



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

FOURTH SECTION

**CASE OF SKURČÁK v. SLOVAKIA**

*(Application no. 58708/00)*

JUDGMENT

STRASBOURG

5 December 2006

**FINAL**

*05/03/2007*

*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 Skurčák v. Slovakia,**

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

Sir Nicolas BRATZA, *President*,  
Mr J. CASADEVALL,  
Mr M. PELLONPÄÄ,  
Mr K. TRAJA,  
Mr L. GARLICKI,  
Ms L. MIJOVIĆ,  
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 14 November 2006,

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

## PROCEDURE

1. The case originated in an application (no. 58708/00) 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 Stanislav Skurčák (“the applicant”), on 25 April 2000.

2. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs A. Poláčková.

3. On 24 November 2005 the Court decided to give notice of the application to the Government. 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

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 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. The company failed to pay him his salary and a severance payment.

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

7. On 18 October 2004 the Banská Bystrica Regional Court quashed the declaration of bankruptcy as the debtor's property was insufficient to cover the claim.

## *2. Proceedings concerning the execution of a debt*

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

9. In 1998 the applicant filed an action against the company claiming arrears of salary and a severance payment. On 11 September 1998 the Banská Bystrica District Court granted the applicant's claim.

10. On 19 January 1999 the applicant filed a motion for execution of the judgment. On 1 February 1999 the Banská Bystrica District Court authorised an executions officer to execute its judgment.

11. On 26 March 1999 the executions officer informed the debtor company that execution proceedings had been brought against it and that the sum due would be transferred to the applicant from the debtor's bank account. On the same day the company's representative informed the executions officer that the company owned no property and that its business activities had been stopped.

12. On 20 April 1999 the applicant concluded a contract with the executions officer concerning the enforcement of the sum due. Article II of the contract provided that the applicant did not have to pay any advance on the costs of the execution to the executions officer.

13. On 2 November 1999 the executions officer issued an execution order under which the debtor's banks were to transfer the relevant sum from the debtor's account to the bank account of the executions officer. On 9 November 1999 one of the banks replied that the debtor's deposit was insufficient for covering the debt. On 12 November 1999 the other bank replied that the debtor's account had been closed.

14. On 20 July 2000 the applicant filed a petition with the Slovak Chamber of Executions Officers in which he complained that the executions officer had been inactive in enforcing his claim. In a letter of 23 October 2001 the Secretary to the Slovak Chamber of Executions Officers informed the applicant that the executions officer had acted in compliance with the law. The letter stated, *inter alia*, that the executions officer had examined the debtor's financial situation, that he had filed an execution order with the debtor's banks, and that the sum in issue could not be obtained as the banks had informed the executions officer that the debtor did not own any property.

15. On 24 August 2000 the executions officer requested the applicant to pay an advance on the costs of the execution failing which the officer would ask the District Court to discontinue the execution proceedings. In his reply of 11 September 2000 the applicant recalled that, pursuant to the contract of 20 April 1999, he was not obliged to pay any advance on costs.

16. On 25 October 2001 the executions officer requested the District Court to discontinue the execution proceedings. On 8 February 2002 the Banská Bystrica District Court discontinued the execution proceedings on the ground that the applicant had failed to pay an advance on the costs. The decision was served on the applicant's lawyer on 14 March 2002. It became final on 22 April 2002.

17. 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.

18. On 8 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 original alleged violation of his right resulting from delays in recovering the sums in question still continued 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 12 May 2002.

19. On 5 February 2003 the Registry informed the applicant of the Court's decision in the case of *Andrášik and Others v. Slovakia* (applications no. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00) of 22 October 2002 according to which in similar situations applicants should use the new remedy under Article 127 of the Constitution to the extent that it was still available to them. The applicant replied that he would try that remedy.

### *3. Proceedings before the Constitutional Court*

20. On 17 February 2003 the applicant complained to the Constitutional Court that (i) the length of both the bankruptcy proceedings of 1999 and the execution proceedings of 1999 was excessive, (ii) he had not recovered the arrears of salary which his former employers owed him, (iii) the executions officer had infringed the execution contract of 20 April 1999 and (iv) the Banská Bystrica District Court had not examined the execution contract when it had decided to discontinue the execution proceedings.

