of legal assistance” rendered and the value of such an “act” established under the calculation formula applicable at national level, taking into account what they considered to be the value of the litigation at the domestic level. As to the costs before the Constitutional Court, amounting to EUR 331.12, the applicants submitted a copy of powers of attorney including a provision concerning their obligation to pay their lawyer a fee calculated under the said formula.

57. The Government pointed out that the claim in relation to the costs before the Constitutional Court had been supported by a document showing that the applicants were actually under an obligation to pay that amount to their lawyer. They accordingly had no objection to that claim. However, they considered the claim in relation to costs incurred before the Supreme Court to be unfounded.

58. Regard being had to the documents in its possession and to its case law, the Court awards the applicants jointly EUR 331.12, plus any tax that may be chargeable to the applicants, in respect of the proceedings before the Constitutional Court.

59. As to the remainder of the claim, it observes that the applicants have not substantiated it with any relevant supporting documents establishing that they were under an obligation to pay for the cost of legal services or that

they have actually paid for them (see, for example, *Ištván and Ištvánová v. Slovakia*, no. 30189/07, § 122, 12 June 2012). Accordingly, the remainder of the claim must be dismissed.

### C. Default interest

60. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicants jointly, within three months, EUR 331.12 (three hundred and thirty-one euros and twelve cents), plus any tax that may be chargeable to them, in respect of costs and expenses;
  - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Paul Lemmens  
President