FOURTH SECTION

CASE OF DMD GROUP, A.S. v. SLOVAKIA

(Application no. 19334/03)

JUDGMENT

STRASBOURG

5 October 2010

FINAL

05/01/2011

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

In the case of DMD GROUP, a.s. v. Slovakia,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 14 September 2010,

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

PROCEDURE

1. The case originated in an application (no. **19334/03**) 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 joint-stock company established under the laws of Slovakia, DMD GROUP, a.s. ("the applicant company"), on 2 June 2003. The company was known at the time of its establishment as DMD FIN, a.s.

2. The applicant company was represented by Mr T. Šafárik, a lawyer practising in Košice. The Slovak Government ("the Government") were represented by Ms A. Poláčková and Ms M. Pirošíková, their successive Agents.

3. The applicant company alleged that its right under Article 6 § 1 of the Convention to a hearing by a tribunal established by law was violated in proceedings brought by the applicant company for the enforcement of a financial claim.

4. On 26 March 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company was established in 1997 and has its seat in Trenčín.

A. Factual background

6. In the late 1990s the applicant company commenced proceedings against two major companies, seeking the enforcement of financial claims against the companies through seizure of their shares and transfer of title to the shares to the applicant company.

7. The companies in question had been involved in arms production and had gone through a restructuring that resulted in a large number of job losses and a high rate of unemployment in the region. The relevant events therefore received media attention.

8. The judicial enforcement officer (*súdny exekútor*), A., who had been involved in the enforcement of the claims in issue, was charged with abuse of authority. A. was eventually acquitted of that charge by the Bratislava III District Court (*Okresný súd*) on 7 February 2003. Criminal proceedings were also brought against other individuals.

9. Further details concerning the background can be found in the Court's judgment of 2 June 2009 in the case of *Borovský v. Slovakia* (no. 24528/02).

B. Enforcement

10. On 23 September 1998 the applicant company petitioned A. to enforce a claim for payment of an amount equivalent to approximately 2,900,000 euros (EUR) against

B., a private joint-stock company. A. subsequently sought judicial authorisation of the enforcement.

11. On 30 September 1998 the President of the Martin District Court, C., sitting as a single judge, authorised A. to carry out the enforcement proceedings against B.

12. In the course of the enforcement proceedings, A. seized B.'s movable property and certain shares relating to B. A. attempted to sell the seized property at two public auctions. As the auctions failed, the shares and movable property were transferred to the applicant company at fifty percent of their officially estimated value.

13. On 20 April 1999 the applicant company requested that the enforcement proceedings be ended, as its claim had been satisfied by the above-mentioned award of property.

14. In a decision *(uznesenie)* of 30 June 1999, D., the newly appointed President of the District Court sitting as a single judge, ruled that the enforcement of the applicant company's claim by means of selling the shares was improper (*neprípustná*). At the same time, judge D. discontinued the enforcement proceedings.

Judge D. observed that the shares had been sold by way of a procedure that applied to movable property. However, as shares were not deemed to be movable property, a different procedure requiring special authorisation should have been used.

The two-page decision was not subject to appeal.

C. Reassignment of the enforcement to judge D.

15. The distribution of cases and organisation of work at the District Court is regulated by a work schedule (*rozvrh práce*).

16. The work schedule for the District Court in 1999 was drawn up in 1998 by the then President of the District Court, judge C. According to this work schedule, all enforcement proceedings – including the proceedings for the enforcement of the applicant company's claim – were assigned to the District Court's Ninth Section, which was presided over by judge C. The work schedule provided that judge C. and judge D., who was at that time with the District Court's Seventh Section, were to substitute for each other if necessary.

A copy of the work schedule was sent to the Žilina Regional Court for information on 7 December 1998.

17. On 21 January 1999 judge D. was appointed as President of the District Court. He occupied that position until 5 June 2002.

18. On 4 February 1999 judge D. issued an amendment to the work schedule. With effect from 1 March 1999, new enforcement proceedings were to be distributed evenly among eight different sections of the court, including the Seventh Section. Enforcement proceedings that had originally been assigned to the Ninth Section were also to be reassigned and distributed evenly among the eight designated sections. The amendment was worded in general terms without identifying any specific proceedings.

