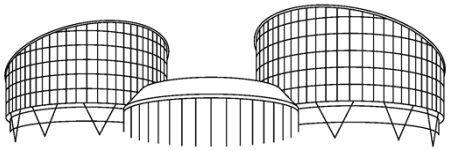

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZAVODNIK v. SLOVENIA

(Application no. 53723/13)

JUDGMENT

STRASBOURG

21 May 2015

FINAL

21/08/2015

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

In the case of Zavodnik v. Slovenia,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 53723/13) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Stanislav Zavodnik ("the applicant"), on 25 May 2010.

2. The applicant was represented by Ms A. Grad Pečnik, a lawyer practising in Celje. The Slovenian Government ("the Government") were represented by their Agent, Mrs V. Klemenc, State Attorney.

3. The applicant complained, under Article 6 of the Convention, that a set of bankruptcy proceedings had been unfair. He also complained, under Articles 6 and 13 of the Convention, of the excessive length of the proceedings and the ineffectiveness of remedies in that connection.

4. On 16 December 2010 the case was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1938 and lives in Ravne na Koroškem.

6. In 1993 his former employer, company Z. R., transferred him to another company.

A. Employment and enforcement proceedings

7. On 20 April 1993 the applicant instituted proceedings against the company Z.R. before the Maribor Court of Associated Labour, complaining about his transfer.

8. On 28 June 1994 the Convention came into force in respect of Slovenia.

9. In September 1995 the applicant's case was transferred to the Slovenj Gradec division of the Maribor Labour Court.

10. Between February 1996 and March 1997 the court held five hearings.

11. On 13 March 1997 the Maribor Labour Court established that the applicant's transfer had never taken effect and that his employment with the defendant had continued. It ordered company Z.R. to re-employ the applicant and to pay him the salary due and the applicable benefits backdated to the day of his transfer. It dismissed the remainder of the claim. The applicant appealed.

12. In a decision of 16 April 1999 the Slovenian Pensions and Disability Insurance Institute recognised the applicant's right to a pension as of 1 February 1999. His employment relationship with Z.R., which as of that date had still not re-employed him, hence terminated.

13. On 17 June 1999 the judgment of 13 March 1997 was upheld by the Higher Labour and Social Court and became final.

14. As Z.R. had not executed the court's judgment, on 6 April 2000 the applicant instituted enforcement proceedings before the Slovenj Gradec Local Court.

15. On 12 July 2000 the court suspended the enforcement proceedings pending a final resolution of bankruptcy proceedings which had been instituted in the meantime against Z.R. (see below).

16. On 3 February 2005 the court decided to terminate the enforcement proceedings, since the applicant's claims had been recognised in the bankruptcy proceedings. The decision became final on 22 February 2005.

B. Bankruptcy proceedings

17. On 5 July 2000 the Slovenj Gradec District Court decided to institute bankruptcy proceedings against the company Z.R.

18. On 31 August 2000 the applicant lodged a claim in the bankruptcy proceedings, seeking 2,000,000 Slovenian tolars (SIT, approximately 8,346 euros (EUR)) payable under the judgment of 13 March 1997 (see paragraph 11 above).

19. On 11 October 2000 the court held the first main hearing in order to review the claims lodged by the creditors. It was decided that a committee of creditors would not be appointed. According to the applicant, both the

receiver and the insolvency panel had assured him and his son, U.Z., who represented him, that they would inform them of any progress in the case, in particular of the scheduling of hearings concerning the distribution of the estate. On the same date the insolvency panel acknowledged part of the applicant's claims and referred him to the contentious proceedings in respect of the remainder of the claims. The applicant appealed.

20. On 5 December 2000 the Maribor Higher Court upheld the applicant's appeal and overturned the District Court's decision by instructing the receiver to institute proceedings in respect of the disputed part of the applicant's claim.

21. On 22 January 2000 the official receiver instituted proceedings before the Slovenj Gradec District Court, requesting it to declare that the disputed part of the applicant's claim did not exist.

22. On 20 June 2001 the receiver reported to the insolvency panel that the conclusion of the proceedings was dependent on the conclusion of bankruptcy proceedings in respect T., a company that had been operated by Z.R. It was expected that a large proportion of T.'s property would be transferred back to Z.R., including a hotel and spa complex, R.V. The receiver estimated that until that had been done, the property available for sale would not even cover the costs of the bankruptcy proceedings.

