CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF VOZÁR v. SLOVAKIA

(Application no. 54826/00)

JUDGMENT

STRASBOURG

14 November 2006

FINAL

14/02/2007

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 Vozár v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 54826/00) 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 Ján Vozár ("the applicant"), on 10 November 1999.

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

3. On 11 October 2004 the President of the Chamber decided to communicate to the Government the complaint concerning the length of the insolvency proceedings and the proceedings relating to the action of 21 November 1997. Applying Article 29 § 3 of the Convention, it was 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 1947 and lives in Šoporňa.

A. Factual background

5. The applicant is a self-employed entrepreneur. He owns a meat processing business. In that capacity he had dealings with a State-owned enterprise, T., and in particular with one of its branch offices.

6. In early 1994 the applicant brought several actions against the branch office in the Trnava District Court (*Okresný súd*), the Bratislava Regional Court (*Krajský súd*) and the Trnava Regional Court. He submitted that the defendant owed him money and sought repayment.

7. The applicant's actions were examined in summary proceedings and resulted in the making of a series of payment orders (*platobný rozkaz*) in March 1994. The defendant was ordered to pay the applicant a total of more than 3.7 million Slovakian korunas[1] (SKK) accompanied by late-payment penalties. The orders were later certified as enforceable as from April 1994.

8. Having been unable to recover any part of his claim, the applicant filed an insolvency petition against T. The insolvency proceedings are a separate subject-matter of the present application and they are described in detail below.

9. T. subsequently went thought the process of privatisation. It was dissolved on 23 June 1994 by a decision of its founder, the Ministry of Agriculture, and all its assets ("the privatised assets") were transferred to the National Privatisation Agency (*Fond národného majetku* – "FNM").

10. On 12 July 1994 T. was struck off the register of companies and legally ceased to exist.

11. On 14 July 1994 FNM sold the privatised assets to a private limited company S. As a result of this sale, under section 15 of the Large Scale Privatisation Act (Law no. 92/1991 Coll., as amended), all liabilities associated with the privatised assets, including the applicant's claims, were transferred to S. The latter acknowledged having assumed such liabilities in a letter of 20 July 1994.

12. On 8 June 1995 S. rescinded the privatisation agreement because it was unable to pay the purchase price. As a result, all liabilities associated with the privatised assets, including the applicant's claims, were transferred back to FNM. S. subsequently ceased commercial operations and was eventually struck off the register of companies.

13. In June 1996 the applicant submitted his claim to FNM. He observed that at that time FNM held the privatised assets and considered, therefore, that FNM had also assumed the liabilities associated with these assets and was liable to satisfy the applicant's claim. The applicant reiterated the claim in August and September 1996, but to no avail.

14. On 17 October 1996 the applicant commissioned a judicial enforcement officer to enforce the payment orders of March 1994.

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[1] SKK 3,700,000 is equivalent to approximately 97,400 euros (EUR).

15. On 18 October 1996 FNM sold the privatised assets to another private limited company P-I. The liabilities associated with the privatised assets were thus transferred to P-I. which acknowledged having assumed the liabilities in a letter to the applicant of 15 November 1996. However, in order to determine their scope, P-I. requested the applicant to provide a detailed summary of his claims.

16. On 30 December 1996 the District Court authorised the enforcement of the payment orders of March 1994 against P-I.

17. On 3 March 1997 P-I. decided to dissolve the company, to establish two new private limited companies, P. and M., and to divide the assets of P-I. between the new companies. The debt in respect of the applicant was transferred to company M. Company P-I. was subsequently struck off the register of companies.

18. The applicant challenged the decision to dissolve P-I. and to divide up its assets by way of a civil action against P. and M. The action is a separate subject-matter of the present application and is described in detail below.

19. On 7 August 1997 the enforcement officer issued an order to freeze the real property of M. with a view to enforcing the amounts owed to the applicant.

