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

SECOND SECTION

CASE OF HARTMAN v. THE CZECH REPUBLIC

(Application no. 53341/99)

JUDGMENT
[Extracts]

STRASBOURG

10 July 2003

FINAL

03/12/2003

In the case of Hartman v. the Czech Republic,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 March and 24 June 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53341/99) against the Czech Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech and French national, Mr Jan Hartman, and an American national, Mr Jiři Hartman ("the applicants"), on 21 March 1996. After the death of the second applicant on 17 May 2002 the Court ruled that Mr Nicholas Perizad Hartman, his son and one of his legal heirs, had standing to continue the proceedings in his stead.

2. The applicants complained of the length of the recovery proceedings they had brought, of an infringement of their right to the peaceful enjoyment of their possessions and of the lack of an remedy whereby they could secure redress.

3. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

4. It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 17 December 2002 the Chamber declared the application admissible as regards the complaints relating to the length of the proceedings and the lack of a remedy to secure redress therefor. It declared the remainder of the application inadmissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 11 March 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr	V. SCHORM,	Agent,
Mrs	M. KRÁLÍKOVÁ,	
Mrs	E. VACHOVCOVÁ,	
Mr	J. KMEC,	Counsel;

(b) *for the applicants*

Mr	M. HULÍK,	*Counsel*,
Mr	J. HARTMAN,	
Mr	N.P. HARTMAN,	*Applicants*.

The Court heard addresses by Mr Schorm, Mr Hulík and Mr J. Hartman.

Mr Hartman asked the Chamber, among other requests, to relinquish jurisdiction in favour of the Grand Chamber. Noting that in doing so he seemed to have had in mind above all the complaints declared inadmissible by the decision of 17 December 2002 and that the Government had opposed relinquishment, the Court decided that the conditions laid down in Article 30 of the Convention had not been satisfied and that consideration of the case would accordingly continue before the Chamber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 31 December 1948 the applicants left the former Czechoslovakia clandestinely. Since 1954 the first applicant has been a permanent resident of France, where he was naturalised in 1968, while keeping Czechoslovak nationality. The second applicant settled in the United States of America in 1949. On 2 April 1958 he obtained American nationality, automatically losing Czechoslovak nationality in accordance with the bilateral treaty of 1928 on naturalisation. On 9 November 1999 he acquired Czech nationality.

10. After the applicants had emigrated all their immovable property, namely four houses in Prague, a detached house and adjoining land in Želízy, together with movable property in the shape of 1,200 books from the

library of the famous singer Ema Destinnová (Emmy Destinn), were seized and administered by the local communist authorities. On 1 July 1955 the Klatovy People's Court (*lidový soud*) ordered the confiscation of this property.

11. After the change of regime in 1989 the applicants began to take steps to recover their former possessions.

A. Proceedings concerning the land in Želízy

12. On 17 November 1992 (9 December 1992 according to the Government) the first applicant brought proceedings in the Mělník District Court (of over) for recovery of the land in Želízy, under the Land Reform Act (Law no. 229/1991.

...

20. On 24 May 2000 ... the District Court gave judgment, dismissing the action brought by the first applicant to prove that he was the owner of the land in Želízy.

21. On 29 September 2000 the applicant appealed.

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25. On 5 November 2001 the Prague Regional Court (*krajský soud*) set aside the first-instance judgment and remitted the case to the District Court.

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27. On 22 May 2002 the District Court again dismissed the applicant's action, noting that he had not corrected its procedural defects in the time allowed.

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29. On 4 September 2002 the Regional Court dismissed the applicant's appeal of 10 June 2002; the Government asserted that the case was finally concluded on 2 October 2002.

B. Proceedings concerning the family house in Želízy

30. On 18 October 1995 (23 October according to the Government) the second applicant brought an action for recovery in the Mělník District Court against the current owners of the detached house and land in Želízy.

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35. On 5 April 2000 the District Court gave judgment on the merits, dismissing the second applicant's action. The judgment became final on 5 July 2000.

C. Proceedings concerning the houses in Prague 7

36. On 17 October 1995 (25 October according to the Government) the second applicant brought an action against the Prague 7 District Office for recovery of the houses under Laws nos. 87/1991 and 119/1990.

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39. At the end of the hearing on 5 March 1998 the District Court dismissed the applicant's action on the ground with that he was not a Czech national and was therefore not entitled to obtain recovery of the houses he claimed.

40. On 19 June 1998 the applicant appealed to the Prague Municipal Court (*městský soud*), arguing that the condition of Czech nationality was of negligible importance, since he had been a Czech citizen at the time when his property was confiscated.