23. On 8 April 2003 the receiver withdrew his claim against the applicant.

24. As a result, on 5 May 2004 the Slovenj Gradec District Court stayed the contentious proceedings.

25. On 1 February 2005 the receiver accepted the applicant's claim in the full amount.

26. On 18 February 2005 the applicant demanded the payment of his claim.

27. In his regular reports to the insolvency panel submitted between 2004 and 2006, the receiver emphasised that the termination of the present proceedings was dependent on the termination of the bankruptcy proceedings in respect of company T., which in turn were dependent on the pending denationalisation proceedings in respect of the R.V. hotel complex.

28. In 2006 ownership of the hotel complex, R.V., was transferred to the company Z.R. According to the receiver's reports, it could not be sold until the termination of the denationalisation proceedings.

29. On 24 October 2007 the denationalisation proceedings were finally resolved.

30. On 16 April 2008 the insolvency panel ordered the sale of the R.V. hotel complex.

31. At a public auction held on 18 May 2008, R.V. was sold for EUR 501,426. Reports on the sale were published online on the Bajta.si web portal, on a web portal for accountants, Racunovodja.si, on the Slovenian Press Agency website, and in the daily financial newspaper, *Finance*.

32. On 17 June 2008 the receiver submitted to the court a draft proposal on the main distribution of the estate. The receiver further proposed that the court issue a decision on the priority payment of the claim of the first creditor, F.F., concerning compensation for damage sustained at work, which had been recognised by a court decision.

33. On 19 June 2008 the Slovenj Gradec District Court issued a decision on the compensation to be paid to F.F. and posted it on the court's notice board.

34. On 30 June 2008 the insolvency panel of the District Court endorsed a draft proposal on the distribution of the bankrupt company's estate to the nineteen remaining creditors. It was proposed that each of them receive 2.85% of the claim acknowledged in the proceedings, which in the applicant's case amounted to EUR 237,86. The court scheduled a further hearing for 10 September 2008 to confirm the distribution of the estate.

35. On the same day, 30 June 2008, the District Court published its decision and posted the notification of the hearing on the court's notice board. It informed the creditors that they could lodge their objections in respect of the distribution proposal at the hearing itself or in writing before the hearing.

36. On 11 July 2008 the notification of the hearing, with its date and venue, was published in the Official Gazette.

37. On 10 September 2008 the District Court held the hearing on the distribution of the estate and confirmed the receiver's distribution proposal. Its decision was posted on the court's notice board on 11 September 2008 and could have been challenged within eight days.

38. As no appeal was lodged against the decision of 10 September 2008, it became final on 20 September 2008.

39. A few weeks later the applicant became aware that the decision on distribution had already been issued. On 24 November 2008 he sent a letter to the District Court, asking it to serve him with the decision of 10 September 2008 so that he could lodge an appeal against it.

40. In its reply of 27 November 2008 the District Court asked the applicant to specify whether it should consider his letter as an appeal against the aforementioned decision.

41. On the same day the court decided to terminate the proceedings. It ruled that since the applicant had refused to accept the sum awarded to him, it should be deposited with the court.

42. On 3 December 2008 the applicant amended his submission in accordance with the court's inquiry of 27 November 2008, specifying that he was complaining against the decision of 10 September 2008 (see paragraph 37 above).

43. On 4 December 2008 the applicant appealed against the decision of 27 November to terminate the bankruptcy proceedings (see paragraph 41 above). He argued that he had not been properly informed about the hearing

of 10 September 2008 on the distribution of the estate (see paragraph 37 above) and that it was unrealistic to expect him to follow for eight years the notices posted on the court's board and to read all the Official Gazettes in order to be informed of the progress in the proceedings. Moreover, he maintained that he should have been awarded the full amount claimed in the bankruptcy proceedings, since, like all the other employees to whom the company owed salary arrears, he had been a priority creditor in those proceedings.

44. On 18 December 2008 the Slovenj Gradec District Court, considering the applicant's submissions of 24 November and 3 December as an appeal against the decision of 10 September, rejected the appeal as being out of time.

