



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

FIFTH SECTION

**CASE OF MINARIK v. THE CZECH REPUBLIC**

*(Application no. 46677/06)*

JUDGMENT

STRASBOURG

10 February 2011

**FINAL**

*10/05/2011*

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



**In the case of** Minarik v. the Czech Republic,

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Mark Villiger,

Isabelle Berro-Lefèvre,

Zdravka Kalaydjieva,

Angelika Nußberger,

Julia Laffranque, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 January 2011,

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

## PROCEDURE

1. The case originated in an application (no. 46677/06) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Ms Susanne Minarik (“the applicant”), on 14 November 2006.

2. The applicant was represented by Mr P. Zima, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V. A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, a violation of her right of access to court under Article 6 of the Convention.

4. On 25 November 2009 the President of the Fifth 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 was born in 1975 and lives in Willstät, Germany.

6. The applicant was a minority shareholder in Sokolovská uhelná, a.s. (“the company”), a joint-stock company incorporated under Czech law.

7. On 4 May 2005 the general meeting of the company adopted, by a vote of the main shareholder, a resolution on the winding up of the company and the transfer of all its assets to the main shareholder.

8. On 25 June 2005 the applicant lodged with the Plzeň Regional Court (*krajský soud*) an action to have the resolution set aside, asserting that it had been adopted contrary to applicable law, bilateral investment treaties and her property rights. She also asserted that the law on which the resolution had been based was itself unconstitutional. At the same time, she informed the court administering the Companies Register (*obchodní rejstřík*) about her action and asked it not to allow the entry in the register of the winding up of the company and the transfer of all its assets to the main shareholder until the legality of the resolution had been decided by the Regional Court. These set-aside proceedings are still pending.

9. The applicant received cash compensation based on the value of her shares as at 31 December 2001. The amount of compensation was based on an evaluation made by an expert appointed by a court on the proposal of the main shareholder.

10. On 30 June 2005 the court in charge of the Companies Register approved the registration of the transfer and the deletion of the company from the Companies Register. No hearing was held prior to that decision, which was not served on the applicant as she did not have standing to participate in the proceedings.

11. On 11 July 2005 the Prague High Court (*vrchní soud*) rejected the applicant's appeal contesting the above-mentioned decision. It ruled that since the applicant did not have standing to take part in the impugned proceedings, she was not entitled to appeal their outcome.

12. On 11 May 2006 the Constitutional Court (*Ústavní soud*) rejected the applicant's constitutional appeal, in which she claimed an impairment of her right to a fair trial and the right to property in relation to the companies register proceedings on the basis that (i) she had not been allowed to be a party to those proceedings as a result of the application of Article 220h(4) of the Commercial Code and (ii) that this had created an irreversible situation. The Constitutional Court rejected the appeal as manifestly ill-founded, holding that the Commercial Code had not impaired her right of access to court because, apart from the companies register proceedings, there were other proceedings available to the applicant in which she could have asserted her rights. It further held that the applicant's claims that such other proceedings would not guarantee adequate protection of her rights could not be reviewed, because the present appeal had been directed only against the decisions in the companies register proceedings.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice are set out in the Court's judgment *Kohlhofer and Minarik v. the Czech Republic*, nos. 32921/03, 28464/04 and 5344/06, §§ 40-70, 15 October 2009.

14. In decision no. Pl. ÚS. 51/03 of 22 February 2005 (referred to at paragraph 36 of the above-mentioned *Kohlhofer and Minarik* judgment), the Constitutional Court rejected a request of the Ostrava Regional Court to strike down several provisions of the Commercial Code regulating the winding up of a company. The Regional Court had determined that those provisions had been applicable to proceedings before it instituted by minority shareholders seeking to set aside a resolution on the winding up of a company and the transfer of all its assets to the main shareholder. The Constitutional Court held as follows:

“[Under the provisions on the concrete review of the constitutionality of any law,] the Constitutional Court can only decide on the constitutionality of a law that is applicable to the proceedings.

...

According to Section 131(3)(c) of the Commercial Code, a court will reject an action to set aside a general meeting resolution if the decision to allow the entry [in the commercial register] of the transfer of all company's assets to the main shareholder has become final.

