



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

FIFTH SECTION

CASE OF GOLHA v. THE CZECH REPUBLIC

(Application no. 7051/06)

JUDGMENT

STRASBOURG

26 May 2011

FINAL

26/08/2011

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

In the case of Golha v. the Czech Republic,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power,

Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 5 and 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 7051/06) 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 Czech national, Mr Vojtěch Golha (“the applicant”), on 11 February 2006.

2. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, from the Ministry of Justice.

3. The applicant alleged that the civil proceedings were inordinately lengthy and that the damages he received were insufficient and in breach of Articles 6 and 13 of the Convention.

4. On 1 September 2009 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Stochov, the Czech Republic.

1. The proceedings on division of matrimonial property

6. On 2 May 1988 the applicant's former wife ("the claimant") instituted civil proceedings for the division of matrimonial property before Kladno District Court.

7. Between January 1989 and August 1993 the District Court sought a valuation by five sworn experts of the movable and immovable property in dispute. On 18 April 1994 it divided the property.

8. In February 1995 Prague Regional Court, on an appeal by the applicant, quashed the judgment of 18 April 1994 and remitted the case to the District Court which, in March 1995, ordered a new expert report to assess the value of the real estate belonging to the matrimonial property. In September 1995 the District Court requested the applicant to find alternative counsel in the specified time period, as it had been impossible to serve documents on his original counsel.

9. In May 1995 and February 1996 the expert witness informed the District Court that the applicant had prevented him from entering his house to estimate the value of the real estate. On 26 February 1996 the District Court fined the applicant for preventing the expert witness from collecting data for his report. The report was drawn up in January 1997.

10. In March 1999 the District Court delivered a judgment by which it made a new decision on the division of the matrimonial property. In February 2000 the Regional Court, following the applicant's appeal, quashed the judgment and sent the case back to the District Court which, on 5 June 2001, adopted a third judgment.

11. This judgment was modified by the Regional Court on 16 July 2002 on appeals by the parties.

12. In November 2002 the applicant lodged an appeal on points of law alleging, *inter alia*, that the real estate should not have been included in the matrimonial property.

13. In the meantime, on 28 February 2003, the District Court had ordered enforcement of the last two judgments. On 30 October 2003 it appointed an expert witness to evaluate the real estate for the purpose of the enforcement, and ordered the applicant to cooperate with him.

14. On 29 January 2004 the Supreme Court quashed the last judgments of 2001 and 2002 and remitted the case to the District Court which, on 10 October 2006, discontinued the enforcement proceedings.

15. On 23 August 2004 the claimant died and her new husband entered the proceedings as a legal successor.

16. On 14 February 2007 the District Court divided the matrimonial property for the fourth time. On 21 September 2007 it corrected clerical errors in the judgment.

17. On 8 January 2008 the Regional Court quashed this judgment and sent the case back to the District Court which, on 6 March 2008, ruled that the claimant's three children were also entitled to join the proceedings.

18. On 28 March 2008 the claimant's new husband died and his two children entered the proceedings as his legal successors. On 8 August 2008 the applicant withdrew the power of attorney from his counsel.

19. On 10 February 2009 the District Court delivered its fifth judgment on the division of the property.

20. On 30 April 2009 the Regional Court, following an appeal lodged by the applicant on 19 March 2009, quashed this judgment. In June 2009 the applicant waived his right to court-appointed counsel.

21. On 24 June 2009 the District Court discontinued the proceedings, as the claimants had withdrawn their claims. In response to an appeal by the applicant, on 12 November 2009 the Regional Court quashed the District Court's decision as erroneous.

22. Between 8 December 2009 and 19 February 2010 the case file was at Prague 2 District Court for proceedings for damages arising from the unreasonable length of the proceedings. On 1 February 2010 the applicant reported his new attorney to the Czech Bar Association for fraudulent behaviour.

23. On 24 February 2010 Kladno District Court handed down its sixth judgment on the division of the property.

24. On the applicant's appeal, this judgment was modified by the Regional Court on 14 October 2010, and became final on 22 November 2010. As a result, the applicant was assigned the real estate and all the remaining movable property and was ordered to pay compensation to the claimants for their share. In his letter of 27 January 2011, the applicant informed the Court that he had lodged an appeal on points of laws before the Supreme Court. It thus seems that the proceedings remain pending.

