



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

FOURTH SECTION

CASE OF POLÁČIK v. SLOVAKIA

(Application no. 58707/00)

JUDGMENT

STRASBOURG

15 November 2005

FINAL

15/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Poláčik v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 58707/00) 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 a Slovakian national, Mr Peter Poláčik ("the applicant"), on 17 April 2000.

2. The Slovakian Government ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. On 11 October 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Tvrdošín.

1. Bankruptcy proceedings against the applicant's former employer

5. On 27 June 1997 the applicant was dismissed from his job in a private company due to its restructuring. Subsequently the applicant brought proceedings against the company before the Dolný Kubín District Court in

which he claimed arrears of salary. The Dolný Kubín District Court granted the applicant's claim on 3 February 1998.

6. On 31 May 1999 the Banská Bystrica Regional Court declared the defendant company bankrupt. On 28 July 1999 the applicant registered his claim against the debtor in the bankruptcy proceedings.

7. On 13 December 1999 the administrator in bankruptcy asked to be replaced in that function due to serious health problems. On 21 January 2000 the Banská Bystrica Regional Court appointed a new administrator.

8. On 19 October 2000 the Regional Court authorised the administrator to pay outstanding salary to the single remaining employee of the company in bankruptcy.

9. On 6 December 2000 the administrator informed the Regional Court that the means of the company did not suffice to cover his expenses. On 26 January 2001 the Regional Court authorised the administrator to sell several obsolete objects of negligible value with a view to obtaining financial means.

10. On 23 February 2001 a hearing was held before the Banská Bystrica Regional Court. The administrator submitted a report on the debtor company's property and his activity. The report stated that it was doubtful whether any means could be obtained with a view to satisfying the creditors. At the hearing the court acknowledged that the applicant's claim in respect of the debtor company was justified.

11. On 19 November 2003 the administrator informed the court that he expected to submit his final report before 31 January 2004. Following the Regional Court's inquiry of 29 September 2004, the administrator submitted the report on the company's property on 1 September 2004. It indicated that the financial means obtained in the course of the bankruptcy proceedings did not suffice even to cover the costs and fees of the administrator.

12. On 18 October 2004 the Regional Court quashed the declaration of bankruptcy as the debtor's property was insufficient. The decision became final on 25 November 2004.

2. Proceedings concerning the execution of a debt

13. In July 1997 the applicant started working in a different company. He was dismissed from his job, due to restructuring of the company, on 28 February 1998.

14. In 1998 the applicant filed an action against the company claiming arrears of salary and a severance payment. On 26 August 1998 the company acknowledged the debt. On 9 September 1998 the Banská Bystrica District Court awarded the equivalent of approximately 750 euros plus default interest to the applicant. The judgment became final on 5 October 1998.

15. On 15 December 1998 the applicant filed a motion with an executions officer and requested enforcement of the sum in issue. On

18 January 1999 the Banská Bystrica District Court appointed the executions officer to enforce the judgment.

16. On 5 February 1999 the executions officer informed the debtor company that enforcement proceedings had been brought against it and that the sum due would be transferred to the applicant from the debtor's bank account.

17. On 26 April 1999 the applicant concluded a contract with the executions officer on enforcement of the judgment in issue. Article II of the contract provided that the applicant did not have to pay any advance on costs of the execution to the executions officer. Article VIII indicated that the contract could only be modified upon the agreement in writing of both parties.

18. On 30 August 1999 the applicant asked the officer to proceed with the execution or, as the case might be, to confirm that the sum was irrecoverable.

19. On 9 November 1999 the bank informed the executions officer that the sum deposited at the company's account was insufficient to cover the debt. On 11 November 1999 a different bank informed the officer that the debtor company's account had been cancelled.

20. The applicant complained about the inactivity of the executions officer to the Ministry of Justice. The Ministry transmitted the complaint to the Slovak Chamber of Executions Officers on 10 April 2000. The Chamber was requested to notify the Ministry of its reply to the applicant within two months.

21. On 24 August 2000 the executions officer requested the applicant to pay, within seven days, an advance on costs of the execution failing which the executions officer would ask the District Court to discontinue the proceedings. Reference was made to Section 197(2) of the Judicial Executors and Enforcement Act. The advance requested amounted to the equivalent of approximately 93 euros. The letter further indicated that the applicant could come to the execution officer's office on 21 September 2000 with a view to settling any queries.

22. In a letter of 11 September 2000 the applicant replied that, pursuant to the enforcement contract of 26 April 1999, he was not obliged to pay any advance on costs and that no reasons had been given for the request. The applicant stated that he was not opposed to amending the contract provided that it would result in a successful recovery of the debt.

23. On 26 July 2001 the executions officer filed a motion for the proceedings to be discontinued as the applicant had failed to pay an advance on his costs.