45. On 29 December 2008 the applicant lodged an appeal against the above decision. He argued that he had not been properly informed about the bankruptcy proceedings, that he should have been treated as a priority creditor, and that the bankruptcy court should have ruled *ex officio* on whether his claims had been ranked correctly and granted him the full amount claimed.

46. On 4 May 2009 the Maribor Higher Court dismissed the applicant's appeal against the decision of 27 November 2008 (see paragraph 41 above), holding that he should have challenged the ranking of his claims at the hearing before the first-instance court. Relying on section 164 of the Compulsory Composition, Bankruptcy and Liquidation Act (see paragraph 51 below), it further concluded that the hearing on the distribution of the estate had been correctly scheduled.

47. On 22 June 2009 the Maribor Higher Court dismissed the applicant's appeal against the decision of 18 December 2008.

48. On 17 July 2009 the applicant lodged a constitutional complaint against the decisions of the Higher Court of 4 May and 22 June 2009, reiterating in substance his complaints before the lower courts.

49. On 4 December 2009 the Constitutional Court rejected the applicant's constitutional complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation and practice concerning bankruptcy proceedings

50. For legislation and practice concerning bankruptcy proceedings, see *Sedminek v. Slovenia*, no. 9842/07, §§ 31-33, 24 October 2013.

51. Section 164 of the Compulsory Settlement, Bankruptcy and Liquidation Act (in force until 1 October 2008) read as follows:

> "(1) The creditors shall be invited to a hearing on the proposal for the distribution of the bankruptcy estate by means of a notification, which shall be published in the Official Gazette at least thirty days prior to the hearing and posted on the court's

notice board. In the notification, the insolvency panel shall further inform the creditors about when and where they can examine the distribution proposal.

(2) Depending on the circumstances of the case, the insolvency panel may decide to publish the notification in the mass media."

52. In so far as relevant, section 165 of the Act read as follows:

"(1) The creditors may submit their objections against the distribution proposal at the hearing on the distribution of the estate.

...

(4) The decision on the main distribution of the estate shall be served to the receiver and posted on the court's notice board."

53. Under section 160 of the Act, claims were in principle paid proportionally from the bankruptcy estate. However, section 160(2) stated that the following types of claims were considered as priority or secured claims and would therefore to be given precedence and paid together with the costs of the bankruptcy proceedings: salaries and compensation for salaries for the last three months prior to the institution of the bankruptcy proceedings; compensation for occupational injuries and diseases; salary compensation for unused annual leave for the current calendar year and unpaid redundancies.

54. Under section 13 of the Act, appeals against the decisions of the bankruptcy court were to be lodged within eight days of the decision being posted on the court's notice board.

B. Act on the Protection of the Right to a Trial without Undue Delay

55. For a detailed presentation of the Act on the Protection of the Right to a Trial without Undue Delay ("the 2006 Act"), see *Žunič v. Slovenia* (dec.) (no. 24342/04, §§ 16-26, 18 October 2007), and *Žurej v. Slovenia* (dec.) (no. 10386/03, 16 March 2010).

56. For domestic practice concerning the application of the 2006 Act in the context of bankruptcy proceedings, see *Sedminek v. Slovenia*, cited above, § 34.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF UNFAIRNESS OF THE PROCEEDINGS

57. The applicant complained that he had not been properly notified of the hearing of 10 September 2008 or of the decision issued by the court on

that date. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, 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

58. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

59. The applicant complained that he had not been personally served with either the court's notification of the hearing on the distribution of the bankruptcy estate or its decision of 10 September 2008. This had prevented him from participating in the hearing and deprived him of the opportunity to lodge an appeal within the prescribed time-limit. He argued that the posting of the notification on the court's notice board and its publication in the Official Gazette could not be considered as an appropriate way of informing the creditors in the present proceedings.

60. The applicant considered that it had been unreasonable and disproportionate to have expected him to regularly drive to another town to consult the court's notice board over a period of eight years or to buy or borrow every issue of the Official Gazette in order not to miss any court announcements about the proceedings. He pointed out in this connection that there had been no progress in the proceedings for several years, that he was an elderly person, and that the receiver had assured him in October 2000 that he would inform him of any progress in the case and any scheduled hearings (see paragraph 19 above).

