



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

FIRST SECTION

CASE OF BTS HOLDING, A.S. v. SLOVAKIA

(Application no. 55617/17)

JUDGMENT

(Just satisfaction – striking out)

Art 41 • Just satisfaction • Art 39 • Friendly settlement

STRASBOURG

2 March 2023

FINAL

02/06/2023

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

In the case of BTS Holding, a.s. v. Slovakia,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having deliberated in private on 7 February 2023,

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

PROCEDURE

1. The case concerns the non-enforcement of an arbitration award made by the International Court of Arbitration of the International Chamber of Commerce in Paris (“the ICC Tribunal”) against the National Property Fund of Slovakia, the country’s privatisation agency. It raises issues under Article 1 of Protocol No. 1 to the Convention.

2. In a judgment delivered on 30 June 2022 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention (see *BTS Holding, a.s. v. Slovakia*, no. 55617/17, §§ 62-73, 30 June 2022).

3. Under Article 41 of the Convention the applicant company sought, *inter alia*, just satisfaction in respect of pecuniary damage as follows.

Firstly, it claimed the amount it had been awarded by the ICC Tribunal, that is a principal amount of 1,894,597.52 euros (EUR) and interest of 14.25% per annum on EUR 1,853,584.45 for the period from 13 March 2009 until full payment of the award.

Secondly, the applicant company claimed EUR 103,996.52 in compensation for the costs of accounting and auditing services which in its submission it had incurred on account of the violation complained of.

4. Since the question of the application of Article 41 of the Convention in relation to the amount of the claim in respect of pecuniary damage was not ready for decision, the Court reserved it and invited the parties to submit, within six months, their written observations on that matter and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 87 and the fourth operative provision).

5. On 13 and 21 December 2022, the Court received communication from the parties indicating that, on 12 December 2022, they had concluded an agreement which included the following provisions:

“4.1.2 [The respondent State] and [the applicant company] agree that [the respondent State] shall pay the [applicant company] compensation for damages, the entitlement for which is based on the [principal judgment], in the amount of EUR 5,000,000 (in words: five million EUR).

...

4.1.4 [The respondent State] declares that the compensation for damages specified in Article 4.1.2 of this Agreement constitutes compensation for damages based on the [principal judgment] ... and ... declares its understanding that such compensation is exempted from income tax in the Slovak Republic.

4.1.5 [The respondent State] undertakes to reimburse the [applicant company] for any taxation that may ultimately be levied against the [applicant company] in the Slovak Republic on the compensation for damages specified in Article 4.1.2 of this Agreement.

...

4.4 In the context and for the purposes of the proceedings before the [Court], [the applicant company] declares that once the payment specified in Article 4.1.2 ... has been credited to its account..., it will have no further financial claims against [the respondent State] (except in accordance with the terms of this Agreement) and shall waive any further claims it may have against [the respondent State] in relation to the facts forming the basis of the [present application before the Court].

4.5 [The parties] acknowledge that this Agreement will constitute the final settlement of [their] case pending before the [Court] ...”

6. The communication mentioned in the preceding paragraph also indicated that the agreement concluded between the parties had entered into force and the amount in question was credited to the applicant company’s account on 13 and 16 December 2022.

THE LAW

7. The Court takes note of the friendly settlement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention and the Protocols thereto and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

8. In view of the above, it is appropriate to strike the case out of the list.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the agreement between the parties and of the Government’s declaration and undertaking concerning the question of taxation (Rule 43 § 3 of the Rules of Court);
2. *Decides* to strike the application out of its list of cases.

BTS HOLDING, A.S. v. SLOVAKIA (JUST SATISFACTION – STRIKING OUT) JUDGMENT

Done in English, and notified in writing on 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President