



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

SECOND SECTION

CASE OF KONEČNÝ v. THE CZECH REPUBLIC

(Application nos. 47269/99, 64656/01 and 65002/01)

JUDGMENT

STRASBOURG

26 October 2004

FINAL

30/03/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Konečný v. the Czech Republic,
The European Court of Human Rights (Second Section), sitting as
a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr G. BONELLO,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 October 2004,

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

PROCEDURE

1. The case originated in three applications (nos. 47269/99, 64656/01 and 65002/01) 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 Lubomír Konečný (“the applicant”), on 4 March 1999 and on 11 September and 12 December 2000 respectively.

2. In his application no. 64565/01, the applicant was represented by Mr Hroza, a lawyer practising in Brno. The Czech Government (“the Government”) were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. On 16 April 2002 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1948 and lives in Brno.

a. Facts prior to 18 March 1992, the date of the entry into force of the Convention with regard to the Czech Republic

5. On 3 February 1989 the applicant filed with the Brno Municipal Court (*městský soud*) an action for the protection of his personality (*žaloba na ochranu osobnosti*) against his father-in-law alleging that he had interfered

with his honour and reputation. He asked the court to prohibit the defendant from mentioning, in writing, verbally or in another way, that he was suffering from mental illness, disorder or deviation and that his behaviour showed symptoms of mental illnesses.

6. A first hearing was scheduled for 28 April 1989 but was adjourned to 19 May 1989. Another hearing took place on 30 June 1989. According to the applicant, the court did not act on 28 April, and 9 and 30 June 1989. Three hearings scheduled for 14 July, 25 August and 22 September 1989 did not take place because the parties had not been convened in time or could not attend. Two further hearings were held on 11 October 1989 and 23 February 1990. According to the Government, the applicant's lawyer was duly convened to the hearings of 14 July and 22 September 1989.

7. On 30 January 1990 a hearing was scheduled for 23 February 1990. On 12 March 1990 the applicant was invited to attend the court but did not do so. On 2 May 1990 he requested that the judges of the Municipal Court's chamber be excluded from the examination of his case. On 2 July 1990 the applicant, upon the Municipal Court's request of 22 June 1990, informed the court that he insisted on the exclusion of all three members of the chamber from the examination of his case. On 12 September 1990 the Brno Regional Court (*krajský soud*) excluded the president of the chamber.

8. On 20 November 1990 the applicant requested to have his former wife cited as a defendant. He also amended his original action in which he sought an order against the defendants enjoining them to refrain from oral attacks on him and to pay him damages in the amount of CZK 50,000 (EUR 1,592).

9. On 12 March 1991 a hearing of the applicant was to take place in connection with his objection to the judges of the chamber of the Municipal Court on grounds of bias. He did not appear. He attended the court on 28 March 1991 explaining that he was staying abroad and could only participate in the proceedings as from 29 April 1991.

10. By letter of 19 April 1991, the president of the Regional Court acknowledged that the proceedings had suffered from delays.

11. On 3 May 1991 the applicant orally informed the new president of the chamber at the Municipal Court that he still insisted on the exclusion of the other two members of the chamber from the examination of his case.

12. According to the applicant, from 1991 to 1995, no hearing was held by the court. Moreover, since 1991, his action was dealt with by a single judge (*samosoudce*).

b. Facts after 18 March 1992

13. Between 15 January and 26 August 1992 the case file was sent to the Brno Regional Prosecutor Office (*krajské státní zastupitelství*) in connection with the applicant's criminal complaint against the defendants.

14. On 12 October 1992 the applicant informed it that he would be available to attend the court on 6 November 1992.

15. On 11 December 1992 the Municipal Court granted the applicant's request of 20 November 1990 to have his former wife cited as a defendant. On the same day, the court adopted an interim measure, which had been requested by the applicant on 12 August 1991, ordering the defendants to refrain from any written or oral attacks on him and from any other measures which could humiliate him.

16. On 6 and 15 January 1993 respectively, the defendants appealed against the interim measure with the result that, on 3 February 1993, the case file had to be sent to the Regional Court.

17. By letter of 18 October 1993, the president of the Regional Court, upon the applicant's complaint of 13 October 1993, acknowledged that there were delays in the proceedings and assured him that the Municipal Court would resume the examination of his case in November 1993.

18. On 7 June 1995 the applicant challenged a judge at the Regional Court for bias in connection with the unreasonable delays in the proceedings. He requested that the case be transferred to another regional court.

19. On 11 July 1995 the Regional Court quashed the interim measure and remitted the case to the Municipal Court. The decision was adopted by the judge whose exclusion had been requested on 7 June 1995.