A copy of the amended work schedule was sent to the Regional Court for information on 30 March 1999.

19. On 30 June 1999 judge D., in his capacity as President of the District Court, issued a decree (*opatrenie*) reassigning the proceedings for the enforcement of the

applicant company's claim to himself.

In the one-page decree, reference was made to section 2(2) and 2(3) of the Administrative Rules for District and Regional Courts (Regulation no. 66/1992 Coll., as amended) ("the Rules").

The decree formally stated that the reason for the reassignment was "a change in the work schedule" and that the reassignment was made "in accordance with the system of substitution of judges fixed in the work schedule and for the purpose of ensuring the proper functioning of the court".

20. In the period between 1 March and 15 July 1999, a total number of 348 cases were reassigned from the Ninth Section of the District Court. Of the total, 49 cases were reassigned to judge D's section and 52, 48, 45, 42, 60 and 52 cases were reassigned to the remaining six Sections of the District Court respectively.

21. Further amendments to the District Court's work schedule were issued by judge D. throughout 1999, taking effect on 1 June, 23 June, 1 August and 1 October 1999. They were all notified to the Regional Court. Under these amendments, judge D. was in charge of one in seven enforcement proceedings and also continued to stand in for judge C. (on a mutual basis).

D. Constitutional complaint

22. The applicant company lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*).

It contended, *inter alia*, that its right to a hearing by a tribunal established by law had been violated by judge D.'s assignation of the case to himself. The applicant company pointed to the fact that the case had been decided by judge D. on the same day that it was reassigned to him. It also alleged that there had been frequent modifications to the work schedule of the District Court in 1999 which had rendered the process of assignment and reassignment of cases uncontrollable, thus leaving room for arbitrariness.

The applicant company also challenged the above-mentioned ruling declaring the enforcement proceedings improper.

23. On 4 July 2002 the Constitutional Court declared the part of the applicant company's complaint concerning the reassignment of the case to judge D. admissible under Article 48 § 1 of the Constitution. At the same time, it declared the remaining part of the complaint concerning the ruling on the merits inadmissible as manifestly ill-founded.

24. In a judgment (*nález*) of 17 January 2003, the Constitutional Court held, by a two to one majority, that there had been no violation of the applicant company's rights under Article 48 § 1 of the Constitution.

25. Having received extensive documentary evidence and having held a public hearing, the Constitutional Court established, *inter alia*, the facts summarised in paragraph 20 above.

The Constitutional Court found that the evidence available indicated that judge D. had made the impugned decree of 30 June 1999 in the context of modifications to the court's work schedule for 1999, in the interests of an equal distribution of cases

concerning enforcement proceedings, and in accordance with section 2(2) of the Rules.

The court further held that the fact that judge D. decided the case on the same day that he had given the above-mentioned decree did not, as such, affect the legal framework within which the change in judges had been effected.

The Constitutional Court concluded that the applicant company had not sufficiently substantiated its allegation that the case had been assigned to judge D. in an unjustified manner.

26. The judge in the minority gave a dissenting opinion. He pointed to the fact that the work schedule of the District Court had been modified several times in the course of 1999 without any acceptable explanation. There was no indication that an objective and transparent method for the reassignment of cases had been established and applied. Moreover, during the relevant period no similar steps had been taken at the District Court to redistribute cases in differing categories despite the far heavier case load in those other categories.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

27. Article 48 § 1 provides that no one may be deprived of his or her lawfully appointed judge (*zákonný sudca*). The jurisdiction of a court in a particular matter is to be established by law.

B. The Constitutional Court's practice

28. According to the Constitutional Court, the right “not to be deprived of his or her lawfully appointed judge” pursuant to Article 48 § 1 of the Constitution is vested in each party to the proceedings (as opposed to the judge) (decision of 22 July 1997 in case no. II. ÚS 43/97).