As mentioned above, the Ostrava Regional Court stayed the proceedings on 14 January 2003, that is, two months after the decision to allow the entry of the transfer of all of the company's assets to the main shareholder became final. If the Ostrava Regional Court sent its request to strike down the provisions of the Commercial Code only in December 2003, it is obvious that it did so at a time when it could not have decided on the merits of the action because of the [effect of] Section 131(3)(c) of the Commercial Code. In other words, it could not have used the provisions whose constitutionality it disputes. Thus, these provisions are not “a law that is applicable to the proceedings.”

## THE LAW

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

15. The applicant complained that the Commercial Code had enabled the transfer of her property – her minority shareholding – against her will without any effective remedy against an abuse of power by the majority shareholder.

She relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

16. The Government disputed the applicant's assertions.

### A. Admissibility

17. The Government maintained that the application had been inadmissible for non-exhaustion of domestic remedies for being premature. They argued that only the proceedings before the courts administering the commercial register had ended, whilst the other actions – to set aside the general meeting resolution and to determine the value of the compensation – were still pending. They maintained that the provisions of law which had hindered the applicant from seeking a review of the lawfulness of the matter (Articles 131(3)(c) and 220h(3) and (4) of the Commercial Code) are likely to be reinterpreted in view of the decision of the Court in *Kohlhofer and Minarik v. the Czech Republic*, cited above.

18. The applicant disputed that objection, asserting that she had no prospect of success in the pending proceedings. She maintained that the Czech courts do not consider the Court's decisions as binding precedents. She added that, in any case, the company had been dissolved and that setting aside the winding-up resolution was highly unlikely for both practical and legal reasons, because the rights of third parties acquired in good faith are also protected by the Commercial Code.

19. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. It is for the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time: that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (*V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX). Where a suggested remedy did not offer reasonable prospects of success, for example in the light of settled domestic case law, the fact that the applicant did not use it is not a bar to admissibility (*Radio France and Others v. France* (dec.), no. 53984/00, § 34, ECHR 2003-X (extracts)). Moreover, an applicant does not need to exercise remedies which, although theoretically of a nature as to constitute a remedy, do not in reality offer any chance of redressing the alleged breach (*Yoyler v. Turkey* (dec.), no. 26973/95, 13 January 1997). In addition, particular attention should be paid to, *inter alia*, the speediness of the remedial action itself, it not being excluded that the adequate nature of the remedy can be undermined by its excessive duration (*Doran v. Ireland*, no. 50389/99, § 57, ECHR 2003-X (extracts)). In the Czech context, the

Court has held that applicants who wished to challenge the lawfulness of a winding-up resolution were not required to pursue, or await, constitutional proceedings on a set-aside decision (*Kohlhofer and Minarik v. the Czech Republic*, cited above, § 79).

20. The domestic situation has not changed since the *Kohlhofer and Minarik* judgment was adopted. The Government did not cite any decision which would signal a change in the domestic case-law, and the relevant legislation has not been amended. In this context, the Court notes that the applicant unsuccessfully challenged the decision to delete the company from the Companies Register all the way up to the Constitutional Court.

21. The Court notes that the Government stressed that the outcome of the set-aside proceedings in the instant case cannot be anticipated, especially in view of the Court's decision in the above-mentioned case of *Kohlhofer and Minarik v. the Czech Republic*, which the domestic courts might follow. The Court agrees that this possibility cannot be ruled out and in general a domestic interpretation of rights in line with the Court's case-law must be welcomed. Nevertheless, the Court considers that in view of the unchanged legislation on this point and the established case-law of the domestic courts, such a change in interpretation remains to a large extent speculative.

22. Thus, independently of the problems which would be created for third parties if the winding-up resolution were to be set aside at some date in the future, the Court considers that the applicant was not required to await the outcome of the set-aside proceedings before lodging an application with the Court. Consequently, the Government's objection in this respect must be dismissed.

23. As for the outcome of the compensation proceedings which, according to the Government, the applicant should have awaited, the Court considers, as in the case of *Kohlhofer and Minarek* (cited above, para. 80) that the question of this alternative remedy is inseparably linked to the Government's plea on the merits that such a remedy justified the limitation on the applicant's access to court in the set-aside proceedings. The Court therefore joins this legal question to its examination on the merits of the application.

