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

FOURTH SECTION

CASE OF HORNÁČEK v. SLOVAKIA

(Application no. 65575/01)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Hornáček v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr J. CASADEVALL,
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 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 65575/01) 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 Štefan Hornáček ("the applicant"), on 25 January 2001.

2. The applicant was represented by Mr I. Siakeľ, a lawyer practising in Martin. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs A. Poláčková.

3. On 10 November 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 1950 and lives in Turany.

5. On 18 November 1997 the Martin District Court issued a payment order under which the applicant was obliged to pay the equivalent of approximately 250 euros to the plaintiff.

6. On 10 December 1997 the applicant, through his lawyer, filed an objection to the order. The lawyer sent the objection to the District Court by registered mail. He submitted a copy of a postal certificate according to

which he had deposited the mail for despatch to the District Court in Martin at the post office on 10 December 1997. The mail had registration number R 690. The certificate, in which the addressee was indicated by the sender, did not mention the contents of the mail.

7. On 12 December 1997 the Martin District Court dismissed the applicant's objection to the payment order. The decision stated that the order had been served on 25 November 1997 and that the time-limit for challenging it by means of an objection had expired on 10 December 1997. The court held that the applicant had filed the objection on 11 December 1997 – the date appearing on the stamp of the District Court – which was out of time.

8. On 29 December 1997 the applicant appealed. With reference to Article 57(3) of the Code of Civil Procedure he argued that by depositing the remedy as registered mail at the post office on 10 December 1997 he had respected the statutory time-limit. He submitted a copy of the postal certificate R 690.

9. On 26 October 1999 the District Court judge heard the applicant and his lawyer. The lawyer stated that the registered mail R 690 was the only mail which he had deposited in person at the post office in Turany on 10 December 1997.

10. On 29 October 1999 the judge heard an employee of the District Court in charge of incoming mail. The employee, after having consulted the file, confirmed that the document in question had been stamped and signed by her and that she had received it in person. She further stated that, in accordance with constant practice, the court's registry would attach the envelope to the letter in case of its delivery by post and that this fact would be mentioned on the document. The employee also pointed out that the applicant's lawyer used to bring most of his documents to the court in person but admitted that he sometimes also sent submissions by post. In reply to a question by the lawyer the employee stated that it was impossible to determine the contents of the registered mail R 690 addressed to the court and to whom it had been submitted.

11. On 30 November 1999 the Žilina Regional Court upheld the District Court's decision of 12 December 1997. With reference to the District Court's stamp of 11 December 1997 on the relevant document and to the above statement of the employee of the District Court, the Regional Court established that the remedy had been filed out of time. Since the postal certificate did not indicate the contents of registered mail R 690, the applicant had not reliably shown that he had deposited the relevant document at the post office on 10 December 1997.

12. On 11 February 2000 the applicant filed an appeal on points of law. He argued that the employee of the District Court could have committed an error when registering the document and that the mail register of the District Court did not indicate the contents of registered mail R 690 and to whom it

had been transferred. He argued that it had not been reliably shown that the document had been deposited in person as the lower courts had found.

13. On 27 September 2000 the Supreme Court rejected the appeal on points of law. The Supreme Court held that the District Court's stamp on the document challenging the payment order indicated that the document had arrived at the District Court on 11 December 1997. According to a handwritten remark which the employee of the District Court in charge of incoming mail had made on it, the document had been submitted to the court's registry in person. These facts, taken together with the statement of the employee before the District Court judge, showed that the remedy had been filed belatedly. The applicant had not proved beyond any doubt that the registered mail R 690 deposited at the post on 10 December 1997 had actually contained his objection to the payment order.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. Under Article 57(3) of the Code of Civil Procedure, a time-limit fixed in the context of judicial proceedings is respected when the action to be taken is effected at a court or where a submission is transmitted, on the day on which the time-limit is to expire, to a body which is under an obligation to deliver it to the addressee.

15. In accordance with established practice, a time-limit is deemed to be respected where a document is deposited, before the end of the day on which the time-limit expires, at a post office for the purpose of its delivery to the addressee through postal services.