61. Moreover, the applicant did not accept the suggestion that he should have known about the progress in the proceedings from media reports on the sale of the R.V. hotel complex (see paragraph 31 above). He stressed that the media in question were not read by the general public: – the first was an online newspaper edited by a regional cultural association; the second was a specialist internet platform for accountants; the third was the Slovenian Press Agency website, which served other media and not the general public; and the forth was a newspaper for businessmen. In addition, being an

elderly person, he did not even know how to use a computer or how to access the internet.

62. The applicant also argued that since there had been only nineteen creditors left in the bankruptcy proceedings, informing them of the hearing by regular mail would not have been expensive or contributed significantly to the length of the proceedings.

63. Lastly, the applicant argued that he had not insisted on the appointment of a committee of creditors at the October 2000 hearing because the trustee had advised the creditors that because the value of the estate was low, the appointment of a committee was not advisable and would merely add to the costs of the proceedings (see paragraph 19 above).

(b) The Government

64. The Government referred to the Court's case-law on permissible restrictions of the right to access to a court. They stressed that laying down procedural rules falls within the jurisdiction of the national authorities, and reminded the Court that its task was limited to assessing whether the regulation at stake was reasonable, whether it had a legitimate aim and whether there was a reasonable proportionality between the means employed and the aim sought to be achieved (see, in particular, *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

65. The Government further stressed that the legislation on the serving of court documents (see paragraph 51 above) pursued the aim of ensuring that bankruptcy proceedings were efficient. They maintained that it would be impossible to require the personal service of court documents in such proceedings because there were sometimes a great number of parties to them. Such a requirement might hamper the proceedings, prolong them disproportionately and decrease their efficiency. In addition, the majority of the Council of Europe Member States had similar rules. Even if in some States an additional personal service was provided for, the service was deemed to have been completed when the document had been posted on the court notice boards, entered in the insolvency databases and published in their Official Gazettes or in the public newspapers.

66. The Government challenged the applicant's allegations that he had trusted the receiver's assurance that he would inform him about the proceedings (see paragraph 63 above). They pointed out that the applicant should have known that under the law there was no such duty and that the proper way of informing the parties of the procedural steps in bankruptcy proceedings was by way of the court's notice board and publication in the Official Gazette.

67. The Government dismissed the applicant's submission that he would have had to drive to the court at regular intervals over a period of several years, arguing that reports in the media on the sale of the R.V. hotel complex (see paragraph 31 above) should have alerted the applicant to the

progress in the proceedings. After the reports on that sale had been published, the applicant could have reasonably expected some development in the bankruptcy proceedings.

68. Lastly, the Government argued that the applicant was responsible for missing the opportunity to participate in the proceedings by electing the members of the committee of creditors, since he had not requested the appointment of a committee at the hearing held in October 2000 (see paragraph 19 above).

2. The Court's assessment

(a) General principles

69. The applicant alleged that the failure to serve him in person with a court summons and with the decision issued at the hearing of 10 September 2008 had prevented him from effectively participating in the hearing and lodging an appeal within the prescribed time-limit. The Court is therefore called upon to examine whether those facts impaired the applicant's right of access to a court.

70. Article 6 § 1 of the Convention does not provide for a specific form of service of documents (see *Bogonos v. Russia* (dec.), no. 68798/01, 5 February 2004). However, the general concept of a fair trial, encompassing the fundamental principle that proceedings should be adversarial (see *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262) requires that all the parties to civil proceedings should have the opportunity to have knowledge of and to comment on the observations filed or evidence adduced by the other party with a view to influencing the court's decision (see *Lobo Machado v. Portugal*, 20 February 1996, § 31, *Reports of Judgments and Decisions* 1996-I). If court documents, including summonses to hearings, are not served in person, an applicant might be prevented from defending himself in the proceedings (see *Ozgur-Karaduman v. Germany* (dec.), no. 4769/02, 26 June 2007; *Weber v. Germany* (dec.), no. 30203/03, 2 October 2007; and *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 76, 4 March 2014).

71. Moreover, the right of access to a court entails the entitlement to receive adequate notification of judicial decisions, particularly in cases where an appeal might be sought within a specified time-limit (see, *inter alia*, *Hennings v. Germany*, 16 December 1992, § 26, Series A no. 251-A; *Bogonos* (dec.), cited above; *Sukhorubchenko v. Russia*, no. 69315/01, §§ 50-54, 10 February 2005; *Mikulová v. Slovakia*, no. 64001/00, §§ 52-58, 6 December 2005; and *Weber* (dec.), cited above).