On 9 November 1999, in accordance with Law no. 193/1999, he obtained a certificate of Czech nationality, issued by the Prague 7 District Office, and became on that date a citizen of the Czech Republic.

41. On 9 November 2000 the applicant brought a new action against the district of Prague 7 seeking recovery of half of the houses concerned. A hearing was set down for 6 August 2002.

42. On 10 January 2002 the Prague Municipal Court dismissed the second applicant's appeal of 19 June 1998 against the judgment of the Prague 7 District Court. The decision concerned was thus upheld and became final on 11 February 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional law

43. Under Article 38-2 of the Charter of Fundamental Rights and Freedoms, everyone is entitled, *inter alia*, to a hearing within a reasonable time.

B. Law no. 335/1991 on courts and judges (in force at the material time)

44. Section 5(1) provides that judges are required to rule impartially and fairly and without delay.

45. By virtue of section 6(1) it is possible to lodge complaints with the organs of the judicial system (such as presidents of courts, or the Ministry of Justice) concerning the way courts have conducted judicial proceedings, whether these concern delays, inappropriate behaviour on the part of persons invested with judicial functions or interference with the proper conduct of court proceedings. An appellant is entitled to obtain information on the measures the supervisory authority has taken in response to his

appeal, but the latter does not give him a personal right to require the State to exercise its supervisory powers.

C. Law no. 58/1969 on State liability for damage caused by an irregularity in the decision of a State authority or in the conduct of proceedings (in force until 15 May 1998)

46. Section 18(1) provided that the State was liable for damage caused by an irregularity committed in the exercise of their official duties by persons vested with public authority.

The State incurred strict liability when the following three conditions were satisfied: quantifiable pecuniary damage; an irregularity in the official proceedings of a State authority; and a causal connection between the two.

47. The Government cited in their observations two cases (nos. 3 C 305/96 and 13 C 368/99) in which claimants had been awarded compensation under Law no. 58/1969 for pecuniary damage caused by over-lengthy proceedings.

D. Law no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings (in force since 15 May 1998)

48. Section 13 provides that the State is liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. A person who has suffered loss on account of such an irregularity is entitled to damages which section 31(2) requires to include reimbursement of the costs incurred by the claimant in respect of the proceedings in which the irregularity occurred, in so far as those costs are linked to the irregularity.

E. Law no. 182/1993 on the Constitutional Court

49. Section 82(3) provides that when the Constitutional Court upholds a constitutional appeal it must either set aside the impugned decision by a public authority or, where the infringement of a right guaranteed by the Constitution is the result of an interference other than a decision, forbid the authority concerned to continue to infringe the right and order it to re-establish the status quo if that is possible.

F. Case-law of the Constitutional Court on the length of proceedings

50. The Constitutional Court's case-law shows that, in order to be able to declare admissible a constitutional appeal concerning the length of proceedings, it requires the appellant to have appealed to the organs of the judicial system. Where it finds an infringement of the right guaranteed by Article 38-2 of the Charter of Fundamental Rights and Freedoms it may order the court to put an end to the delay and expedite the proceedings (as it did in cases nos. I ÚS 313/97 and I ÚS 112/97, cited by the Government in their observations), but is not empowered to award compensation to the appellant.

51. In their additional observations of 18 February 2003 the Government gave a fuller account of the Constitutional Court's case-law on the question. In addition to the sixteen judgments mentioned in the final decision on admissibility in the case of *Kuchař and Štis v. the Czech Republic* (application no. 37527/97, 23 May 2000, unreported) they referred to the following judgments:

– no. III. ÚS 230/96: on 29 May 1997 the Constitutional Court dismissed the appeal on delays in guardianship proceedings on the ground that the appellant had contributed by his conduct to the prolongation of the proceedings.

– no. III. ÚS 70/97: on 10 July 1997 the Constitutional Court found that the Prague High Court (*vrchní soud*) had infringed with the appellant's right to have his case heard without unjustified delays. It held that such an infringement would not justify setting aside a decision which had become final unless the delays had led to the infringement of other Constitutional rights. Procedural delays alone, therefore, did not constitute grounds for setting the decision aside.

– no. III. ÚS 218/97: in this judgement of 4 December 1997 the Third Chamber of the Constitutional Court tried to establish a distinction between the judicial and administrative elements of judicial power by imputing the delays caused by the courts' excessive workload to the administrative element alone.

– no. Pl. ÚS 6/98: on 17 February 1998 the full court of the Constitutional Court decided that the right to a hearing without unjustified delays corresponded to the courts' obligation to comply with the principle of fair trial, without it being possible to draw a distinction between the various elements of judicial power.

