



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

FOURTH SECTION

**CASE OF BERNÁT v. SLOVAKIA**

*(Application no. 1395/02)*

JUDGMENT

STRASBOURG

31 January 2006

**FINAL**

***31/04/2006***

*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 Bernát 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. PAVLOVSKI,  
Mr L. GARLICKI,  
Ms L. MIJOVIĆ,  
Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 10 January 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 1395/02) 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 Leopold Bernát ("the applicant"), on 12 November 2001.

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

3. On 20 January 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1930 and lives in Trenčín.

5. On 8 April 1994 the applicant lodged an action against his employer with the Banská Bystrica Regional Court (*Krajský súd*). He sought financial compensation for the latter's use of four of his inventions and one industrial design which related to the applicant's job with the employer and to which the applicant had a 50% title.

6. A hearing called for 23 June 1994 was rescheduled on the applicant's request and took place on 21 July 1994. The defendant did not appear and the hearing was adjourned. The Regional Court invited the applicant to

submit a list of all owners of the intellectual property at issue and a list of experts who could assess the property's value. The applicant submitted this information in letters of 26 July and 1 August 1994.

7. On 8 December 1994 the Regional Court requested that the Trenčín District Court examine witnesses. The examination took place on 29 December 1994.

8. In a letter of 5 February 1996 the President of the Regional Court acknowledged that for a long period of time there had been no progress in the case. The letter stated that the judge to whom the action was assigned had originally not been authorised to acquaint herself with classified information that was relevant to the case. The authorisation was granted on 20 November 1995 and only thereafter could the judge proceed with the matter.

9. On 21 April 1997 the Regional Court held a hearing. On 12 November 1997 it enquired of the Ministry of Defence whether it was possible to inspect the subject-matter of the action. On 11 March 1998 the Regional Court appointed an expert to make a technical assessment of its value. At the same time the parties were ordered to pay a deposit towards the expert's expenses. The defendant lodged an appeal against this order.

10. On 28 May 1998 the expert submitted his report. On 1 December the Supreme Court (*Najvyšší súd*) dismissed the defendant's appeal concerning the payment of his expenses.

11. In the meantime the applicant had submitted and later withdrawn a request that the action be transferred to another court. A similar request was submitted by the defendant and dismissed by the Supreme Court on 18 September 1997.

12. On 25 January 1999 the Bratislava Regional Court declared the defendant company insolvent. Pursuant to Article 14 § 1 (d) of the Bankruptcy and Composition Code (Law no. 328/1991 Coll., as amended), all judicial proceedings against it, including the applicant's action, were thus automatically *ex lege* stayed.

13. Despite the insolvency order, on 14 April 1999, the Banská Bystrica Regional Court held a hearing at which the defendant failed to appear.

14. On 27 April 1999 the Banská Bystrica Regional Court gave a formal decision to stay the proceedings in the applicant's action under Article 14 § 1 (d) of the Bankruptcy and Composition Code. On 20 April 2001 the bankruptcy trustee requested under Article 14 § 5 of that Code that the proceedings resume.

15. On 16 May 2001, following a hearing held on the same day, the Banská Bystrica Regional Court granted a major part of the action and dismissed the remainder. No party challenged the judgment by an appeal and it became final and binding on 2 July 2001.

16. At an unspecified time the applicant registered his claim under the judgment of 16 May 2001 in the insolvency proceedings which are still pending.

## THE LAW

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

17. The applicant complained that the length of the proceedings in his action of 1994 had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

18. The period to be taken into consideration began on 8 April 1994 and ended on 16 May 2001. It thus lasted seven years and over one month for one level of jurisdiction. It is noted that, during this period, from January 1999 to April 2001, the action was *ex lege* stayed, as a consequence of the insolvency order against the defendant.

#### A. Admissibility

19. The Government objected that the applicant had not exhausted domestic remedies as required under Article 35 § 1 of the Convention as he had not claimed damages in the ordinary courts under the State Liability Act of 1969.

20. The applicant contested that argument.

21. The Court has previously found that the remedy referred to by the Government need not be exhausted for the purposes of Article 35 § 1 of the Convention as it neither offers reasonable prospects of success nor is it capable of providing direct protection for the right to a hearing within a reasonable time guaranteed by Article 6 § 1 of the Convention as required by the relevant case-law (see, for example, *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001 and *D.K. v. Slovakia* (dec.), no. 41262/98, 14 May 2002). The Court has found no reasons for reaching a different conclusion in the present case.

22. The Government’s objection of non-exhaustion of domestic remedies thus cannot be sustained.

23. 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**

24. The Government accepted that the proceedings were lengthy in the period from 4 January 1995 to 4 April 1997 and maintained that, except for this period, they were expeditious.

25. The applicant disagreed and maintained his complaint.

26. 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).

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

29. 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**

30. The applicant made a claim for damages in the amount of 104,591<sup>1</sup> Slovakian korunas (SKK). He maintained that this amount was due to him under the judgment of 16 May 2001.

31. The Government contested the claim maintaining that there was no causal connection between the applicant’s Convention complaint and the

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<sup>1</sup> SKK 104,591 is an equivalent of approximately EUR 2,700

damage asserted. They further pointed out that the applicant had registered his judgment claim to the insolvency proceedings and that these proceedings were still pending.

32. In so far as the claim has been substantiated, the Court does not discern any pecuniary damage. However, it accepts that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to the amount claimed, it awards award him 2,700 euros (EUR) under that head.

### **B. Default interest**

33. 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 2,700 (two thousand seven hundred euros) in respect of non-pecuniary damage, to be converted into Slovakian korunas 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 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 31 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President