20. On 3 September 1995 the Municipal Court invited the applicant to complete his request for an interim measure. He did so on 30 October 1995.

21. The applicant says that, on 11 December 1995, the president of the Regional Court found substantiated his claim of alleged illegal actions of the Regional Court carried out by an excluded judge.

22. On 8 January 1996 the Municipal Court invited the applicant to complete the merits of his action for the protection of his personality. He did so on 14 February 1996, at the same time extending his claim for damages to CZK 30,000 (EUR 955).

23. On 21 May 1996 the Municipal Court held a hearing at which the applicant withdrew his action together with his request of 12 August 1991 for an interim measure. However, he maintained his petitions of 20 November 1990 and 14 February 1996 and requested that another interim measure be adopted. The court adjourned the hearing without fixing a new date.

24. On 8 July 1996 the applicant requested that the proceedings be stayed and that the evidence already adduced in the criminal proceedings instituted by the defendants for defamation be added to the case file.

25. On 27 December 1996 the applicant challenged the single judge for bias alleging that she was responsible for delays in the proceedings. He requested that his case be transferred to another court. On 28 December 1996 he challenged the impartiality of the judge at the Regional Court as

well as the Regional Court as a whole, and requested that his case be transferred to the Ostrava Regional Court.

26. On 15 April 1997 the Brno Regional Court, passing over – the applicant says – his objection for bias, upheld the Municipal Court's decision of 10 October 1996 in so far as it stayed, following the applicant's withdrawal of his action on 21 May 1996, the proceedings concerning his original action and his request for an interim measure of 12 August 1991. It quashed the remainder of the Municipal Court's decision. On the same day, the Regional Court decided that the single judge dealing with the applicant's case was not excluded from the proceedings.

27. On 11 November 1997 another hearing was held before the Municipal Court and was then adjourned. During this hearing, the applicant asked for leave to amend his claims of 20 November 1990 and 14 February 1996, increasing the claim for damages. No new hearing date was fixed.

28. The applicant says that during the whole year of 1998 the court remained inactive.

29. On 19 January 1998 the applicant filed a constitutional appeal (*ústavní stížnost*) complaining about the delays in the proceedings. On 3 February 1998 the Constitutional Court (*Ústavní soud*) informed him that legal representation in such proceedings was obligatory. According to the applicant, he was legally represented, but his lawyer did not introduce a proper constitutional appeal in time, with the result that the Constitutional Court dismissed his original appeal on 24 March 1998 for formal shortcomings.

30. On 20 March 1998 the Municipal Court granted the applicant leave to amend his claims in line with his petitions of 14 February 1996 and 11 November 1997 concerning the merits of his action for the protection of his personality and his increased claim for damages.

31. According to the applicant, the court adjourned the hearing of 19 May 1998 because of the unexcused absence of the defendants' lawyer. No new hearing date was fixed.

32. On 10 November 1998 the applicant introduced a second constitutional appeal, alleging that the proceedings had lasted an unreasonably long time.

33. On 12 November 1998 the Municipal Court granted the applicant's subsequent request of 19 May 1998 to amend his action in its modified version. On 17 November 1998 the court scheduled a hearing for 15 December 1998. However, it was adjourned without a new date being fixed, as the case file needed to be sent to the Olomouc High Court (*Vrchní soud*) which was to deal with the applicant's objection to the judges at the Regional Court on grounds of bias. On the same day, the applicant filed a complaint alleging delay, challenging the single judge, the whole

Municipal Court and Regional Court for bias, and requesting that his case be transferred to another court.

34. On 26 November 1998 the case file was sent to the Constitutional Court which had dealt with the applicant's second constitutional appeal.

35. The applicant says that no hearing was held during the whole year of 1999.

36. On 1 March 1999 the Constitutional Court dismissed the applicant's second constitutional appeal for non-exhaustion of domestic remedies as the applicant had not complained since 11 December 1995 of delay in the proceedings to the president of the Regional Court. The case file was returned to the Municipal Court on 5 March 1999.

37. On 5 May 1999 the Regional Court again decided not to exclude the single judge from the examination of the applicant's case.

38. On 28 June 1999 the applicant filed a third constitutional appeal against this decision.

39. The next day the Municipal Court held another hearing. It was adjourned to 2 September 1999 as the defendants could not be present.

40. On 2 August 1999 the applicant lodged a fourth constitutional appeal, this time against the decision of the High Court of 31 March 1999 rejecting his request for the exclusion of the judges at the Regional Court from the proceedings.