72. The Court further reiterates that the right of access to a court is not absolute but may be subject to limitations (see *Ashingdane*, cited above, § 57). In addition, Article 6 requires and allows the States to organise their system in a manner enabling expeditious and efficient judicial proceedings.

However, the above-cited provision also lays emphasis on the more general principle of the proper administration of justice (see, *mutatis mutandis*, *Süßmann v. Germany*, 16 September 1996, § 57, *Reports* 1996-IV).

73. In laying down such procedural regulations, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is not part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane*, cited above, § 57; *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B; and *Cordova v. Italy* (no. 1), no. 40877/98, § 54, ECHR 2003-I).

74. Lastly, the Court reiterates that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see, *mutatis mutandis*, *Padovani v. Italy*, 26 February 1993, § 24, Series A no. 257-B).

(b) Application of these principles to the present case

75. The Court must ascertain whether on the facts of the case a fair balance was struck between, on one hand, the interests of the effective administration of justice and, on the other hand, those of the applicant (see, *mutatis mutandis*, *Geffre v. France* (dec.), no 51307/99, CEDH 2003-I).

76. On the one hand, the rules on service of summonses and decisions by means of posting them on the court's notice board and publishing them in the Official Gazette serve the legitimate aim of ensuring that bankruptcy proceedings are expeditious and efficient (see, *mutatis mutandis*, *De Geouffre de la Pradelle v. France*, 16 December 1992, § 32, Series A no. 253-B). The rationale behind dispensing with a personal service is that this type of proceedings may involve large numbers of creditors and parties. The personal service of court documents could add substantially to the costs of proceedings and, moreover, hamper their course if unsuccessful.

77. On the other hand, under the domestic law, the hearing on the distribution of the estate represents a crucial point in the proceedings. Up to that point, the creditors may challenge the official receiver's proposal for the distribution of the estate. They are precluded from doing so at a later stage, including by appealing against the decision on the distribution (see paragraph 52 above). In this connection, the Court notes that the eight-day time-limit for lodging an appeal against the decision on distribution is relatively short (see paragraph 54 above).

78. The applicant was a party to proceedings in which it took more than eight years for a hearing on the distribution of the bankruptcy estate to be scheduled. At that point, there were only nineteen creditors left whose names must have been known to the court (see paragraph 34 above). In addition, the applicant, who was not represented by a lawyer in the proceedings, argued that he had been assured by the receiver that he would be informed of any progress in the proceedings (see paragraph 19 above). The Court sees no reason why the applicant should not have trusted the receiver, in particular bearing in mind the rather low number of creditors in the proceedings (see, *mutatis mutandis*, *De Geouffre de la Pradelle*, cited above, § 33). Lastly, while the domestic law indeed does not provide for the personal service of summonses and court decisions in bankruptcy proceedings, it does however provide for the possibility of publishing the notification of the hearing on the distribution of the estate also in the mass media (see paragraph 51 above).

79. The Court regrets that in the present case the domestic court failed to use the latter publication option. The Court cannot follow the Government's argument that the applicant should have known about the sale of the R.V. hotel complex from online media reports on it (see paragraphs 31 and 67 above). It agrees with the applicant that the media at issue cannot be considered to have been targeted at the general public and/or to have reached the applicant (contrast *Geffre v. France*, cited above), an elderly person who alleged that he was unable to use a computer or access the internet.

80. The Court considers that it would be unrealistic to expect the applicant to regularly consult the notice board of a court located in a different town from his place of residence or to gain access to every issue of the Official Gazette.

81. In the circumstances of the present case, the Court is unable to come to a conclusion that the applicant had a fair opportunity to have knowledge of the hearing on the distribution of the estate and that his failure to take part in the proceedings was due to a lack of diligence on his part (see, *a contrario, Cañete de Goñi v. Spain*, no. 55782/00, § 39, ECHR 2002-VIII). Moreover, it considers that it would not have been disproportionate to require the State to take additional steps to ensure by further means that the few parties left in the proceedings, including the applicant, were informed of the hearing on the distribution and the decision taken at the hearing. By being deprived of the opportunity of taking part in the hearing of 10 September 2008, the applicant was prevented from challenging the receiver's plan for the distribution of the estate and thus from vindicating his right to obtain a higher percentage of his claim for unpaid wages.

