



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

FIFTH SECTION

**CASE OF DRUŽSTEVNÍ ZÁLOŽNA PRIA AND OTHERS
v. THE CZECH REPUBLIC**

(Application no. 72034/01)

JUDGMENT
(Just satisfaction)

*This version was rectified on 27 January 2010
under Rule 81 of the Rules of Court*

STRASBOURG

21 January 2010

FINAL

28/06/2010

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Družstevní záložna Pria and Others v. the Czech Republic,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 72034/01) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Družstevní záložna Pria, a credit union, and eight other applicants, Mr Jiří Medek, Mr František Zoubek, Mr Vladimír Olšaník, Mr Karel Pospíšil, Mrs Dagmar Kousalová, Mr Josef Frommel, Mrs Ludmila Kramolišová and Mrs Jiřina Solaříková, members of the credit union and of its management and supervisory organs, on 26 March 2001. In the course of the proceedings before the Court, 633 individuals, members of the credit union joined the proceedings. The first applicant is a legal entity with registered seat in Brno (hereinafter “the applicant credit union”) created under the Credit Unions Act (*zákon o spořitelních a uvěrních družstvech* – “the Act”). Its incorporation became effective on 23 August 1995. The individuals are Czech nationals.

2. In a judgment delivered on 31 July 2008 (“the principal judgment”), the Court held that there had been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of the applicant credit union. It further held that it was not necessary to rule on the allegation of a violation of Article 13 of the Convention and declared inadmissible all complaints of the individual applicants (*Družstevní záložna Pria and Others v. the Czech Republic*, no. 72034/01, 31 July 2008 “the principal judgment”).

3. Under Article 41 of the Convention the applicants sought just satisfaction of restitution *in integrum* or the compensation of the material and immaterial damage sustained and reimbursement of costs and expenses incurred.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three forthcoming months, their written observations on that issue and, in particular, to notify the Court of any agreement they might have reached (*ibid.*, §§ 118-119, and point 5. of the operative provisions).

5. The parties did not come to terms on the question of just satisfaction. The applicant credit union and the Government each filed observations.

THE LAW

6. 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

7. The applicant credit union provided a detailed account of the assets it allegedly held when the receivership had been imposed. It also stated that the receiver had mismanaged its property, inflicted damage on it, and that because of the winding-up order it had been deprived of the possibility of administering its property and operating its business. The applicant credit union argued that it could not obtain reparation for the violations in the domestic courts, and requested to be put in the position in which it would have been, had the found violations of the Convention not taken place. It relied in this respect on an expert report attached to its submissions of 4 April 2006, where its assets were evaluated at CZK 528,279,840 (EUR 19,609,497). It invited the Court to take into consideration that it was deprived of the chance to establish the illegality of the imposition of the receivership as the documents necessary were seized by the State. According to the reports at its disposal, the applicant credit union was generating profit the day the receivership was imposed, and there was no legal ground to subject it to the receivership. It further contended that it still could not effectively seek a remedy in respect of the sustained losses in the domestic courts as its business and accountancy documents remained seized. It further emphasized that three quarters of any just satisfaction awarded by the Court would not be eventually paid to its members but to the State, since it is the creditor who vindicated three quarters of all claims filed within the bankruptcy proceedings.

8. The Government submitted that there was no causal link between the imposition of the receivership and the pecuniary damage claimed. They maintained that neither compensation for pecuniary damage, nor just satisfaction for violations should be granted. The Government relied on an expert opinion of PricewaterhouseCoopers Česká republika, s.r.o. commissioned by them for the purposes of the present case. According to the report, the market value of the applicant credit union as at 11 January 2000, i.e. immediately before the receivership came into effect, was CZK 0.0. The credit union was thus not able to continue its existing business activities in the long term. The report did not identify any mistake from an economic perspective made by the receiver, and disagreed with the findings embodied in expert opinions submitted by the applicant credit union. The applicant credit union's actions for damages against the State are still pending as on 26 April 2007 the Supreme Court remitted the case to the court of first instance for further consideration. The Government emphasized that the poor economic standing of the applicant credit union was the consequence of mismanagement by the executives in place prior to the imposition of the receivership. They consider the claim for just satisfaction absurd, given the fact that the State paid from its deposit-insurance scheme approximately CZK 294 million to the members of the applicant credit union in compensation for losses sustained in consequence of the mismanagement of the applicant credit union prior to the receivership.

9. The Court observes that the violations found in the principal judgment stemmed from the denial by the receiver of access to the applicant credit union's business and accountancy papers under Article 1 of Protocol No. 1, and from a lack of adequate judicial review of the imposition of the receivership under Article 6 of the Convention (see the principal judgment, §§ 94-95 and 113-115, 31 July 2008). The Court did not find a violation of the Convention in the making of the receivership order as such, and indeed expressly found that “the taking of control of the ... business could ... be regarded as falling within [the State's] margin of appreciation” (see the principal judgment, § 90). It follows that no causal link has been established between the violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 found in the present case, on the one hand, and the imposition of the receivership on the other. Whilst the imposition of the receivership might well have had adverse financial consequences for the credit union, the Court cannot speculate as to what the eventual economic standing of the applicant credit union might have been, had it been able to challenge the imposition of those measures in proceedings compatible with Article 6 of the Convention and Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Capital Bank AD v. Bulgaria*, no. 49429/99, § 144, ECHR 2005-XII (extracts); *Tre Traktörer AB*, p. 25, § 66, *Fredin (no. 1)*, p. 20, § 65; and *Credit and Industrial Bank*, § 88, all cited above).