29. The Constitutional Court held in its judgment of 28 February 1994 in case no. I. ÚS 8/94 that the right “not to be deprived of his or her lawfully appointed judge” attaches to the person of the judge and not to a court. A 'lawfully appointed' judge is one who, fulfilling the statutory requirements for being a judge, has been assigned to a case under the work schedule of the court concerned.

30. The Constitutional Court has also held (by a decision of 3 April 1996 in case no. II. ÚS 15/96) that the right of a person “not to be deprived of his or her lawfully appointed judge” cannot be interpreted in so broad a manner as to pertain to a specific, individual judge.

The purpose of this constitutional right is therefore satisfied if an individual's rights are decided upon by a judge who has been duly appointed to a court which has jurisdiction *ratione loci* and *ratione materiae* and is at the appropriate level of jurisdiction.

31. In reviewing the additional constituent elements of the notion of a “lawfully appointed judge” under Article 48 § 1 of the Constitution, the Constitutional Court held that it is not only statutory provisions, in particular those of the Courts and Judges Act,

that are of relevance but above all the provisions of the Constitution, chiefly Article 46 § 1, which provides that everyone may claim his or her rights by way of a procedure established by law before an independent and impartial court (judgment of 15 June 2000 in case no. III. ÚS 16/00).

32. The Constitutional Court has also held (in its judgments in cases nos. II. ÚS 87/01, II. ÚS 118/02 and II. ÚS 119/02) that, in principle, a "lawfully appointed judge" is the judge assigned to a specific case under the work schedule of the court concerned. However, if there are circumstances justifying the reassignment of the case or of the entire agenda to a different judge for the reasons envisaged in sections 2(2) and (3) of the Rules, any newly assigned judge becomes a lawfully appointed judge. Such circumstances comprise, for example, the long-term absence of a judge, significant differences in workload among judges, or sudden events preventing a judge from taking specific steps in the proceedings.

33. In a judgment of 9 June 1999 in case no. II. ÚS 47/1999, the Constitutional Court held that a president of a court must not use his discretion, contrary to the law, to take a case away from a lawfully appointed judge and assign it to another judge in order to accommodate one of the parties without providing a precise ground of justification for the reassignment.

C. Administrative Rules for District and Regional Courts

34. The Rules were issued by the Minister of Justice. As then in force, they defined the internal rules of District Courts and Regional Courts and the discharge of tasks by those courts.

Section 2 of the Rules governed courts' work schedules, that is to say the distribution of cases among court divisions and judges.

35. Pursuant to paragraph 1 of section 2, the distribution of work at courts was to be determined in a work schedule for a whole calendar year. The schedule of work was also to provide for the substitution of judges.

36. Under paragraph 2, where a judge was absent for a long period or where there were substantial differences in the workload of judges at the same court, the President of the court was given power to decide that a certain amount of work be transferred to a different division of the court.

37. Paragraph 3 provided that, where a sudden event prevented a judge from carrying out individual acts in a case, the court's president might charge a different judge to take the action required.

38. Under paragraph 4, a court's president was to take the measures indicated in paragraphs 2 and 3 in accordance with the rules concerning the replacement of judges as defined in the work schedule, unless a different action was required with a view to ensuring the proper functioning of the court.

39. No further statutory rules on the status and creation of courts' work schedules existed at the relevant time.

D. State Administration of the Judiciary

40. At the relevant time, the State administration of the judiciary was governed by

Law no. 80/1992 Coll., as amended. Pursuant to section 8 of the Law, the bodies charged with the State administration of the judiciary were the Ministry of Justice and the Presidents and Vice-presidents of the courts.

41. The State administration of District Courts was carried out by the Ministry of Justice directly or through the Presidents of those courts (section 9(1)).

THE LAW

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

42. The applicant company complained that: (i) judge D. had arbitrarily taken the applicant company's case from judge C., the lawfully appointed judge; (ii) judge D. had assigned the case to himself and declared the method of the applicant company's enforcement proceedings improper on the same day as the reassignment was ordered, despite the fact that the enforcement action had already been carried out; and (iii) that the relevant period had been plagued by an extensive number of chaotic and opaque swaps in the agendas of the various Sections of the District Court.