2. Proceedings for damages

25. On 16 April 2007 the applicant claimed compensation for non-pecuniary damage arising from the excessive length of the proceedings with the Ministry of Justice under Act No. 82/1998 as amended by Act no. 160/2006. He specified the non-pecuniary damage that he had suffered at 285,000 Czech korunas (CZK, 10,962 euros (EUR)), the pecuniary damage at CZK 2,000,000 (EUR 76,923) and the "loss of time and costs" at CZK 179,494 (EUR 6,903).

26. On 3 August 2007 the Ministry confirmed receipt of the applicant's claim and requested further documents to substantiate the non-pecuniary damage claim. On 27 August 2007 the applicant provided the Ministry with the requested documents.

27. As the Ministry did not deal with the applicant's request within the six-month statutory time-limit, he brought a civil action for damages against the Ministry on 6 November 2007.

28. In a letter of 22 February 2008 the Ministry of Justice acknowledged that the proceedings were unreasonably lengthy and had suffered from administrative malpractice within the meaning of section 13 of Law no. 82/1998. The Ministry relied on the Court's case-law in its determination of just satisfaction. Taking into account the relative complexity of the proceedings, the death of one of the parties during the proceedings and the applicant's uncooperativeness with the expert witness in 1995-96 the Ministry awarded the applicant CZK 85,000 (EUR 3,270) for non-pecuniary damage. Further it concluded that there had not been any causal link between the legal costs and the claims for compensation for pecuniary damage on the one hand and the length of the proceedings on the other, so these claims were denied. The applicant received the sum on 3 March 2008.

29. On 20 September 2010 Prague 2 District Court granted the applicant's civil action in part and awarded him CZK 75,500 (EUR 3,060) in just satisfaction in addition to the award made by the Ministry. The court concluded that the proceedings on merits had overall lasted for more than twenty-two years and that they had been complex to a certain extent. It further considered that the applicant had contributed to the length of the proceedings by causing delays amounting to five years and that the expert witnesses and other parties had delayed the proceedings by more than two years. The court admitted that the remaining fourteen and a half years were attributable to the State, and that despite the patrimonial character of the proceedings the outcome was significant for the applicant as he was elderly, was not in good health and the proceedings concerned, *inter alia*, his place of residence. The court then deducted seven and a half years from the overall length of the proceedings, which represented the delay not caused by the State, and determined the default sum to be awarded to the applicant accordingly. This sum was adjusted by percentage rates representing the complexity of the case (-20%), the number of instances involved (-20%), the conduct of the applicant (-26%), his health and age and what was at stake for him (+20%). The final just satisfaction consisted of two parts. Firstly, the applicant was awarded CZK 45,500 (EUR 1,844), on top of the sum awarded by the Ministry, for the length of the proceedings on merits. Moreover, the court acknowledged that the compensatory proceedings had themselves been lengthy, and awarded the applicant an extra CZK 30,000 (EUR 1,216) for this reason.

30. On 2 November 2010 the overall sum was transferred to the applicant. The judgment became final on 9 November 2010. The applicant challenged it on 20 November 2010 and applied for a waiver of the time-limit for appeal due to his hospitalisation. This request was denied as belated. It appears that no formal decision has been taken on the appeal.

II. RELEVANT DOMESTIC LAW

31. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings are set out in the Court's decision in the case of *Vokurka v. the Czech Republic* ((dec.), no. 40552/02, §§ 11-24, 16 October 2007).

III. RECOMMENDATION CM/Rec (2010)3 OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE TO MEMBER STATES ON EFFECTIVE REMEDIES FOR EXCESSIVE LENGTH OF PROCEEDINGS

32. This recommendation, adopted on 24 February 2010, gave guidance to member States on the remedies for excessive length of domestic proceedings. *Inter alia* it recommended the governments to:

“8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

33. The applicant complained that the length of the proceedings on the division of the matrimonial property was unreasonable.