20. In 1997 the payment orders of March 1994 were quashed. The quashing was upheld on the applicant's appeals in 1998 and 1999. It was held that both the applicant's actions and the payment orders had incorrectly identified the applicant's debtor as the branch office of T. whereas branch offices had no distinct legal personality and could not be sued.

21. As a result of the quashing the enforcement proceedings against companies P-I. and M. were discontinued on 28 June and 17 September 1998, respectively.

22. In 1998 the applicant's wife committed suicide.

23. On 30 September 1999 the Bratislava Regional Court dismissed a petition by a creditor to declare company M. insolvent on the ground that the company had no assets. The company was subsequently struck off the register.

24. On 21 December 1999 company P. was declared insolvent. The insolvency proceedings are still pending.

B. Insolvency proceedings concerning T.

25. On 10 May 1994 the applicant lodged his insolvency petition against T. in the Bratislava Regional Court.

26. On 26 May 1994 the Regional Court requested the debtor to convene a meeting of creditors in accordance with the Bankruptcy Code.

27. In a letter of 30 June 1994 the Ministry of Agriculture requested the Regional Court's opinion as to the implications of the insolvency petition on

the process of T.'s privatisation. In a letter of 1 July 1994 the Regional Court expressed the view that as long as T. had not been declared insolvent, which was the case, there were no legal obstacles under the insolvency rules to privatisation.

28. On 27 September 1994 T. informed the Regional Court that all of its assets had been transferred to S. On 22 December 1995 S. informed the Regional Court that the privatised assets had been transferred back to FNM as a result of its decision to rescind the privatisation agreement.

29. On 12 March 1996 the Regional Court requested FNM to provide information about the current situation concerning the privatised assets. FNM responded on 28 March 1996.

30. In a letter of 15 March 1996 the President of the Regional Court informed the applicant in reply to his complaint that the reason why the matter had not yet been concluded was the heavy workload of judges.

31. On 27 July 1999 the Regional Court again requested FNM to provide information about the current situation concerning the privatised assets. FNM responded on 20 September 1999.

32. On 24 September 2001 the Regional Court requested the applicant and his lawyer to specify the entity which was the defendant in the proceedings in view of the privatisation of T. and the restructuring of P-I. In the absence of any response the Regional Court reiterated the request on 8 January 2002.

33. On 12 March 2002 the Regional Court discontinued the insolvency proceedings on the ground that despite repeated requests the applicant had failed to specify which entity was the defendant. The applicant did not appeal and the decision became final on 8 April 2002.

C. Action of 1997

34. On 5 December 1997 the applicant filed an action challenging the decision of 3 March 1997 concerning the dissolution of P-I. and the creation of two new companies. The applicant also challenged the relevant entries in the register of companies and sought an interim measure staying the enforcement proceedings against M. in a different matter.

35. On 20 April 2004 the Trnava District Court stayed the proceedings under Article 14 § 1 (d) of the Bankruptcy Code pending the outcome of the insolvency proceedings concerning P. The proceedings are still pending.

THE LAW

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

36. The applicant complained that his right of access to a court had been violated in that he had been unable to challenge the transfer of his claim against the original debtor to the new debtor as a result of the original debtor's privatisation. He also complained that the length of the bankruptcy proceedings and the proceedings in his action of 1997 had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention. The relevant part of that provision 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..."

A. Admissibility

1. Access to a court

37. In so far as the applicant complains that it was impossible for him to challenge the privatisation of his original debtor, the Court notes that the applicant's original debtor was dissolved in 1994. The privatised assets were transferred to FNM, then to company S. and finally back to FNM. They were finally sold to a private company P-I. in 1996. By virtue of the last-mentioned sale the process of privatisation was completed. The application was however submitted no earlier than 1999.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Length of proceedings in action of 1997

38. The Government argued that the applicant had failed to exhaust domestic remedies in that he had not filed a complaint about the length of these proceedings with the Constitutional Court under Article 127 of the Constitution. They claimed that this remedy had been available to him as from 1 January 2002 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX).