24. 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**

25. The applicant maintained that Czech legislation had made it impossible for her to challenge the winding-up resolution before a court. The applicant considered that her application had the same characteristics as

that of *Kohlhofer and Minarik v. the Czech Republic*, cited above, where the Court found a violation of Article 6 of the Convention.

26. The Government took the view that in several aspects the present case differs from *Kohlhofer and Minarik v. the Czech Republic*, cited above, particularly because of the prospect of significant change in domestic case-law and legislation following the Court's judgment in that case. The Government further invited the Court to reconsider its conclusions in the *Kohlhofer and Minarik* judgment, finding the dissenting opinion in that case to be preferable. They maintained that the restrictions on the applicant's access to court had been proportionate and that the applicant's shares had constituted financial property rights which could be fully protected in the pending compensation proceedings.

27. The Court recalls that it has already found a violation of Article 6 § 1 of the Convention in cases raising the same issues as the present application (see *Kohlhofer and Minarik v. the Czech Republic*, cited above), where applicants had no access to court to contest general meeting resolutions which had deprived them of their shares.

28. The Court firstly notes that the Government's argument concerning the prospect of a change in domestic case-law and the fact that the set-aside proceedings are still pending before the first-instance court has been examined above and rejected (§ 21).

29. The Court cannot agree with the Government's argument that the applicant's rights connected with the shares are primarily property of a nature which can be sufficiently protected in the compensation proceedings: the applicant however seeks access to the courts regarding the legality of the act of deprivation of her property – that is, of the shares themselves. It is for shareholders as property owners to decide themselves what other use, if any, apart from monetary value, they find in their property. Therefore the Court is unable to authoritatively determine that the applicant's shares represented only a monetary value or to speculate as to what other use they were to her. It suffices to note that by law shareholders enjoy many rights of a non-pecuniary nature which they might find useful for whatever reason, such as the right to be invited to and to attend general meetings, or the right to be acquainted with the contents of annual, extraordinary, interim or consolidated financial statements and reports, and so on.

30. For these reasons, the compensation proceedings cannot be considered as sufficiently protective of the applicant's claim that she had been illegally deprived of her ownership of the shares, that is, her personal property, which clearly engages the applicant's civil rights under Article 6 of the Convention.

31. Having examined all the material submitted to it, the Court considers that there is no new fact or convincing argument capable of persuading it to reach a different conclusion in the present case than in *Kohlhofer and*



*Minarik v. the Czech Republic*, cited above. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies in this respect and finds that there has been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

32. The applicant complained that the resolution on the winding up of the company had been tantamount to an expropriation of shares of the minority shareholders and thus that the second sentence of Article 1 of Protocol No. 1 to the Convention is applicable. She maintained that that provision had been violated because the interference had not been lawful, had been contrary to general principles of international law, that there had been no public interest in the action and that it had not been proportionate.

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

33. The Government maintained that the applicant's complaints under this provision of the Convention were inadmissible.

34. The Court observes that the proceedings for compensation, crucial in the light of Article 1 of Protocol No. 1, are still pending.

35. It follows that this part of the application is premature within the meaning of Article 35 § 1 of the Convention (see *Kohlhofer and Minarik v. the Czech Republic*, cited above, § 112) and must therefore be declared inadmissible pursuant to Article 35 § 4 of the Convention.

## III. APPLICATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant complained that she had not had at her disposal any remedy against the interference with her property rights which forms the subject of her application. She relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] 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.”

37. The Court notes that this complaint is linked to that made by the applicant under Article 1 of Protocol No. 1, which has been declared inadmissible as premature.

38. It follows that this complaint is manifestly ill-founded pursuant to Article 35 § 3 (a) of the Convention and must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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.”

40. The applicant claimed 2,500 euros (EUR) for costs and expenses incurred before the Court.

41. The Government did not consider this amount to be unreasonable or unsupported by documentation.

42. 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 to the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for the applicant's costs and expenses incurred in the proceedings before the Court.

43. The Court considers it appropriate that 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 complaint concerning Article 6 § 1 admissible and the remainder of the application inadmissible;
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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in

respect of costs and expenses, to be converted into Czech korunas at the rate applicable at the date of settlement;

(b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President