– no. II. ÚS 342/99: on 4 April 2000 the Constitutional Court held that delays in proceedings concerning the award of damages could infringe the constitutional right to judicial protection. It therefore ordered the court concerned to expedite the proceedings.

– no. IV. ÚS 599/2000: in its judgment of 22 January 2001 the Constitutional Court ordered the court concerned to expedite the proceedings and implement the execution it had ordered. The Constitutional Court held that what constituted a reasonable time could vary in accordance

with the circumstances of the case and that it was for the State to see to it that there were sufficient staff to ensure compliance with the rule.

– no. IV. ÚS 379/01: in this judgment of 12 November 2001 the Constitutional Court held that delays in proceedings already concluded by a decision which had become final did not in themselves amount to a breach of Article 38-2 of the Charter of Fundamental Rights and Freedoms. Setting aside the impugned decision, in a situation where the Constitutional Court did not have any other means of protecting Constitutional rights, would be justified only if procedural delays had entailed an infringement of the principle of fair trial or other substantive rights guaranteed by the Constitution. The appellants had alleged nothing of the sort, nor had they appealed to the president of the court under the Law on courts and judges.

– no. I. ÚS 663/01: on 19 November 2002 the Constitutional Court ordered the lower court to cease to infringe an appellant's right under Article 38-2 of the Charter and Article 6 § 1 of the Convention and to hear his claim without delay. It reiterated that procedural delays were not justified by the courts' excessive workload and that in such situations it was essential, before lodging a constitutional appeal, to apply to the president of the court in question by lodging an appeal under the Law on courts and judges. There were however exceptions to that rule since the remedy concerned could not be insisted upon where it proved to be manifestly ineffective.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

...

B. Failure to exhaust domestic remedies

55. In the second place the Government pleaded failure to exhaust domestic remedies with regard to the complaint under Article 6 § 1 of the Convention, arguing that the applicants had not availed themselves of any of the remedies intended to expedite judicial proceedings.

56. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption – reflected in Article 13 of the Convention, with which it has

close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system

57. Under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27, and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 87, § 38).

58. Furthermore, in the area of exhaustion of domestic remedies, Article 35 apportions the burden of proof. It is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Horvat v. Croatia*, no. 51585/99, § 39, ECHR 2001-VIII).

59. The Court has previously held that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the circumstances of each case. That means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, pp. 1210-11, §§ 65-68).

60. In the present case, with regard to the Government's assertion that the applicants failed to take any steps to expedite the proceedings, the Court observes that in respect of the length of civil proceedings, the question of the methods by which an applicant could have accelerated the proceedings goes to the merits of the application (see *Horvat v. Croatia*, cited above, § 46). Indeed, in its decision on the applicability of the present case, the Court joined this objection to the merits.

1. *Arguments of the parties*

61. The Government asserted that the Czech legal system provided preventive domestic remedies, namely appeals to a higher authority and constitutional appeals, backed up by an application for compensation.

62. Appeals to a higher authority could be lodged by any person with the organs of the judicial system, namely presidents of courts and the Ministry of Justice, which were required to consider them within two months. Such appeals, dealt with flexibly, were intended to act as a warning to the authorities and were capable of restarting stalled proceedings.

63. When seized with a constitutional appeal, the next step after an appeal to a higher authority, the Constitutional Court had jurisdiction to consider whether there had been an infringement of the fundamental right to a hearing within a reasonable time. It could afford redress by ordering the inactive Court to terminate the infringement of the fundamental right and proceed with the case. In the Government's submission, the effectiveness of constitutional appeals stemmed from the binding nature of the Constitutional Court's enforceable decisions. While it was true that the Constitutional Court generally required appellants to have tried to obtain relief through an appeal to a higher authority, its assessment of the matter was flexible.

64. As regards the possibility of compensation, the Government noted that the applicants had had the possibility of bringing an action for damages against the State, which, under Law no. 82/1998 (no. 52/1969 before 15 May 1998), was liable for damage caused by an irregularity in the conduct of proceedings. They asserted that the courts did not hesitate to allow such applications when the statutory conditions were met and noted that this type of remedy was not used often enough.

While acknowledging that, to date, no compensation for pecuniary damage had been awarded through an action of the type mentioned above, the Government submitted that this did not mean that in specific cases such actions were not an available, effective and appropriate remedy. Moreover, it had to be proved that the applicants had actually suffered damage for which they could not obtain redress at domestic level; then, if the infringement of a fundamental right led to non-pecuniary damage, it was above all the finding of such an infringement which constituted just satisfaction, and that finding could be obtained by a judgment of the Constitutional Court or through the award of compensation for pecuniary damage.