41. At the hearing held on 2 September 1999, the applicant again challenged the single judge for bias. The case file had, therefore, to be sent to the Regional Court which, on 26 January 2000, dismissed the applicant's motion.

42. On 17 February and 15 March 2000 respectively, the applicant complained of delays in the proceedings before the Constitutional Court on his third constitutional appeals introduced on 28 June and 2 August 1999.

43. On 24 February 2000 the applicant filed a fifth constitutional appeal, challenging the decision of the Regional Court of 26 January 2000 dismissing his request for the exclusion of the single judge.

44. A hearing on 21 March 2000 was cancelled due to the applicant's illness.

45. On 30 March 2000 the president of the Constitutional Court informed the applicant that the judge rapporteur (*soudce zpravodaj*) dealing with his third constitutional appeal was ill and had to resign from her functions. He assured the applicant that a new judge rapporteur would be appointed.

46. A hearing scheduled for 30 May 2000 was adjourned to 3 October 2000. At the second hearing, the court heard witnesses. It adjourned the hearing to 7 November 2000.

47. On 18 September 2000 the applicant again modified his action for the protection of his personality.

48. On 3 October 2000 the Constitutional Court dismissed the applicant's fifth constitutional appeal since the civil proceedings were still pending and it would be open to him to appeal against a judgment on the merits once it was adopted.

49. On the same day, the Municipal Court held a hearing. Another hearing was scheduled for 7 November 2000 following the applicant's request to continue hearing the defendants.

50. On 26 October 2000 the applicant was informed that the hearing before the Municipal Court scheduled for 7 November 2000 would be held on 5 December 2000 because the defendants' lawyers could not attend. On that day, the Municipal Court resumed its examination of the applicant's case. The next hearing was scheduled for 20 February 2001.

51. On 12 December 2000 the case file was again sent to the Constitutional Court in connection with the applicant's third constitutional appeal. It was returned on 13 February 2001.

52. A hearing scheduled for 20 February 2001 was adjourned to 3 April 2001 and then to 3 May 2001. The applicant was informed of this on 22 March 2001.

53. On 29 May 2001 the Constitutional Court dismissed the applicant's fourth constitutional appeal. His third constitutional appeal was dismissed on 12 June 2001.

54. On 14 May 2002 the applicant submitted to the Municipal Court a request for leave to modify the merits of his action. On 16 April 2003 the court refused to grant the modification.

55. On 30 May 2003 the applicant complained of the delays in the proceedings to the president of the Municipal Court. The latter replied on 4 June 2003, finding the complaints unsubstantiated.

56. In the meantime, on 3 June 2003 a hearing had been held before the Municipal Court. On 1 July 2003, the Municipal Court requested the applicant to rectify, within 15 days, his action in its amended versions authorised by the court on 20 March and 12 November 1998 and 3 October 2003. In his reply of 24 July 2003, the applicant insisted that his action had been submitted in the appropriate form and had set out all relevant matters.

57. In his letter of 4 June 2003 addressed to the applicant, the vice-president of the Regional Court admitted that there had been delays in the proceedings.

58. On 23 September 2003 the applicant submitted his written comments on the state of the proceedings to the Municipal Court. On the same day, the court requested the applicant to rectify his action within 30 days by submitting a statement of relevant facts and evidence. The applicant replied on 5 November 2003.

59. On 20 November 2003 the Municipal Court held a hearing at which it approved a friendly-settlement agreement reached between the parties.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

60. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement under Article 6 § 1 of the Convention. According to the applicant, the delays in the proceedings had been caused by the partiality of the courts involved. He also claimed that the Constitutional Court, by rejecting his first and second constitutional appeals in which he had criticised the delays in the proceedings, deprived him of his last domestic remedy, in breach of Article 13 of the Convention.

He added that the lengthy proceedings before the Constitutional Court on his third and fourth constitutional appeals had deprived him of effective remedies against the lower courts' decisions.

The relevant part of Article 6 § 1 of the Convention reads as follows:

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

61. The Government contested the applicant's arguments.

62. The Court observes that the period to be taken into consideration only began on 18 March 1992, when the recognition by the Czech and Slovak Federal Republic, to which the Czech Republic is one of the successor States, of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

63. The period in question ended on 20 November 2003. It thus lasted eleven years, eight months and two days.

A. Admissibility

64. Under Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted.

65. The Government contended that the applicant could not be regarded as having exhausted available domestic remedies with regard to his complaint about the length of the proceedings. They submitted that administrative hierarchical complaints about the length of the proceedings could have been lodged with the president of the competent court, with the president of the superior court or with the Ministry of Justice, and that this system was complemented by the possibility of filing constitutional appeals. According to the Government, although the Constitutional Court was not entitled to deal with the question of pecuniary or non pecuniary damage

caused by delays in the proceedings, the applicant could lodge an action for damages against the State under State Liability Act no. 82/1998. The Government referred in this respect to the Constitutional Court's relevant case-law.