10. As regards the claims of the applicant credit union asserting losses caused by the mismanagement of the appointed receiver, a matter which the Court in its principal judgment reserved to its consideration of Article 41 of the Convention (§ 86), the Court notes that an action for damages in this respect is still pending before the domestic courts (see paragraph 8 above), and there is no reason to consider that the domestic action will not address the relevant issues. In any event, the damage referred to in the applicant union's claims does not flow from the violations which the Court has found, but from the making - and implementation - of the receivership order itself. These claims are therefore also not connected to the violation, and do not call for an award under Article 41 of the Convention.

No award is therefore made under this head.

B. Costs and expenses

11. The applicant credit union claimed CZK 1,333,083.80 (EUR 49,465) as reimbursement of its legal costs. It submitted that the costs consisted of CZK 525,000 for an expert report assessing its loss suffered in the period from 12 January 2000 to 31 December 2001; CZK 128,110 for legal representation in the proceedings whereby the extension of receivership on 12 July 2001 was contested; and the remainder for the costs and expenses of the counsel before the Court, representing 212 billable hours charged by tariffs within the range of CZK 2,500 – 4,000 (EUR 98 – 157). It further claimed the costs of the domestic proceedings in damages and the proceedings on the appointment of the liquidator. It maintained that part of the costs was discharged by L. V. P., spol. s r. o. and AZ STAVBA, s. r. o., legal entities different from it, due to the bankruptcy. It specified that the funds were in fact raised among its members and formally paid by those entities.

12. The Government found those sums excessive, estimating that the applicant credit union should be entitled to a reimbursement of costs that would not exceed EUR 5000. Moreover, they expressed their doubts whether the legal costs put forward in the application were in fact incurred by the applicant credit union, given the fact that they were paid by two legal entities different from the applicant credit union. Unless it is established that those costs were paid by those entities in order to remedy the breaches of the Convention's rights of the applicant credit union, this part of the claim should be in the Government's view rejected.

13. The Court notes that no casual link between the violations found in the principal judgment and the loss purportedly incurred from 12 January 2000 to 31 December 2001 has been established. Therefore, it considers that the costs of the expert report assessing that loss should not be reimbursed.

14. Regarding the proceedings on the action in damages and on the appointment of the liquidator respectively, the subject matter of those proceedings did not encompass the applicant credit union's right in respect of which the violations were found. It ensues that the costs incurred in those proceedings were not spent in the attempt to remedy in domestic courts the breaches established of its Convention rights and, accordingly, should not be reimbursed.

15. By contrast, the sum of CZK 128,110 (EUR 5,028) for legal representation in the domestic proceedings whereby the extension of the receivership of 12 July 2001 had been contested was incurred in the course of the proceedings in which the applicant credit union sought protection of its Convention rights. Given the complexity of the case, the subject matter of the proceedings, the number of instances hearing the case, and the evidence submitted in this regard, the Court considers the sum reasonable in quantum and grants it in full.

16. As for the costs incurred in pursuing the application at hand, the Court, having regard to the complexity and volume of the present case, considers the billable hours put forward by the applicant credit union to reflect properly the needs of proper legal representation of the applicant credit union. It cannot, nonetheless, disregard that evidence adduced in this respect comprises also items, such as costs of media consulting and analyzing, which are not related to legal counselling and thus cannot be subsumed under any category of costs and expenses reimbursable under this head. Furthermore, some items, such as costs of copying, do not seem to be reasonable as to quantum. As to the assertion that the costs were paid in part not by the applicant credit union, it is true that according to invoices submitted to the Court some payments to the legal counsel had been discharged by L. V. P., spol. s r. o. and AZ STAVBA, s. r. o., legal entities different from the applicant credit union. However, the description of legal services provided in those invoices suggests that the payments were made in order to assure the legal representation before the Court. Having regard to the fact that the content of those invoices was not disputed, the Court considers it appropriate to reimburse the applicant credit union CZK 499,081.59 (EUR 19,587) for the legal costs and expenses incurred in the course of the proceedings before it.

17. It ensues that the Court awards to the applicant credit union under this head in total CZK 627,191.59 (EUR 24,615).

C. Default interest

18. 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. *Holds*

- (a) that the respondent State is to pay the applicant credit union¹, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 24,615 (twenty four thousand six hundred and fifteen euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants; the amount to be converted into Czech korunas at the rate applicable at the date of settlement;
- (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;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

¹ Rectified on 27 January 2010: The text read ... the applicants ... in the former version of the judgment.