82. The foregoing considerations are sufficient to conclude that there has been a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS AND INEFFECTIVNESS OF REMEDIES IN THIS RESPECT

83. The applicant further complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention (see paragraph 57 above).

84. Lastly, the applicant complained that the remedies available to him for excessive duration of legal proceedings in Slovenia had been ineffective. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [this] 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."

A. Admissibility

85. The Government raised an objection, arguing that the applicant had not exhausted the domestic acceleratory remedies available to him under the 2006 Act.

86. The Court observes that the question whether the requirement that an applicant must exhaust domestic remedies has been satisfied in the instant case is closely linked to the complaint concerning the existence of an effective remedy within the meaning of Article 13 of the Convention. It therefore considers that this objection, raised by the Government under Article 6 § 1 of the Convention, should be joined to the merits of the complaint under Article 13.

87. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6

(a) The arguments of the parties

88. The applicant argued that the proceedings had been unduly lengthy.

89. The Government admitted that the employment proceedings had exceeded the reasonable time requirement, but argued that the domestic courts could not be reproached for failing to act with sufficient diligence.

90. As regards the bankruptcy proceedings, the Government further argued that they had been complex and that the Court should take into consideration the fact that the conclusion of those proceedings was

dependent on the conclusion of the parallel bankruptcy and denationalisation proceedings in respect of the R.V. complex (see paragraph 22 above).

91. The Government maintained that the domestic courts could not be reproached for lack of diligence in respect of the bankruptcy proceedings either. While admitting that the applicant himself had not contributed to the length of the proceedings, they considered that the case was not of major importance for him since the duration of the bankruptcy proceedings had had no impact on the low amount he had eventually received from the bankrupt company's estate.

(b) The Court's assessment

92. The Court holds that in the present case the determination of the applicant's "civil rights" within the meaning of Article 6 § 1 of the Convention began in the employment proceedings and continued in the enforcement and bankruptcy proceedings (see *Di Pede v. Italy*, 26 September 1996, § 22, *Reports* 1996-IV; *Sukobljević v. Croatia*, no. 5129/03, § 37, 2 November 2006; and *Sedminek*, cited above, § 40, 24 October 2013).

93. The period to be taken into consideration therefore began on 28 June 1994, when the Convention entered into force with respect to Slovenia, and ended on 4 December 2009, when the Constitutional Court rejected the applicant's constitutional appeal in respect of the bankruptcy proceedings. The proceedings thus lasted fifteen years and five months and decisions were rendered at six instances.

94. 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). The Court further reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D, and *Bauer v. Slovenia*, no. 75402/01, § 19, 9 March 2006).

95. Applying the criteria separately to the contentious, enforcement and bankruptcy proceedings, the Court observes that the employment proceedings did not appear to be very complex and no significant delays in that set of proceedings can be attributed to the applicant.

96. In assessing the reasonableness of the time that elapsed after the Convention came into force with respect to Slovenia, account must also be taken of the state of the proceedings at the time. The Court notes in this connection that at the relevant time the proceedings had already been pending for one year and two months, and that no procedural steps were taken by the court during that period. Furthermore, after the Convention

came into force it took the first-instance court an additional sixteen months to schedule the first hearing and more than two years and six months to deliver a judgment. The proceedings were further delayed by the higher court, which took more than two years to decide on the applicant's appeal.

97. As to the bankruptcy proceedings, which also had an impact on the length of the enforcement proceedings, the Court is willing to accept that in principle they can be considered as having been more complex and that the duration of the proceedings in the present case was partially due to their dependence on the outcome of another set of bankruptcy proceedings, which in turn was dependent on the outcome of the denationalisation proceedings. However, the Court cannot agree with the Government that those circumstances justify the overall duration of the proceedings, which amounted to more than eight years and five months at the first instance. It reiterates in this context that it is for the State to organise its legal system in such a way as to enable its courts to comply with the requirement of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Tusa v. Italy*, 27 February 1992, § 17, Series A no. 231-D, and *Jama v. Slovenia*, no. 48163/08, § 36, 19 July 2012).