The applicant company alleged a violation of its right to a hearing by a tribunal established by law under 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 ... hearing ...by [a] ... tribunal established by law."

A. Admissibility

43. In support of its claims, the applicant company submitted that the ruling declaring the method of enforcement that had been used improper had had consequences for the applicant company in the context of the entire transaction in that the credibility of the applicant company's claim had been put in question. This had a detrimental effect on its value and liquidity.

44. The Government disagreed and argued that the ruling declaring the applicant company's method of enforcement improper had had no practical ramifications for the applicant company because by then the enforcement had been completed and there had never been any claim to reverse it.

45. The Court notes that its task is not to review the relevant domestic law and practice *in abstracto*, but rather to determine whether the manner in which they were applied to or affected the applicant company gave rise to a violation of the Convention or its Protocols (see *Mežnarić v. Croatia*, no. 71615/01, § 28, 15 July 2005, with further references).

46. The Court considers that it must first resolve the question of the applicability of Article 6 § 1 of the Convention to the facts of the present case in the light of the Government's submission that the substantive ruling made by judge D. on 30 June 1999 had no concrete effect on the applicant company because it was merely of a declaratory

nature and neither had the aim nor effect of reversing the enforcement which was, by that time, already completed (see paragraph 44 above).

47. To that end, the Court reiterates that for Article 6 § 1 under its "civil" limb to be applicable, there must be proceedings whose outcome directly determines the civil right or obligation in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, *inter alia*, *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 44, Series A no. 327-A, and *Fayed v. the United Kingdom*, 21 September 1994, § 56, Series A no. 294-B).

48. The Court observes at the outset that the impugned substantive ruling of judge D. was made on 30 June 1999 in the framework of proceedings for the enforcement of the applicant company's financial claim (see paragraph 10 above) and that such proceedings undoubtedly fall within the ambit of Article 6 § 1 of the Convention (see, for example, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997 II).

49. The Court further notes that the ruling in question declared the enforcement of the applicant company's claim – achieved by selling the shares relating to B. (see paragraph 14 above) – improper, although the enforcement had in fact taken place before the ruling was made (see paragraphs 12 and 13 above).

There is no indication that the ruling has imposed any directly enforceable obligations on the applicant company or conferred any directly enforceable rights on the applicant company's debtor.

50. Nevertheless, the Court accepts that the ruling had consequences for the applicant company which were relevant and sufficient to engage the guarantees of Article 6 § 1 of the Convention in that, by implication, it necessarily affected the value and liquidity of the applicant company's property rights – in other words, the shares of company B. (see paragraph 43 above).

It follows that, in the proceedings in issue, the applicant company benefited from the guarantees of Article 6 § 1 of the Convention and, in particular, the right to a hearing by a tribunal established by law.

51. The Court notes that the application 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

1. The parties' submissions

(a) The applicant company

52. The applicant company submitted that judge D. had intervened in its case in the context of a power struggle between economic groups that had a political background. His intervention was incompatible with the principle of open justice and more in keeping with the arbitrary and politicised "cabinet justice" of the past.

The fact that the changes in the work schedule had been notified to the Regional Court was of no relevance, as the notification carried no legal consequences.

By deciding the case on the same day that he had reassigned it to himself and by concluding the proceedings in that manner, judge D. had rendered the procedural right of the applicant company to challenge him on grounds of bias effectively useless.

(b) The Government

53. The Government argued that the changes in the District Court's work schedule in 1999 had had a clear basis in law and had complied with the law. They had been carried out with the legitimate aim of rationalising the workings of the District Court and had been proactively notified to the superior court, even though notification was not required by law.

54. The frequency of the changes to the work schedule in 1999 reflected the development of the personnel situation at the District Court and, save for the first amendment, the amendments were not substantial.

55. The Government emphasised that the decree reassigning the applicant company's case had been issued subsequently to the amendment to the work schedule that freed additional space in the schedule. The decree was duly reasoned and administratively registered.

56. The Government also submitted that judge D. had been a natural choice to take over cases from judge C.'s agenda because the two judges would stand in for each other. There were no reasons to doubt the impartiality of judge D. and the correctness of his decision.