34. Article 6 of the Convention provides:

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

A. Admissibility

1. *Victim status*

35. The Government maintained that the applicant could no longer be considered to be a victim of a violation of the right to a hearing within a reasonable time. They argued that the Ministry of Justice had acknowledged the violation and provided the applicant with sufficient just satisfaction.

36. In the Government's opinion submitted on 15 January 2010, the amount of EUR 3,270 awarded by the Ministry of Justice can be considered to be adequate and sufficient. Such an amount is not insignificant in the context of the national law, where heirs may, in the event of a relative's death, be compensated by up to EUR 9,230 for non-pecuniary damage which is incomparably more severe. The Government emphasised that this just satisfaction is also higher than the amount awarded by the Court for non-pecuniary damage suffered by applicants who, contrary to Article 3 of the Convention were not guaranteed adequate health care in prison (see *Wenerski v. Poland*, no. 44369/02, § 84, 20 January 2009, and *Kaprykowski v. Poland*, no. 23052/05, § 81, 3 February 2009).

37. The applicant maintained that in view of the length of the proceedings on merits the award was insufficient.

38. The Court reiterates that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, an applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Apicella v. Italy* [GC], no. 64890/01, § 70, 29 March 2006).

39. In the present case the Court observes that the first condition, namely the finding of a violation, was met on 22 February 2008, and on 20 September 2010 when the Ministry of Justice and Prague 2 District Court acknowledged the violation of the applicant's right to a hearing within a reasonable time.

40. As to the second condition, the Court notes that the applicant has been awarded the equivalent of EUR 5,114 for the length of the proceedings on merits. He received EUR 3,270 granted by the Ministry by a money order of 3 March 2008 and EUR 1,844 granted by the Prague 2 District Court by a money order of 2 November 2010.

41. The Court is satisfied that Prague 2 District Court referred to the applicable case-law when calculating the just satisfaction and that it took into account the length of the compensatory proceedings and therefore increased the final just satisfaction by EUR 1,216. Nevertheless, the court attributed more than two years of the delay in the proceedings to the expert witnesses and the other parties. Only after deducting these two years, and five years on account of the applicant's conduct, did the court admit that the remaining delay was imputable exclusively to the State. In this context the Court points out that the expert witnesses, despite their inherent independence, fell within the control of the domestic courts, which bore responsibility for ensuring the smooth administration of justice (see *Cambal v. the Czech Republic*, no. 22771/04, § 33, 21 February 2006). Therefore the State cannot exonerate itself from the delays caused by the expert witnesses unless the applicant contributed to them. Also, the courts cannot attribute to the applicant the delays associated with the defendant's obstructions, as the attitude of other parties does not dispense them from ensuring a speedy trial

(see *Sürmeli v. Germany* [GC], no. 75529/01, § 129, ECHR 2006-VII, and *Smirnova v. Ukraine*, no. 36655/02, § 69, 8 November 2005).

42. In addition the Court observes that the District Court blamed the applicant for his conduct during the proceedings twice. First, when it deducted five years which allegedly represented the applicant's contribution to the overall length of the proceedings, second when as its next step it adjusted the resulting sum by deducting 26% in view of the applicant's conduct (see paragraph 29 above).

43. Having regard to the facts of the case and to the principles established in the case-law (see *Apicella*, cited above, §§ 67-118; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V; and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V) the Court considers that the amount of CZK 160,500 (approx. EUR 5,114) awarded by the Ministry of Justice and Prague 2 District Court for the length of the proceedings on merits cannot be considered as providing adequate and sufficient redress.

In this context the Court observes that the reference period taken into account by the domestic authorities covers the whole proceedings since 1988, while the reference period and the appreciation by the Court spans the period only from 18 March 1992, the date of the entry into force of the Convention with regard to the Czech Republic.

44. In view of the above, the Court concludes that by the date of this judgment the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

2. *Non-exhaustion of domestic remedies*

45. The Government submitted that the applicant had not exhausted domestic remedies, as the compensatory proceedings were pending before the first-instance court and their outcome could not be anticipated. Therefore it could not be ruled out that the courts would directly apply the principles specified in the Court's case-law, in particular as regards the possibility of a higher compensation award for any delays objectively arising in compensatory proceedings (see *Apicella*, cited above, § 96, and *Sartory v. France*, no. 40589/07, § 24, 24 September 2009).