24. In a letter of 30 July 2001, the Secretary to the Slovak Chamber of Executions Officers informed the applicant, in reply to his above complaint, that the executions officer in question had acted in compliance with the law. The letter stated, *inter alia*, that the executions officer had examined the

financial situation of the debtor and that he had filed an execution order with the debtor's bank. As the bank had informed the executions officer that the debtor did not own any property, the sum due could not be enforced. The letter also stated that the officer had warned the applicant's lawyer in the applicant's presence, at the moment when the request for execution had been filed, that the execution would not succeed as the debtor no longer carried on any business activity and owned no property. The executions officer's request for an advance on costs of the execution was in conformity with Section 197(2) of the Judicial Executors and Enforcement Act.

25. On 28 November 2001 the Banská Bystrica District Court granted the request of the executions officer and it discontinued the proceedings. The decision was served on the applicant on 11 January 2002. It stated that no appeal was available against it.

26. The applicant appealed. He alleged that under the contract he had not been obliged to pay any advance on costs of the execution.

27. On 22 March 2002 the executions officer submitted the file together with an explanation to the District Court. The officer maintained that the relevant law entitled him to request an advance on his costs. Furthermore, he had warned the applicant that the execution was unlikely to succeed as the debtor owned no property.

28. On 7 May 2002 the District Court obtained a report from the companies register, and it transmitted the case to the appellate court on 20 May 2002.

29. On 31 May 2002 the Banská Bystrica Regional Court rejected the appeal as being inadmissible as under the relevant law no appeal lay against a decision to discontinue enforcement proceedings on the grounds of the creditor's failure to pay an advance on costs of the execution.

3. Correspondence with the Court's Registry

30. On 29 August 2002 the Registry of the Court asked the applicant for information as to whether he had used the remedy under Article 127 of the Constitution enacted with effect from 1 January 2002.

31. On 9 September 2002 the applicant replied that he had exhausted all available remedies at the time when he had lodged his application in 2000. He maintained that he was not required to use the newly introduced remedy as his case was pending before the Court. At the same time, the applicant admitted that the originally alleged violation of his right resulting from delays in recovering the sums in question still remained and that, in the meantime, new violations had occurred as a result of the subsequent developments in his cases. He referred, in particular, to his submissions to the Court of 21 May 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution, Constitutional Court Act and the Constitutional Court's practice

32. Article 48 (2) of the Constitution provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

33. Pursuant to Article 130 (3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon the petition (*podnet*) presented by any individual or corporation claiming that their rights were violated.

34. According to its case-law under the former Article 130 (3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights under Article 48 (2) of the Constitution. It could neither grant damages to the person concerned nor impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

35. As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127 the relevant part of which reads as follows:

“1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated.” ...

36. The implementation of the above constitutional provisions is set out in more detail in Sections 49-56 of Act no. 38/1993 (the Constitutional Court Act), as amended with effect from 20 March 2002.

37. Section 53(3) of the Constitutional Court Act provides that a complaint is to be filed within two months from the final effect of a decision or of notification of the interference complained of. In other cases that time-limit starts running from the moment when the plaintiff had a practical possibility of learning about an interference with his or her rights.

38. The Constitutional Court has held that it can examine complaints about delays in proceedings only when the proceedings complained of were pending at the moment when the constitutional complaint was filed.

B. Judicial Executors and Enforcement Act of 1995 (*Zákon o súdnych exekútoroch a exekučnej činnosti*) and Regulation No. 288/1995

39. Under Section 31 of the Judicial Executors and Enforcement Act of 1995, a court can discontinue execution proceedings at the executor's request where the creditor has failed to pay an advance on the fees and costs of the executor within the time-limit fixed by the latter.

40. Section 33(1) of that Act renders an execution officer liable for damage resulting from the actions under the Act.

41. Section 197(2) reads as follows:

“A judicial executor may request an adequate advance on his or her fee and expenses from the person entitled to have the execution carried out.”

42. Regulation No. 288/1995 issued by the Ministry of Justice governs the remuneration of judicial executors and compensation for their expenses.

43. Section 24(1) of the Regulation gives judicial executors the right to an advance on their fees and expenses.

THE LAW

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

44. The applicant complained that the execution proceedings were unfair as the Banská Bystrica District Court had discontinued them on grounds of his failure to pay an advance on costs notwithstanding the fact that under the contract he had not been obliged to pay it. He also complained that the length of the above bankruptcy and execution proceedings was excessive. He alleged a violation of 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 within a reasonable time by [a] ... tribunal...”

A. Admissibility

45. The Government contended that the applicant had not exhausted domestic remedies as he had not sought redress by means of a complaint under Article 127 of the Constitution introduced with effect from 1 January 2002.

46. The applicant submitted that he was not required to use the new constitutional remedy as he had lodged the application prior to its enactment.

a) As regard the alleged unfairness of the execution proceedings

47. The Court notes that this complaint relates to facts which occurred after the introduction of the application. The decision to discontinue the execution proceedings was served on the applicant on 11 February 2002, and the applicant had thereafter no less than two months to complain about the alleged violation of his right to a fair trial to the Constitutional Court pursuant to Article 127 of the Constitution, as operative since 1 January 2002. The Court finds no particular circumstances absolving the applicant from the obligation to use that remedy.

48. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

b) As regards the length of the bankruptcy proceedings

49. The Court notes that the bankruptcy proceedings were pending before the Banská Bystrica Regional Court from 31 May 1999 to 18 October 2004. While it is true that the applicant had no effective remedy at his disposal at the moment of introduction of the application in 2000, such a remedy was available in Slovakia with effect from 1 January 2002. The Court's Registry drew the applicant's attention to that remedy, and it has been the Court's practice to require that applicants in similar positions should use it (see, e.g., *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, 22 October 2002). The Court finds no particular circumstances absolving the applicant from the obligation to use the above remedy.

50. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

c) As regards the length of the execution proceedings

51. There was no appeal available against the Banská Bystrica District Court's decision to discontinue the execution proceedings given on 28 November 2001. The Court therefore considers that that decision was final. It was served on the applicant on 11 February 2002. The period under consideration therefore lasted from 15 December 1998 to 28 November 2001, that is 2 years, 11 months and 13 days.

52. It has been the Constitutional Court's practice to examine complaints about excessive length of proceedings only to the extent that the proceedings complained of were pending at the moment of introduction of the complaint to the Constitutional Court. Even assuming that it was open to the applicant to file a complaint under Article 127 of the Constitution between 1 January 2002 (when that remedy became operative) and 11 February 2002 (when the decision of 28 November 2001 was served on him), the Court considers that, in the particular circumstances of the case, the applicant was not required to exhaust it for the purpose of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Žiačik v. Slovakia*, no. 43377/98, §§ 34-45, 7 January 2003, unreported).

53. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

54. The Government contended that there had been no particular delays in the execution proceedings imputable to the Slovakian authorities. They pointed out that the applicant had insisted on enforcement of the sum notwithstanding that he had been warned that his claim was unlikely to succeed.

55. The applicant disagreed.

56. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). Special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

57. More than 9 months elapsed between 11 November 1999, when a bank informed the officer that the debtor company's account no longer existed, and 24 August 2000, when the executions officer asked the applicant to pay an advance on his fee and costs. Another 10 months lapsed before the executions officer, on 26 July 2001, filed a request for the proceedings to be discontinued on grounds of the applicant's failure to pay the fee within the 7 day time-limit fixed by him. Even assuming that the executions officer had to wait for the outcome of the examination of the applicant's complaint against him, the Court notes that the Slovak Chamber of Executions Officers took more than 15 months to carry out the examination. No explanation has been provided for such a delay. Finally the District Court decided on the executions officer's request 4 months after it

had been filed on 26 July 2001. The Court considers that the above delays, taken together, are incompatible with the reasonable time requirement in the particular circumstances of the case.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

59. The applicant complained that, as a result of the conduct and outcome of both the bankruptcy and execution proceedings, he was unable to recover the sums which the courts had awarded to him. He relied on Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

60. The Government maintained that it could not be held liable for the failure to recover the sums in question due to the debtors' insolvency. Even assuming that their liability arose due to any errors or omissions of public authorities, the applicant could have obtained compensation for any damage of non-pecuniary nature by means of a complaint under Article 127 of the Constitution (as effective from 1 January 2002) and, subsequently, he could have claimed compensation for pecuniary damage (i) under Act No. 58/1959 and Act No. 514/2003 (governing liability of State and public authorities) in respect of the bankruptcy proceedings and (ii) under Act No. 58/1969 and Section 33(1) of the Judicial Executors and Enforcement Act of 1995 in respect of the execution proceedings.

61. The applicant, with reference to the documents submitted by the Government, acknowledged that his claim for the sum in issue to be recovered through the intermediary of the executions officer was devoid of any prospect of success from the very beginning. In his view, lacunae and imperfections in the Slovak legislation governing business activities were at the origin of the situation complained of.

62. The Court does not consider it necessary to examine whether domestic remedies have been exhausted as this part of the application is, in any event, inadmissible for the reasons set out below.

63. To the extent that the applicant complains that the flaws in the domestic legislation prevented him from recovering the sums in question, the Court recalls that its task is not to review the relevant domestic law and

practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention or its Protocols (see *Mežnarić v. Croatia*, no. 71615/01, § 28, with further references).

64. Under the Court's practice, a failure to recover a debt because of the debtor's indigence cannot be held against the respondent State unless and to the extent that it is imputable to the domestic authorities (see *Omasta v. Slovakia* (dec.), no. 40221/98, 10 December 2002). Having regard to the particular circumstances of the case, the Court finds no appearance of a violation of Article 1 of Protocol No. 1 on account of the conduct or outcome of the proceedings complained of.

65. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 153,982 Slovak korunas (SKK) in respect of pecuniary damage and SKK 1 million in respect of non-pecuniary damage.

68. The Government contested these claims.

69. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 2,400 euros in respect of non-pecuniary damage.

B. Default interest

70. The Court considers it appropriate that the default interest 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 complaint concerning the length of the execution proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as a result of the length of the execution proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President