57. The Government were of the view that the fact that judge D. had decided the case on the same day that the applicant company's case had been reassigned to him "had no impact on the legal framework and gave no grounds to doubt his attitude in respect of the matter."

2. The Court's assessment

(a) General principles

58. The Court reiterates that under Article 6 § 1 of the Convention a tribunal must always be "established by law." This expression reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols (see, for example, *Jorgic v. Germany*, no. 74613/01, § 64, ECHR 2007-IX (extracts)).

59. "Law", within the meaning of Article 6 § 1 of the Convention, comprises not only legislation providing for the establishment and competence of judicial organs (see, *inter alia*, *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002), but also any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular (see *Gorguiladzé v. Georgia*, no. 4313/04, § 68, 20 October 2009, and *Pandjikidzé and Others v. Georgia*, no. 30323/02, § 104, 27 October 2009).

This includes, in particular, provisions concerning the independence of the members of a tribunal, the length of their term of office, impartiality and the existence of procedural safeguards (see, for example, *Coëme and Others v. Belgium*, nos.

32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 99, ECHR 2000-VII, and *Gurov v. Moldova*, no. 36455/02, § 36, 11 July 2006).

In other words, the phrase "established by law" covers not only the legal basis for the very existence of a "tribunal" but also compliance by the tribunal with the particular rules that govern it (see *Sokurenko and Strygun v. Ukraine*, nos. 29458/04 and 29465/04, § 24, 20 July 2006) and the composition of the bench in each case (see *Buscarini v. San Marino* (dec.), no. 31657/96, 4 May 2000).

60. The Court further observes that, according to its case-law, the object of the term "established by law" in Article 6 of the Convention is to ensure "that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament" (see *Zand v. Austria*, no. 7360/76, Commission's report of 12 October 1978, Decisions and Reports (DR) 15, pp. 70 and 80). Nor, in countries where the law is codified, can the organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret relevant domestic legislation (see *Coëme and Others*, cited above, § 98, and *Savino and Others v. Italy*, nos. 17214/05, 20329/05 and 42113/04, § 94, 28 April 2009).

61. The Court further reiterates that, in principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of domestic law (see, *mutatis mutandis*, *Coëme and Others*, cited above, § 98 *in fine*, and *Lavents*, cited above, § 114).

(b) Application of the general principles to the facts of the case

62. The Court will first determine whether the facts complained of in the instant case were compatible with the relevant provisions of domestic law.

To that end, the Court notes that the events concerning the reassignment of the applicant company's case to judge D. and his subsequent swift determination of the case, by issuing a declaratory ruling as to the improper method of enforcement used and discontinuing the proceeding, were subject to comprehensive examination by the Constitutional Court in its judgment of 17 January 2003.

In particular, it is noted that the Constitutional Court received extensive documentary evidence, held a public hearing and concluded that the impugned reassignment had taken place in the context of modifications to the District Court's work schedule for 1999 made in the interests of the equal distribution of cases concerning enforcement proceedings and in compliance with the Rules. The Constitutional Court also found that the speed with which judge D. decided on the case had no particular legal relevance (see paragraph 25 above).

63. The Court observes that it is not entirely clear which statutory ground was used to justify the reassignment of the applicant company's case from judge C. to judge D.

In particular, the decree of 30 June 1999 relied on both sections 2(2) and 2(3) of the Rules (see paragraph 19 above), while the Constitutional Court cited section 2(2) of the Rules in its judgment of 17 January 2003 (see paragraph 25 above). However, these provisions deal with the reorganisation of work in differing situations, namely to solve a long-term problem or to overcome the consequences of a sudden event (see paragraphs 36 and 37).

Having regard to the limitations on its power to review questions of compliance with domestic law (see paragraph 61 above), the Court accepts the Constitutional Court's conclusion that the applicable domestic law was complied with.

64. The Court is therefore called upon to determine whether the results of the interpretation and application of the domestic rules in the case at hand were compatible with the specific requirements of Article 6 § 1 of the Convention.