21. In a letter of 27 February 2003 a judge of the Constitutional Court informed the applicant that his motion could not be dealt with as it met none of the formal requirements laid down in the Constitutional Court Act for bringing proceedings before the Constitutional Court. The letter further stated that plaintiffs had to appoint an advocate to represent them in

proceedings before the Constitutional Court and that a complaint to the Constitutional Court had to be lodged within a two-month time limit.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

22. For recapitulation of the relevant domestic law and practice see *Poláčik v. Slovakia*, no. 58707/00, §§ 32-43, 15 November 2005.

## THE LAW

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

23. The applicant complained that the above bankruptcy and execution proceedings had been unfair and that they had lasted an excessively long time. 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

24. 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, which had been introduced with effect from 1 January 2002.

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

##### *1. As regards the length and alleged unfairness of the bankruptcy proceedings*

26. 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 situations should use it (see, for example, the *Andrášik and Others v. Slovakia* decision referred to in paragraph 19 above).

27. As the applicant did not file his complaint with the Constitutional Court in accordance with the formal requirements (see paragraph 21 above), he has not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

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

*2. As regard the alleged unfairness of the execution proceedings*

29. The Court notes that this complaint relates to proceedings which ended by a decision given on 8 February 2002. At that time it was open to the applicant to complain about the alleged violation of his right to a fair trial to the Constitutional Court pursuant to Article 127 of the Constitution, which took effect on 1 January 2002.

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

*3. As regards the length of the execution proceedings*

31. The Government maintained that the applicant should have sought redress by means of a complaint under Article 127 of the Constitution enacted with effect from 1 January 2002. With reference to the practice of the Constitutional Court, they argued that the applicant could have obtained redress before the Constitutional Court if he had filed a complaint within the statutory time-limit and in accordance with the formal requirements. The Government disagreed with the Court's practice according to which applicants who had filed an application concerning length of proceedings prior to 1 January 2002 were required to use the new constitutional remedy only where the domestic proceedings complained of were pending after 22 October 2002 when the Court had adopted its decision in *Andrášik and Others v. Slovakia* (see also *Vujčik v. Slovakia*, no. 67036/01, §§ 50-51, 13 December 2005).

32. The applicant disagreed with the Government's arguments.

33. As stated above, the decision to discontinue the execution proceedings was given on 8 February 2002, and it became final on 22 April 2002. The application was introduced on 25 April 2000. At that time it was the Court's general practice to assess whether domestic remedies had been exhausted with reference to the date on which the application had been lodged with it. The Court decided to make an exception to this rule in respect of cases against Slovakia concerning the length of proceedings which had been lodged with it prior to 1 January 2002 in its *Andrášik and Others v. Slovakia* decision adopted on 22 October 2002. At that time a final decision had already been given in the execution proceedings of which the

applicant complains. The statutory two-month time-limit prevented the applicant from using the constitutional remedy in issue.

34. Given these circumstances, the Court, in conformity with the position previously taken, considers that the applicant was not required to have recourse to the remedy in issue as regards his complaint about the length of the execution proceedings. The Government's objection can therefore not be upheld

35. The period under consideration lasted from 19 January 1999 to 8 February 2002, that is 3 years and 21 days.

36. The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

## **B. Merits**

37. The Government admitted that the complaint about the length of the execution proceedings was not manifestly ill-founded. They considered, however, that the applicant had contributed to the length of the proceedings by insisting that the execution be carried out despite the fact that the debtor had had no property and by refusing to pay an advance on the costs of the execution.

38. The applicant maintained that his right to a hearing within a reasonable time had been violated.

39. 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).

40. 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). In particular, the facts of the present case are, in substance, similar to those of *Poláček v. Slovakia* referred to in paragraph 22 above. In the *Poláček* judgment of 15 November 2005 the Court found that the length of execution proceedings lasting 3 years less 17 days in similar circumstances had been excessive.

41. 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 execution 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 1 OF PROTOCOL No. 1

42. The applicant complained that he had been unable to recover the sums which his former employers owed 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.”

43. The Court does not consider it necessary to determine whether or not the applicant exhausted domestic remedies as, in any event, it 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 (see also the *Poláčik v. Slovakia* judgment referred to above, §§ 64-65).

44. 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

45. 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

46. The applicant claimed 204,611 Slovakian korunas in respect of pecuniary damage alone. That amount comprised the sums which the former employers owed to the applicant plus default interest.

47. The Government contested the claim.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

49. As the applicant submitted no claim in respect of non-pecuniary damage, no award should be made in respect thereof.

**B. Costs and expenses**

50. The applicant made no claim under this head.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning the excessive 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. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President