

SLOVAKIA

Anton Dulak

The Protective Purpose of a Rule

Judgment of the Constitutional Court of the Slovak Republic of 9 May 2017, Case No. II ÚS 295/2017/11

Facts:

- Cooperate farm (investor) went bankrupt, while the members of the cooperate farm, who used the services of a bonds trader, lost their savings.
- Claim for a compensation for damage from the National Bank ... National Bank's erroneous bank supervision.

Judgment of the Court of first instance + the Appellate court:

“...the complaining party did not prove the National Bank’s negligence”

Judgment of the Constitutional Court:

The state's responsibility for damage inflicted as a result of erroneous institutional process requires the inflicted damage to be a result of the very erroneous institutional process. This is the case when the institutional process, or the result of the process, was conceived as a means to protect not only the general interests of society, but also the very infliction of damage upon the damaged party.

Judgment of the Constitutional Court:

- the complaining party, as an investor, must have known that investing in the performance of a cooperate farm carries certain risks
- state authorities can only monitor proceedings in the limits defined and controlled by the law

Judgment of the Constitutional Court:

- there is no subjective right or claim to 'correct' or 'accurate' lawful bank supervision, which would then create a claim for damage compensation when such supervision fails.
- basic bank supervision is a conceptual, and rather (economically) political activity – not a traditional administrative activity that Act No. 514/2003 Z. z. has in mind.

Judgment of the Constitutional Court:

- damage does not have to be compensated, as long as the purpose of the legal regulation surrounding it was not to protect from such damage.

Judgment of the Constitutional Court:

References:

- German concept „Schutzzweck der Norm“
- Court ruling of 22 April 1958 (BHZ 27, 137)
- European Court of Justice in the matter ESD C-222/02