98. The Court is also unable to follow the Government's argument that the bankruptcy proceedings in which the applicant tried to enforce a judgment previously given in his favour were of minor importance to him.

99. Having examined all the material submitted to it and having regard to its case-law on the subject (see *Čakš v. Slovenia*, no. 33024/02, § 19, 7 December 2006, and *Jama*, cited above, § 36), the Court, for the reasons set out above, considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Article 13

101. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

102. While the bankruptcy proceedings are the continuation of the previous employment and enforcement proceedings, they nevertheless represent a distinct stage of the proceedings with regard to the remedies available in respect of complaints of undue delay. The Court has previously assessed the effectiveness of remedies in cases against Slovenia by distinguishing between different stages of proceedings or sets of proceedings (see *Sirc v. Slovenia*, no. 44580/98, §§ 166-78, 8 April 2008; *Blekić v. Slovenia* (dec.), no. 14610/02, §§ 72-85, 7 July 2009; *Robert Lesjak v. Slovenia*, no. 33946/03, §§ 40-53, 21 July 2009; and *Beguš v. Slovenia*, no. 25634/05, §§ 27-31, 15 December 2011).

103. As to the employment and enforcement proceedings, the Court observes that they were terminated before the 2006 Act entered into force. It has rejected objections and arguments put forward by the Government in previous cases involving proceedings terminated before the 2006 Act entered into force (see *Grzinčič v. Slovenia*, no. 26867/02, §§ 75-76, 3 May 2007) and sees no reason to reach a different conclusion in the present case.

104. As to the bankruptcy proceedings, the Court held in the case of *Sedminek* (cited above, §§ 63-65) that the remedies available to the applicants for raising a complaint about the length of the bankruptcy proceedings under the 2006 Act had been ineffective.

105. Moreover, the Government have still not provided any domestic case-law to show how the acceleratory remedies provided for under the 2006 Act could be an effective remedy in respect of this type of proceedings (see, *mutatis mutandis*, *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, § 107, 1 December 2009). In the absence of any such examples of case-law, the Court is not convinced that the remedies relied on by the Government can be considered effective for the purposes of Article 35 § 1 of the Convention.

106. The Court therefore considers that at all stages of the proceedings there has been a violation of Article 13 on account of the absence of any remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1. In view of this conclusion, it also rejects the Government's objection concerning the exhaustion of domestic remedies.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

107. Relying on Article 6 § 1, the applicant complained that his right to a fair trial had been violated in the employment, enforcement and bankruptcy proceedings. In particular, he argued that since his claims against the company had been accepted by a court judgment, the bankruptcy court should have considered *ex officio* whether those claims were to be treated as priority. Moreover, he considered that the fact that in the bankruptcy proceedings he had not been awarded the full amount accepted by the labour court had also given rise to a violation of Article 1 of Protocol No. 1 to the Convention. Furthermore, he complained of a violation of Article 14 of the Convention, arguing that in the bankruptcy proceedings he had been treated differently from another worker who had been in a similar position and who had received the full amount awarded by the labour court. Lastly, he complained under Article 13 that he had not had at his disposal an effective legal remedy to challenge the decision of the bankruptcy court.

108. In the light of all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

109. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicant claimed EUR 30,000 in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage.

112. The Government contested the claims. They argued that no causal link existed between the alleged violations and the pecuniary damage claimed. They further argued that the applicant's claim for non-pecuniary damage was excessive.

113. 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 awards the applicant EUR 12,500 in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicant also claimed EUR 3,768.81 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

115. The Government argued that the claim was not supported by sufficient documentary evidence and was also excessively high.

116. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads.

C. Default interest

117. The Court considers it appropriate that the default interest rate 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 complaints under Article 6 § 1 of the Convention concerning the length and unfairness of the bankruptcy proceedings by reason of the failure to inform the applicant of the hearing on the main distribution of the estate, and the complaint under Article 13 of the Convention concerning the lack of an effective legal remedy in respect of the length of proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to properly inform the applicant about the hearing on the distribution of the estate;

3. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention on account of the length of the proceedings and ineffectiveness of remedies in this respect;

4. *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, the following amounts:
      (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President