65. The applicants submitted that there was no remedy in Czech Law capable of affording redress for the length of proceedings. Appeals to a higher authority were merely complaints which had no procedural consequences and could not provide effective and speedy redress. On the other hand, constitutional appeals required the prior exhaustion of other remedies and thus contributed to the prolongation of the proceedings.

The applicants further argued that Law no. 82/1998 contained only general provisions and did not lay down any specific time within which courts were required to act. It did not provide for any compensation for non-pecuniary damage, but only for actual pecuniary damage or loss of earnings.

2. The Court's assessment

66. The Court notes at the outset that appeals to a higher authority, the remedy advocated by the Government, cannot be regarded as an effective remedy because they do not give litigants a personal right to compel the State to exercise its supervisory powers (see *Kuchař and Štis* (dec.), cited above).

67. It further notes that where the Czech Constitutional Court finds that proceedings which have led to a constitutional appeal have been held up by delays imputable to a particular court, it can order the latter to put an end to the delays and continue the proceedings forthwith. While accepting that such an order may have the effect of speeding up the course of the proceedings if it is acted upon immediately by the court in question, the Court notes that Czech legislation does not lay down any sanction for failure to comply. Unlike the Swiss Federal Court (see *Boxer Asbestos S.A. v. Switzerland* (dec.), no. 20874/92, 9 March 2000, unreported) or the Spanish Constitutional Court (see *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII), the Czech Constitutional Court is therefore not empowered to take practical steps to expedite the proceedings complained of.

68. Nor can the Czech Constitutional Court award appellants any compensation for delays that have already occurred. The Court takes the view that that omission cannot be made good by the possibility of bringing an action for damages against the State under Law no. 82/1998. The Government, on whom the burden of proof in this regard falls, have not succeeded in establishing (see paragraph 64 above) that compensation for non-pecuniary damage can be obtained through such an action (see, *mutatis mutandis*, *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001, unreported). But in length-of-proceedings cases the applicants sustain above all non-pecuniary damage, in an amount which the Court does not oblige them to prove.

69. That being so, the Court considers that there is no legal remedy whereby someone can complain of the excessive length of proceedings in the Czech Republic (see, *mutatis mutandis*, *Horvat v. Croatia*, cited above, § 48). The applicants were therefore justified in considering that no domestic legal remedy would have enabled them to raise their complaint effectively.

The Court accordingly concludes that there was no appropriate and effective remedy which the applicants should have exercised for the

purposes of Article 35 § 1 of the Convention. It therefore dismisses the plea of non-exhaustion of domestic remedies entered by the Government.

...

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicants complained that they had not had an effective remedy capable of affording redress for the length of the recovery proceedings they had brought. In that connection, they relied on Article 13 of the Convention, which provides:

> "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."

79. The Government referred to the reversal of the case-law on this point effected by the judgment in the case of *Kudła v. Poland* ([GC] no. 30210/96, § 152, ECHR 2000-XI), noting that there was no single model of domestic remedy in Europe, in spite of a development towards the introduction of compensatory remedies. They submitted that under the Czech system of appeals against the excessive length of proceedings it was possible not only to expedite the proceedings but also to make good any damage suffered (see paragraphs 61-64 above).

80. The applicants disputed that argument. Moreover, the first applicant emphasised the accessory nature of the complaint and concerning the length of the proceedings, expressing his disagreement with the Court's decision to declare inadmissible the complaints relating to Article 1 of Protocol No. 1.

81. The Court observes, firstly, that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so. It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland*, cited above, §§ 156-158).

Article 13 therefore offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

82. In the present case the Court reiterates that appeals to a higher authority, the remedy advocated by the Government, cannot be regarded as

an effective remedy whereby the length of proceedings can be contested (see paragraph 66 above).

83. With regard to constitutional appeals, as provided for in Czech law, the Court reaffirms that they do not constitute an effective remedy with respect to the length of proceedings, in that they do not make it possible to compel courts to expedite proceedings or to provide compensation for any damage resulting from their excessive length. The same applies to actions under Law no. 82/1998, which cannot be regarded as a mechanism to afford adequate redress for violations which have already occurred (see paragraphs 67-68 above).

84. The Court accordingly considers that in this case there has been a violation of Article 13 of the Convention on account of the fact that Czech law does not provide an effective remedy whereby the applicants could have contested the length of the proceedings.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

...;

3. *Holds* that there has been a violation of Article 13 of the Convention;

...

Done in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 10 July 2003.

S. DOLLÉ Registrar	J.-P. COSTA President