16. In a judgment given in 1977 the Supreme Court of the Slovak Socialist Republic held that the date indicated on the postal certificate issued to the sender of registered mail and not the date on the envelope of such mail was relevant when considering whether an appeal was filed in time. The Supreme Court expressed the view that a court could dismiss an appeal as having been filed belatedly only where it had reliable reasons for such a conclusion. In particular, it had to establish when, where and how an appeal was actually filed (Supreme Court's Collection, 34/1978, p. 567).

THE LAW

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

17. The applicant complained that the courts had violated his right of access to a court in that they found that his remedy against the payment

order had been filed belatedly. 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 ... hearing ... by [a] ... tribunal..."

18. The Government contested that argument.

A. Admissibility

19. The Court notes that the application 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

20. The Government contended that the applicant had authorised a lawyer to challenge the payment order on his behalf. The lawyer should have been aware of the applicable procedural requirements. The postal certificate in which the addressee had been indicated by the lawyer did not mention which matter the mail concerned. The lawyer's allegation that the registered mail deposited on 10 December 1997 contained an objection to the payment order issued against the applicant could not be verified. The respondent State could not be held liable for the lawyer's failure to file the remedy in issue in a manner permitting it to be verified that the procedural requirements had been respected.

21. According to the applicant, it has not been the current practice to indicate on postal certificates, a part of which is filled in by senders, the contents of documents sent by registered mail. It was shown that registered mail posted by the lawyer on 10 December 1997 had been delivered to the District Court on 11 December 1997. The fact that the system of registering of incoming mail at the District Court did not permit one to determine the contents of the registered mail should not disadvantage him.

22. The Court reiterates that the "right to a tribunal", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (for the recapitulation of the relevant case-law see, for example,

Levages Prestations Services v. France, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, § 40 and *Zedník v. the Czech Republic*, no. 74328/01, §§ 27-29, 28 June 2005).

23. In the present case domestic courts at three levels relied on the statement by the employee of the District Court in Martin that the applicant's lawyer had submitted the document in issue at the court's registry in person on 11 December 1999, that is one day after the relevant time-limit had expired. They did not accept the argument of the lawyer that he had sent the objection by registered mail on 10 December 1999 and the postal certificate submitted by him to that effect. In particular, the Supreme Court concluded that the applicant had not shown beyond any doubt that the registered mail contained the objection in question.

24. It is true that the postal certificate concerning registered mail R 690 in which the sender and the addressee were indicated by the lawyer did not state to which case the mail related. However, it has not been argued before the Court that the relevant law or practice required such an indication.

25. Thus the applicant showed that he had sent a registered mail to the District Court when the time-limit for filing a remedy against the payment order in issue had not yet expired. In accordance with the Supreme Court's practice, such a postal certificate has been considered, in principle, to be a reliable indication that a remedy was filed on the day indicated on it.

26. In the Court's view, it would have been appropriate in the circumstances of the case for the courts involved to establish when the registered mail R 690 had been delivered to the District Court and in which case file it had been included. There is no indication that such an attempt was made. The courts merely accepted the statement of the employee of the District Court that it was impossible to establish the contents of the registered mail R 690 addressed to the court and to whom it had been submitted.

27. The Court considers that, in the particular circumstances of the case, the domestic courts failed to ensure a reasonable relationship of proportionality between the legitimate aim of ensuring compliance with the formal requirements for filing the remedy in issue and the applicant's right of access to a court with a view to having the contested decision reviewed.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested that claim.

31. The Court accepts that the applicant suffered non-pecuniary damage. Having regard to the circumstances of the case, it awards the applicant the sum claimed, namely EUR 2,000 under this head.

B. Costs and expenses

32. The applicant also claimed the equivalent of approximately EUR 360 for the costs and expenses incurred before both the domestic authorities and the Court.

33. The Government invited the Court to grant compensation for the applicant's costs and expenses only to the extent that they had been reasonably incurred and with due regard to the value of the subject-matter of the proceedings in issue.

34. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the fact that the applicant was represented by a lawyer both in domestic and Convention proceedings, the Court considers it appropriate to award the sum claimed, namely EUR 360, covering costs under all heads.

C. Default interest

35. 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 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 360 (three hundred and sixty euros) in respect of costs and expenses, the above amounts to be converted into the currency of the respondent State at the rate applicable at 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle Nicolas Bratza
Registrar President