39. The applicant submitted that he was not required to make use of this remedy because he had submitted his application in 1999, which was before the remedy under Article 127 of the Constitution had become available.

40. The Court observes that the action of 1997 was pending on and after 1 January 2002 when the remedy under Article 127 of the Convention became available. It was likewise pending on and after 22 October 2002

when the Court established an exception, in respect of cases such as the present, from the general rule that exhaustion of domestic remedies was assessed with reference to the situation at the time when an application was lodged (see *Andrášik and Others*, cited above). The 1997 action is in fact still pending today.

41. To the extent that the complaint has been substantiated, the Court has found no reasons for exempting the applicant from the obligation to make use of the remedy in question (see the summary in *Obluk v. Slovakia*, no. 69484/01, §§ 56-58, 20 June 2006).

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

3. Length of insolvency proceedings

42. The Government argued that the applicant had failed to exhaust domestic remedies since he had not complained about the length of the insolvency proceedings to the Constitutional Court. They pointed out that the insolvency proceedings had ended with a decision of 12 March 2002 which became final and binding on 8 April 2002. This was in the period when the remedy under Article 127 of the Constitution (see *Andrášik and Others*, cited above) already existed and the applicant had the possibility to use it.

43. The applicant disagreed and considered that he was not required to make use of the said remedy for the same reason as explained above in respect of the action of 1997.

44. The Court has previously found that where applications had been introduced prior to 1 January 2002 and were the proceedings in question had ended with a final decision prior to 22 October 2002 (see paragraph 40 above), applicants were not required under Article 35 § 1 of the Convention to raise the complaint about their length with the Constitutional Court (see, for example, *Malejčík v. Slovakia*, no. 62187/00, §§ 46 and 47, 31 January 2006, *Vujčík v. Slovakia*, no. 67036/01, § 50, 13 December 2005 and *Mikolaj and Mikolajová v. Slovakia*, no. 68561/01, §§ 41-42, 29 November 2005). The present case falls within this category and the Court has found no reasons for reaching a different conclusion.

It follows that the complaint of the length of the insolvency proceedings cannot be rejected for non-exhaustion of domestic remedies.

45. The period to be taken into consideration began on 10 May 1994 and ended on 12 March 2002. It thus lasted 7 years and about 10 months for a single level of jurisdiction.

46. 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

47. 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).

48. 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).

49. Having examined all the material submitted to it, including the conduct of the applicant in the final stage of the proceedings (see paragraphs 32 and 33 above), the Court considers that no fact or argument has been put forward 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 the length of the insolvency proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. In connection with his complaint that he had been unable to challenge the transfer of his claim from T. to the private debtors, the applicant also alleged a violation of his right to an effective remedy guaranteed by Article 13 of the Convention, which provides that:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

51. The Court has found above that the applicant's complaint concerning the impossibility to challenge the privatisation of T. had been submitted out of time (see paragraph 37 above). It observes that the applicant's complaint under Article 13 has the same factual and legal background and finds no reasons to reach a different conclusion.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. 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 applicant claimed SKK 11,585,953[1] in respect of pecuniary damage and SKK 100,000,000[2] in respect of non-pecuniary damage. As for the non-pecuniary damage he claimed that the facts of the case had caused damage to his family life and that they had driven his wife to take her own life (see paragraph 22 above).

54. The Government refuted the claim in respect of the pecuniary damage and, as regards the non-pecuniary damage, contested the amount.

55. In so far as the claim for compensation in respect of the pecuniary damage has been substantiated, 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 considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,000 under that head.

B. Default interest

56. 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 excessive length of the insolvency proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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[1] SKK 11,585,953 is equivalent to approximately EUR 305,000.
[2] SKK 100,000,000 is equivalent to approximately EUR 2,631,600.

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 6,000 (six thousand euros) in respect of non-pecuniary damage, the above amount 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 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 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President