65. The Court observes that, as manager of the organisation of work at the District Court in his capacity as President, judge D. acted as an agent of the Ministry of Justice carrying out the State administration of the judiciary rather than as a member of the judiciary (see paragraphs 40 and 41 above).

However, judge D. was also involved in the applicant company's case in deciding it in his capacity as a judge.

66. The Court is of the view that, in such circumstances, the paramount importance of judicial independence and legal certainty for the rule of law call for particular clarity of the rules applied in any one case and for clear safeguards to ensure objectivity and transparency, and, above all, to avoid any appearance of arbitrariness in the assignment of particular cases to judges (see in this connection *Iwańczuk v. Poland* (dec.), no. 39279/05, 17 November 2009).

67. The Court observes that, at the relevant time, the assignment of cases to judges was largely governed by the work schedule of the court in question and that the rules concerning the creation and modification of work schedules were principally embodied in the Rules (see paragraphs 34 – 39 above).

68. The Court also observes that the applicable rules, both substantive and procedural, were far from being exhaustive (see in particular paragraph 39 above) and left significant latitude to the president of the court in issue.

This is evidenced, for example, by the number of modifications to the work schedule that were made at the District Court in 1999 (see paragraphs 18 – 21 above) and the fact that there appear to have been no specific safeguards in respect of such modifications.

In particular, as admitted by the Government, such modifications did not even require to be notified to a superior court (see paragraph 53 above).

69. The Court further observes that the amendments to the District Court's work schedule concerned the reorganisation of work at the District Court in general terms – that is to say, on generically verifiable criteria and without identifying specific individual cases (see paragraphs 18 and 21 above). By contrast, the reassignment of the applicant company's case on 30 June 1999 took the form of a “decree” and concerned that individual case exclusively (see paragraph 19 above).

70. On the basis of the information available, the Court cannot reliably verify whether the reassignment of the applicant company's individual case was on objective

grounds and whether any administrative discretion in its reassignment was exercised within transparent parameters. In this respect, the Court notes the case-law of the Constitutional Court concerning the additional constituent elements of the notion of a "lawfully appointed judge" and its content (see, in particular, paragraphs 31 and 33 above).

71. The Court places further reliance on the fact that judge D., exercising his judicial mandate, ruled on the applicant company's case - which involved a claim to the equivalent of no less than EUR 2,900,000 - in private on the same day that, exercising his administrative mandate, he reassigned the case to himself.

As the decision of judge D. completed the proceedings and was not subject to appeal, the applicant company was deprived of the possibility to raise any objections. Although this does not constitute a separate Convention issue in the circumstances of the present case, the applicant company was thereby also prevented from potentially challenging judge D. for bias.

72. The foregoing considerations are sufficient to enable the Court to conclude that the reassignment of the applicant company's case to judge D., who subsequently decided the case, was not compatible with the applicant company's right to have a hearing before a tribunal established by law.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant company made a claim in respect of pecuniary damage, quantifying the claim with a "hypothetical estimate" of some 5,000,000 Slovakian korunas (SKK) (the equivalent of some EUR 166,000) but submitting that it was not in a position to substantiate the claim or to quantify it with any precision. The applicant company also claimed SKK 2,000,000 (the equivalent of some EUR 66,400) in respect of non-pecuniary damage.

75. The Government contested the substance of the former claim and the amount of the latter claim.

76. The Court observes that although the applicant company's pecuniary rights and interests must have been affected (see paragraph 50 above), the applicant company has failed to substantiate the relevant part of its Article 41 claim. The Court therefore rejects this claim.

77. On the other hand, it awards the applicant company EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant company also claimed SKK 200,000 (the equivalent of some EUR 6,640) in legal costs, making reference to the domestic legal regulations concerning lawyers' fees but providing neither any breakdown of the claim nor any supporting documents.

79. The Government considered that the applicant company was only entitled to an award in respect of legal costs actually and necessarily incurred and which were reasonable as to quantum.

80. The Court observes that the claim has not been substantiated. It is therefore dismissed.

C. Default interest

81. 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 application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non pecuniary damage;
   (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 company's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

DMD GROUP, A.S. v. SLOVAKIA JUDGMENT