46. The Government pointed out that according to the Czech legislation it is in principle necessary to claim compensation for non-pecuniary damage arising from the lengthy proceedings before a court too, usually before at least the courts of first and second instance (see *Najvar v. the Czech Republic* (dec.), no. 8302/06, 3 March 2009). Therefore, when the Government submitted their observations on 15 January 2010, the present application appeared to be premature.

47. The Government further argued that a faster conclusion of the compensatory proceedings has been prevented by an objective obstacle consisting of the continued, simultaneously pending proceedings on the

merits. Prague 2 District Court repeatedly required access to the file for the compensatory proceedings, while Kladno District Court and Prague Regional Court could not satisfy this request, as they needed the file for the proceedings on the merits.

48. The applicant did not comment on the Government's observations.

49. The Court reiterates that in addition to the actual award particular attention should be paid to the speediness of the remedial action itself, as the adequate nature of the remedy can be undermined by its excessive duration (see, *inter alia*, *Doran v. Ireland*, no. 50389/99, § 57, ECHR 2003-X (extracts); *Sürmeli*, cited above, § 101; and *Martins Castro and Alves Correia de Castro v. Portugal*, no. 33729/06, § 53, 10 June 2008). In this context the Court observes that several States have chosen to limit compensatory proceedings to one or two judicial instances (see *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX; *Charzyński v. Poland* (dec.), no. 15212/03, § 14, ECHR 2005-V; and *Scordino*, cited above, § 62). Besides, compensatory proceedings in Italy, lasting eleven months at one level of jurisdiction, were found to be excessively long (see *Simaldone v. Italy*, no. 22644/03, § 29, ECHR 2009-... (extracts)).

50. With regard to the Czech compensatory remedy, the Court already stated that the proceedings before two judicial instances which follow the obligatory administrative procedure under Articles 14 and 15 of the Act 82/1998 gave the State sufficient opportunity to redress the alleged violation. It has to be noted that the decision delivered by the appellate jurisdiction becomes final, notwithstanding the possible engagement of the Supreme and the Constitutional Court. Under these circumstances the Court considered that requiring applicants to pursue their claim to these higher levels of jurisdiction would on the one hand burden the applicants as regards their time and costs and would also run a risk of overwhelming the higher courts (see *Najvar*, cited above, and *Uher v. the Czech Republic* (dec.), no. 45566/04, 2 September 2008).

51. In the present case the Court notes that the applicant filed a claim with the Ministry of Justice on 16 April 2007. The Ministry, which has to examine claims within the statutory six-month period, requested further documents from the applicant on 3 August 2007. On 27 August 2007 the applicant provided the Ministry with the requested documents. On 22 February 2008, after ten months and eight days, the Ministry acknowledged that the proceedings on the merits were unreasonable lengthy and awarded the applicant damages. In the meantime, on 6 November 2007 the applicant brought the action for damages against the Ministry under the Act 82/1998. Prague 2 District Court delivered the judgment on 20 September 2010 which became final on 9 November 2010. It seems that the applicant did not observe the time-limit set to appeal this judgment.

52. The Court observes that the applicant had been pursuing the compensatory proceedings for more than three and a half years without obtaining sufficient redress. Being of the opinion that the length of the compensatory proceedings is excessive, and taking into consideration that the proceedings on merits are probably still pending, the Court accepts that under these specific circumstances the applicant did everything that could reasonably be expected of him to obtain redress at the domestic level even if he did probably not observe the time-limit set to appeal the judgment of 20 September 2010. In any case had the applicant challenged the Prague 2 District Court decision properly, the appellate proceedings would have further prolonged the already unreasonable length of the compensatory proceedings.

53. The Government's objection relating to the applicant's failure to exhaust domestic remedies must therefore be rejected.

