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

# FIFTH SECTION

# DECISION

Application no. 11216/22
Jaroslav BROŽ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 13 February 2025 as a Committee composed of:

Andreas Zünd*, President*,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 11216/22) 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") on 18 February 2022 by a Czech national, Mr Jaroslav Brož ("the applicant"), who was born in 1980, lives in Brno and was represented by Ms M. Grochová, a lawyer practising in Brno;

the decision to give notice of the complaints under Articles 6 § 1 and 8 of the Convention to the Czech Government ("the Government"), represented by their Agent, Mr P. Konůpka, from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The application concerns the revocation of the applicant's appointment as an insolvency administrator ("*insolvenční správce*") in a set of insolvency proceedings. The revocation was ordered by an insolvency court for breach of duty (section 32 and 36 of the Insolvency Act (Law no. 182/2006)). The applicant, who holds a special insolvency administrator's licence ("*zvláštní povolení vykonávat činnost insolvenčního správce*"), complains that his

removal affected his good reputation negatively, depriving him of his credibility. He further complains that his right to be heard was breached in the proceedings he instituted to challenge his removal before national courts because no oral hearing was held. The applicant relies on Articles 6 § 1 and 8 of the Convention.

2. On 16 September 2015 the applicant was appointed as an insolvency administrator by the Brno Regional Court ("the insolvency court) in insolvency proceedings concerning assets of a certain R. Č. ("the debtor"), after his predecessor's removal. Prior to the applicant's appointment, part of the debtor's immovable property had been sold in an auction sale. The applicant challenged the sale by way of an action for nullity which was, however, rejected as an inadmissible procedural avenue.

3. In April 2018 the applicant obtained a security clearance certificate which was valid until 8 April 2023 and a special insolvency administrator's licence which was valid for five years[1].

4. On 18 October 2018 the insolvency court requested the applicant to submit an updated inventory of the debtor's bankruptcy estate (*soupis majetkové podstaty*). According to the insolvency court, in the updated inventory the applicant was to remove the assets, which had been sold in the public auction, from the bankruptcy estate. Further, the insolvency court invited the applicant to consent to the debtor's application for annulment of the bankruptcy (*konkurz*), reminding him that an insolvency administrator is required to follow the instructions of the insolvency court.

5. On 29 October 2018 the applicant sent the insolvency court a submission entitled "Update of estate inventory as requested by the insolvency court", in which he responded to the insolvency court's instruction. He argued that the insolvency court was acting contrary to the law and the Supreme Court's case-law.

6. On 5 November 2018 at a review hearing (*přezkumné jednání*) the debtor addressed the procedure followed by the applicant stating that his course of action was interfering with his personal, family and working life. In his opinion the applicant was unjustifiably protracting the proceedings in contravention of the instructions given by the debtor, the creditors, and the insolvency court.

7. On 19 November 2018 the insolvency court revoked the applicant's appointment as insolvency administrator in the debtor's case on the grounds that he had disregarded an instruction of the insolvency court. The court noted the following about the holding of the hearing:

> "The insolvency court did not order a hearing to consider the case. It maintains that everything is ascertainable from the contents of the insolvency file and the files of

[1] The special licence authorises the applicant to act as an insolvency administrator in cases involving large companies, selected financial institutions etc. The economic significance of these entities is reflected in the substantial economic revenues which accrue to insolvency administrators holding a special licence when they are appointed to such an insolvency case.

> incidental disputes, everything is published in the [insolvency register]; further, [the applicant], in his submissions of 29 October 2018, had already communicated a list of scheduled hearings and his absence until 3 December 2018."

8. On 28 November 2018 the applicant appealed against the revocation of his appointment as insolvency administrator in the debtor's case. He supplemented his appeal on 30 November 2018 and 23 January 2019.

9. On 22 February 2019 the Olomouc High Court amended the insolvency court's decision so that the applicant's appointment as insolvency administrator was not revoked.

10. On 31 May 2021 the Supreme Court, upon an appeal on points of law filed by one of the creditors, reversed the High Court's decision by upholding the insolvency court's decision to revoke the applicant's appointment.

11. On 19 October 2021 the Constitutional Court (III. ÚS 2119/21) dismissed a constitutional appeal by the applicant as being manifestly unsubstantiated. It held, *inter alia*, as follows:

> "The Constitutional Court found no violation of the right to be heard .... It follows from the wording of section 32(1) of the Insolvency Act that the insolvency court should only remove the insolvency administrator after hearing him ... However, the hearing of the administrator may be dispensed with if the insolvency court proceeds without a proposal and the hearing of the administrator cannot lead to the clarification of the reasons leading to the removal of the insolvency administrator. In the present case, ... the applicant ... had ample opportunity, in the course of the proceedings, to explain reasons leading to his removal, both in the context of his appeal against the decision of the [insolvency court] of 19 November 2018 and in his response to the appeal on points of law by [one of the creditors] ...."