3. Conclusion

54. The Court concludes that the application 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

55. The Court points out that despite the fact that the proceedings in question started on 2 May 1988, the period to be considered by the Court began to run only on 18 March 1992, the date of the entry into force of the Convention with regard to the Czech Republic. Nevertheless, for the assessment of the reasonableness of the length of the proceedings it is necessary to take into account the stage of proceedings at this date (see, *mutatis mutandis*, *Patera v. the Czech Republic*, no. 25326/03, § 97, 26 April 2007). The proceedings are probably still pending and have already lasted for almost nineteen years since the ratification of the Convention by the Czech Republic.

56. The Government maintained that the proceedings were being held before three levels of jurisdiction and that they were very complex. They require numerous expert reports, a comprehensive amendment of the relevant law was adopted during the proceedings, and legal successors living abroad had to enter the proceedings following the claimant's death. Furthermore the applicant himself prevented the expert witness from collecting the necessary data, was repeatedly ill and hospitalised and cooperation with his ever-changing counsel was difficult.

57. The Court reiterates that in view of the variety of types of proceedings, there are no absolute criteria for determining the point at which the length of proceedings becomes excessive. Regard must be had to all the

circumstances of the case, what is at stake for the parties, the complexity of the case and the conduct of the parties and any other persons (experts or others) acting independently of the court. The longer the proceedings as a whole or at one particular level of jurisdiction, the more pressing the obligation on the court to take steps to expedite or conclude them (see, among many other authorities, *Sürmeli*, cited above, § 65).

58. In the present case the Court admits that the proceedings were to a certain extent complex. It was necessary to rely on several expert witness reports and their supplements, two claimants living in Slovakia entered the proceedings and the relevant laws changed during the course of the proceedings. As to the applicant's conduct, he twice prevented the expert witness from collecting the necessary data and he possibly contributed to the length of the proceedings by changing his counsel several times. However, this conduct cannot justify the overall length of the proceedings.

59. At the same time the Court emphasises that the first judgment was delivered more than six years after the action had been brought, that the second judgment was handed down almost five years after the first one had been quashed, that the appellate court quashed the decisions of the first-instance court four times and that the Supreme Court quashed the lower courts' decisions in 2004, all due to various factual or legal inaccuracies. The Court consistently held that applicants cannot be blamed for making full use of the remedies available to them under domestic law (see, among others, *Schmidtová v. the Czech Republic*, no. 48568/99, § 65, 22 July 2003).

60. The Court further notes that the delays in the proceedings caused by the health of the applicant and the death of the claimant have resulted from *vis maior* independently of the will of the Government and of the applicant, which cannot be blamed for such delays (see, *mutatis mutandis*, *Bačák v. the Czech Republic*, no. 3331/02, § 29, 7 March 2006).

61. With respect to what was at stake for the applicant, in view of his age, poor health and the fact that the proceedings concerned, *inter alia*, his place of residence, the Court cannot but agree with Prague 2 District Court that the proceedings were of a certain importance to him.

62. Thus, having applied the above criteria set out in its case-law to the present case, the Court concludes that the proceedings, which lasted already nineteen years since 18 March 1992, have been excessively lengthy and fail to meet the "reasonable time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

64. In substance the applicant complained that he had no effective remedy as regards the length of the proceedings within the meaning of Article 13 of the Convention. This Article 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.”

65. The Government maintained that Article 13 required the existence of a systemic opportunity to achieve redress, regardless of problems which could appear under specific circumstances when exhausting remedies and which could possibly relieve the applicant of the obligation to make use of an existing and usually effective remedy (see, *mutatis mutandis*, *Denis Vasilyev v. Russia*, no. 32704/04, § 136, 17 December 2009). Not even the fact alone that in the specific case and on the basis of a remedy which is otherwise effective the applicant was not provided redress at all, or to an extent that would not relieve him of the status of a victim of a violation of the right to a hearing within a reasonable time, could lead to the conclusion that an effective remedy of violation of the said right was not available to the applicant (see *Gordon-Krajcer v. Poland*, no. 5943/07, §§ 32-34, 7 July 2009, and *Tekiela v. Poland*, no. 35785/07, §§ 33-35, 13 January 2009).

66. The Government underlined that the Court had not found a violation of Article 13, even though it had referred to dozens of specific cases in which Italy had been found to violate Article 6 on grounds of late payment of awards for lengthy proceedings at the national level, and had drawn attention to additional hundreds of similar cases notified to the respondent Government (see *Simaldone*, cited above, §§ 80 et seq.).

67. In the present case the Government saw no indication that the specific circumstances, *inter alia* the difficulties caused by the existence of only one case file for the purpose of two ongoing parallel proceedings, represented a problem usually accompanying compensatory proceedings. Thus the Government were convinced that it would not be possible, on the basis of this case, to draw doubts about the effectiveness of the remedy in general.

68. The Government also noted that the applicant’s claim was partially granted by the Ministry of Justice in approximately ten months, or relatively quickly. The relevant award was remitted to the applicant almost immediately. In their observations submitted on 15 January 2010 the Government also asserted that the possible delays objectively arising in compensatory proceedings may be remedied by higher compensation (see paragraph 45 above).

69. The Court has already found the violation of Article 6 in the present case. The applicant therefore has an “arguable claim” for the purposes of Article 13 of the Convention.

70. The Court reminds that the compensatory remedy for lengthy proceedings introduced by Law no. 82/1998 was found to be effective (see *Vokurka v. the Czech Republic* (dec.), no. 40552/02, 16 October 2007). On that occasion the Court expressed concerns about the risks of the lengthening of the compensatory proceedings as the claimant, unsatisfied

with the outcome of proceedings before the relevant administrative authority, might subsequently bring an action before the first-instance court which could be challenged by an appeal and later by an appeal on points of law or a constitutional appeal (*ibid.*, § 61).

71. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms. In the present case the applicant used the opportunity to claim compensation for non-pecuniary damage arising from the excessive length of the proceedings. Consequently the Ministry of Justice and later Prague 2 District Court acknowledged the violation of his right to a hearing without unjustified delay and awarded him just satisfaction.

The Court underlines that Prague 2 District Court indeed took into account the length of the compensatory proceedings and awarded the applicant CZK 30,000 (EUR 1,216) on this account, in order to provide him with extra damages to compensate for the delays arising during the compensatory proceedings and not to penalise him further (see *Martins Castro and Alves Correia de Castro*, cited above).

72. The Court takes due note of the applicant's failure to properly challenge the above decision and claim higher damages. Therefore, it does not assess the sufficiency of the award for the purposes of the Article 13 complaint.

73. Under the specific circumstances of the case, the Court is of the view that the excessive length of the compensatory proceedings does not render the remedy under Law no. 82/1998 incompatible with Article 13, all the more once the applicant was provided compensation for this delay, albeit that it has consequences for the Court's assessment of the requirement of exhaustion of domestic remedies by the applicant.

Accordingly, there has been no violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41

74. 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

75. The applicant, along with his account of the developments before the domestic courts, mentioned that the amount EUR 384,615 in respect of non-pecuniary damage would not suffice to relieve his suffering. With regard to

pecuniary damage the applicant claimed EUR 115,384, which sum, he asserted, reflected the decrease in value of the real estate he had been assigned.

76. The Government pointed out that it was not entirely clear whether this statement was intended as a claim made before the Court under Article 41 or rather as the applicant's subjective assessment of a desirable conclusion of the domestic proceedings. In any case the Government considered that the claim for pecuniary damage lacked a causal link between the damage and a violation of the Convention and was unsubstantiated. Further, the Government observed that the claim for non-pecuniary damage was excessive and the applicant had already received compensation before the domestic authorities.

77. With regard to the pecuniary damage the Court observes that, should the judgment of 14 October 2010 on the division of the matrimonial property be final, the applicant did not justify his estimation of the pecuniary damage in any objectively verifiable manner (see, *a contrario*, *Bořánková v. the Czech Republic*, no. 41486/98, § 65, 7 January 2003). Therefore the Court does not discern any causal link between the violation found and the pecuniary damage alleged and rejects this claim.

78. As to the non-pecuniary damage, it seems that the applicant claims the damages alternatively from the domestic authorities or from the Court. Having regard to his poor health and the excessive length of the proceedings on merits, and ruling on an equitable basis, the Court awards the applicant EUR 2,100.