12. In October 2022 the validity of the applicant's special insolvency administrator's licence was extended until April 2028. In April 2023 the applicant obtained a new security clearance certificate valid until April 2028.

13. It follows from the insolvency register (*insolvenční rejstřík*) that to date the applicant has been appointed as insolvency administrator in 493 insolvency proceedings out of which 128 proceedings are currently pending.

## THE COURT'S ASSESSMENT

14. The applicant complained, under Article 6 § 1 of the Convention, that he had not been heard by the court in the proceedings on the revocation of his appointment. He further complained, under Article 8 of the Convention, that the revocation had affected his reputation adversely and had deprived him of credibility which is one of the requirements for holding the office of insolvency administrator.

15. Although the Government did not raise a plea of inadmissibility expressly based on a lack of significant disadvantage to the applicant, the Court finds it appropriate to examine of its own motion whether the applicant's complaints comply with that admissibility criterion provided for

in Article 35 § 3 (b) of the Convention (see *Magomedov and Others v. Russia*, nos. 33636/09 and 9 others, § 49 with further references, 28 March 2017), as amended by Article 5 of Protocol No. 15[2].

16. The Court will therefore examine (i) whether the applicant suffered a significant disadvantage as a result of the alleged breach of his right to an oral hearing under Article 6 § 1 of the Convention and of his right to private life under Article 8 of the Convention; and (ii) whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the complaint on the merits.

17. Inspired by the principle *de minimis non curat praetor*, the admissibility criterion contained in Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, by the nature of things, relative and depends on all the circumstances of the case. The severity of the alleged violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Ağcakaya v. Türkiye*, no. 39365/18, 13 September 2022).

18. As regards the first element, the Court notes that the present case concerns the applicant's removal from his duties as insolvency administrator in a single set of insolvency proceedings (see *mutatis mutandis Angerjärv and Greinoman v. Estonia*, nos. 16358/18 and 34964/18, § 100, 4 October 2022), whereas to date he has been appointed as the insolvency administrator in 493 insolvency proceedings and in 128 of those proceedings he is still active (see paragraph 13 above). The applicant was not facing the prospect that he might not be able to continue to practise the profession of insolvency administrator. He did not convincingly demonstrate that his revocation had a substantial negative effect – apart from this single set of insolvency proceedings – on his reputation and, consequently, on the overall exercise of the function of insolvency administrator. The applicant did not lose his special insolvency administrator's licence which, on the contrary, was renewed until 2028, and he also obtained a new security clearance certificate valid until April 2028 (see paragraph 12 above). In addition, the applicant did not put forward any argument to show that his financial situation was such that his revocation had had a significant impact on him.

19. The Court further considers that the decision to remove the applicant from the function of insolvency administrator was a decision of an organisational and technical nature which, according to the Court's relevant case-law, could be taken without an oral hearing (see *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; *Varela Assalino*

[2] See Article 8 § 4 of Protocol No. 15and paragraph 24 of the Explanatory Report to Protocol No. 15.

*v. Portugal* (dec.), no. 64336/01, 25 April 2002; and *Schelling v. Austria*, no. 55193/00, § 30, 10 November 2005). Moreover, like the Constitutional Court, the Court considers that the applicant was able to make detailed legal and factual observations regarding the reasons for his removal at the various stages of the proceedings which followed the insolvency court's decision on his removal. At the same time, he does not put forward any relevant fact or circumstance which could not have been submitted to the national courts in the written form.

20. In view of the above, the Court cannot conclude that the applicant has shown that he has suffered a significant disadvantage as a result of the alleged violations of the Convention, which did not reach a sufficient level of severity.

21. As regards the second element, the Court reiterates that it has established clear and extensive case-law concerning alleged breaches of the right to an oral hearing and the right to private life, including the right to protection of reputation (see *Schuler-Zgraggen Varela Assalino* and *Schelling* cited above, and *Egill Einarsson v. Iceland* (no. 2), no. 31221/15, §§ 31-37, 17 July 2018). Thus, having regard to the clear and extensive case-law on the topic and the absence of any other element requiring it to carry out an examination of the present application on its merits, the Court takes the view that respect for human rights does not require an examination of this case.

22. In the light of the foregoing, the Court concludes that the requisite conditions for the application of Article 35 § 3 (b) of the Convention have been satisfied. It follows that the application should be declared inadmissible pursuant to Article 35 §§ 3 (b) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 13 March 2025.

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| Martina Keller<br>Deputy Section Registrar | Andreas Zünd<br>President |