B. Costs and expenses

79. The applicant also provided the Court with an invoice issued by his attorney, who seems to have represented him before the Court from 17 December 2009 to 15 January 2010. The attorney did not send any observations or any other relevant documents, and claimed EUR 7,038 for costs and expenses incurred before the Court. On 1 February 2010 the applicant reported the attorney to the Czech Bar Association for fraudulent behaviour.

80. The Government submitted that due to the applicant's conflict with the attorney it is unclear whether he actually paid the sum stated on the invoice.

81. 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 rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible by a majority;
2. *Holds* by five votes to two that there has been a violation of Article 6 of the Convention;
3. *Holds* unanimously that there has been no violation of Article 13 of the Convention;
4. *Holds* by five votes to two
 - (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 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable on 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 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power joined by Judge Yudkivska is annexed to this judgment.

D.S.
S.P.

DISSENTING OPINION OF JUDGE POWER JOINED BY JUDGE YUDKIVSKA

This case raises an issue in relation to the principle of subsidiarity and I voted against majority in its finding of a violation. I do not acquiesce in the proposition that regular delays are endemic in every system and must, of necessity, be tolerated. I accept the importance of administering justice in a manner that does not jeopardise its effectiveness and credibility (see *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 1999-V).

There was, undoubtedly, considerable delay in this case. However, it is clear that the respondent state has readily acknowledged the delay and has relied upon this Court's case law in its determination of just satisfaction. The proceedings in issue were highly contentious involving, as they did, a dispute over matrimonial property. They were also quite complex and involved three levels of jurisdiction at domestic level. Furthermore, the applicant's former wife (the claimant) died and the proceedings were taken over by her husband. Subsequently, he also died and new parties were brought into the proceedings, some of whom were resident abroad. These objective facts contributed, inevitably, to the protracted length of the proceedings.

Apart from all these matters which were beyond anyone's control, the applicant himself played a significant part in the overall delay. He was, of course, entitled to exercise his right to appeal on several occasions, which he did, but he cannot at the same time disregard the fact that these appeals had the effect of adding to the overall length of time which the proceedings took. The Court has frequently reiterated that while applicants are entitled to make use of their procedural rights, they must bear the consequences when this leads to delays (see, *mutatis mutandis*, the *Buchholz v. Germany* judgment of 6 May 1981, Series A no. 42, pp. 21-22, § 63).

Further delay was caused by the fact that the applicant was rather obstructive, refusing to allow court appointed assessors to determine the value of the matrimonial property. In addition to his difficulties with the assessors, he also had difficulties with his counsel and withdrew his instructions on various occasions. There is no evidence in the file that he ever brought an application before the domestic courts seeking to advance the litigation. Neither is there any evidence of protracted periods of delay (post-ratification) within the proceedings or long periods of inactivity for which the State could be held responsible. In the light of all the prevailing circumstances, the degree of culpability which falls upon the state for the alleged delay is greatly diminished.

Notwithstanding the foregoing, the authorities of the Czech Republic have acknowledged that the proceedings were lengthy and have compensated the applicant in respect thereof. In awarding damages, they conducted a careful and thorough investigation into the proceedings in

issue. Absent evidence of manifest unreasonableness in their evaluation, it is not, in my view, appropriate for this Court to interfere with the assessment of the relative weight to be given to the conduct of all concerned. Notwithstanding his clear contribution to the overall length of proceedings, the domestic authorities proceeded to award the applicant a significant sum in compensation.

After reviewing what the domestic tribunals have already done, this Court has decided to increase that award by a modest amount. I disagree, fundamentally, with the approach of the Chamber in this regard. Respect for subsidiarity requires this Court to satisfy itself that a genuine acknowledgment of a violation has occurred and that reasonable compensation therefore has been made. It is, in my view, neither appropriate nor prudent for this Court to re-assess the assessment and to ‘top-up’ an award made at domestic level in circumstances where, quite evidently, a careful appraisal of responsibilities for delay has been conducted and a reasonable sum of compensation has been granted in relation thereto.