66. The applicant disputed the Government's arguments.

67. The Court recalls that there was no effective remedy under Czech law to complain about the length of civil proceedings (*Hartman v. Czech Republic*, no. 53341/99, § 84, ECHR 2003-VIII). Therefore, the Court finds that it has not been established that the applicant had any effective remedy at his disposal which would have enabled him to submit his complaint under Article 6 § 1 of the Convention to the domestic authorities. Accordingly, this part of the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

68. The Government added that the proceedings on the applicant's third and fourth constitutional appeals did not come within the scope of Article 6 § 1 of the Convention as their outcome was not decisive for the applicant's civil rights and obligations. The applicant based his objections of bias against the judges on the manner in which they proceeded. However, in accordance with the case-law of the Supreme Court and Article 14 § 4 of the Code of Civil Procedure, the reasons for the exclusion of a judge need not necessarily be related to any of the procedural measures taken by the latter. His arguments in his third and fourth constitutional appeals were thus *prima facie* at variance with the relevant legislation, and the Constitutional Court's decisions could not influence the course of the proceedings.

69. The Court considers that the applicant availed himself of the appropriate procedural means in order to defend his rights under Article 6 § 1 of the Convention and/or relevant provisions of the Charter and Fundamental Rights and Freedoms, which form an integral part of the Czech legal system and take precedence over any contrary provision of the law. Moreover, according to the Court's case-law, Article 6 § 1 applies to proceedings before Constitutional Courts (see *Krčmář v. the Czech Republic*, no. 35376/97, § 36, 3 March 2000, with further references). Accordingly, this branch of the application cannot be declared incompatible *ratione materiae*, but must be considered to form part of the period under consideration.

70. The Court finds that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further concludes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

71. The Government argued that the case was rather complex as a consequence of the applicant's numerous modifications of his original action. Moreover, the applicant himself had contributed to the protraction of the proceedings by repeatedly challenging different judges for bias and by his failure to attend a number of hearings before the Municipal Court. The proceedings had also been prolonged by various procedural steps taken in the criminal proceedings instituted by the applicant against his former wife and members of her family for defamation. Moreover, the defendants had been responsible to a certain extent for the protraction of the proceedings. The Government admitted that the proceedings had suffered from certain delays, but were of the opinion that these delays had not been caused by the conduct of the State authorities involved in the applicant's case.

72. The applicant contested the Government's arguments.

73. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

74. The Court considers that, even though the case was of some complexity, having regard, in particular, to the applicant's repeated amendments to his original action, it cannot be said that this in itself justified the entire length of the proceedings.

75. The Court considers that, even if the applicant was responsible for the delays caused by his repeated challenges to different judges involved in his case for bias and by his failure to attend the Municipal Court's hearings on numerous occasions, he cannot be regarded as having contributed to the prolongation of the proceedings in a decisive manner.

76. As to the conduct of the judicial authorities, the Court observes that hearings were held at regular intervals. However, it considers that the domestic courts did not make efficient use of these occasions in order to reach a final decision in the case. It notes that from 18 October 1993 to 7 June 1995 there was no progress in the proceedings and that this delay has not been satisfactorily explained by the Government (see paragraphs 17-19 above). It further notes that the Regional Court took more than two years and five months to quash the interim measure adopted by the Municipal Court (see paragraphs 15 and 19 above). Another seven months elapsed between 15 April 1997, the date on which the Regional Court upheld the Municipal Court's decision of 10 October 1996, and 11 November 1997, when the Municipal Court held the hearing. Moreover, the latter took almost

six months to decide on the applicant's request of 19 May 1998 for leave to amend the merits of his action (see paragraph 30 above).

The Court further observes that from 14 May 2002 to 16 April 2003 the Municipal Court remained inactive. It finally notes that the Constitutional Court took one year, eleven months and one day, and one year, ten months and ten days, respectively, to decide on the applicant's third and fourth constitutional appeals (see paragraphs 38, 40 and 53 above). The Government did not present any explanation for these delays.

77. Consequently, the Court takes the view that an overall period of eleven years, eight months and two days could not, in itself, be deemed to satisfy the “reasonable time” requirement in Article 6 § 1 of the Convention. It considers it unnecessary to rule on the applicant's allegation that the delays in the proceedings were caused by the partiality of the courts involved in his case.

78. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

79. In view of the above decision, the Court considers that it is more appropriate to look at the applicant's allegation in respect of the length of the proceedings before the Constitutional Court on his third and fourth constitutional appeals under Article 13 from the standpoint of whether or not he had an effective remedy to complain about the length of the proceedings in general.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicant further complained of the fact that the Constitutional Court, by rejecting his first and second constitutional appeals of 19 January and 10 November 1998 in which he had complained of the delays in the proceedings, deprived him of the last domestic remedies available to him. This gave rise to a breach of Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in this 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.”

81. The Government contested the applicant's argument.

A. Admissibility

82. The Court notes that this complaint is linked to the applicant's Article 6 complaint examined above, including his complaints regarding the length of the proceedings on his third and fourth constitutional appeals. The complaint must therefore likewise be declared admissible.

B. Merits

83. The Court reiterates that Article 13 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

84. In the present case, the applicant complained in his first and second constitutional appeals about the delays in the proceedings for the protection of his personality.

85. The Court has already dealt with applications against the Czech Republic raising questions analogous to the one raised in the instant case, and has found a violation of Article 13 of the Convention (see the above-mentioned *Hartman v. the Czech Republic*, §§ 81-84). It has examined the present application and finds that the Government have not adduced any facts or circumstances which could lead it to reach a different conclusion.

86. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS AND OF ARTICLES 13 AND 17 OF THE CONVENTION

87. The applicant alleged that his right to a fair hearing and his right to an effective domestic remedy had been violated by the Constitutional Court in its decisions on his constitutional appeals. He invokes in this respect Articles 6 § 1, 13 and 17 of the Convention.

88. The Government contested the applicant's arguments.

Admissibility

89. The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

90. The Court considers that there is nothing in the case file which indicates that the Constitutional Court, when dealing with the applicant's constitutional appeals, lacked impartiality or that the proceedings before it were otherwise unfair. The mere fact that the applicant is dissatisfied with the outcome of the litigation cannot of itself raise an arguable claim of a breach of Article 6 of the Convention.

91. Moreover, there is no appearance on the materials before it of any violation of Article 17 of the Convention either.

92. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. THE APPLICANT'S OTHER COMPLAINTS

93. The applicant finally complained that, as a result of the fact that the proceedings for the protection of his personality lasted an unreasonably long time and thus deprived him of adequate and effective legal protection, he had suffered prejudice in the proceedings concerning the guardianship of his son, lodged with the Brno Municipal Court in 1991. He said that he had been the victim of defamatory statements made by the defendants to the national judicial and other authorities as well as to private persons who had taken part in the proceedings. According to the applicant, the courts involved in the guardianship proceedings had not accepted his repeated requests to be allowed to intensify his contacts with his son, and had not allowed the latter to express his views to the courts. As a result, the applicant's parental rights and his son's rights guaranteed by the Convention on the Rights of the Child and by other international treaties had been infringed.

Admissibility

94. The Court considers that the applicant's complaint raises an issue under Article 8 of the Convention.

95. It observes, however, that the applicant has not exhausted domestic remedies since he failed to submit this complaint to the Constitutional Court.

96. It follows that domestic remedies have not been exhausted in respect of this part of the application, as required by Article 35 § 1. The complaint must therefore be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 80,000 euros (EUR) and CZE 1,500,000 (EUR 47,244) in respect of the non-pecuniary damage he suffered as a result of the protracted length and unfairness of the proceedings.

99. The Government considered that the applicant did not sustain any material damage as a result of the length of the civil proceedings. Furthermore, the Government found excessive the applicant's claims in respect of non-pecuniary damage.

100. The Court considers that the applicant must be taken to have suffered non-pecuniary damage, such as distress and frustration, on account of the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation alone. Taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant a total sum of 4,500 EUR under this head.

B. Costs and expenses

101. The applicant also claimed CZE 72,854 (EUR 2,295) for the costs and expenses incurred before the domestic courts in the proceedings for the protection of his personality and other related proceedings, as well as for the costs incurred before the Court.

102. The Government considered excessive the amounts claimed, stating that the applicant had failed to specify any legal costs and expenses incurred. They requested the Court, should it find a violation of Article 6 § 1 of the Convention, to award the applicant a maximum of EUR 500 for his legal costs and expenses.

103. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also have been incurred to prevent or obtain redress for the violation found.

104. The Court observes that the applicant did not submit any details of the fees or other expenses claimed. Making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 450 for

the postage and copying expenses which he incurred in filing and pursuing his application.

C. Default interest

105. 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 complaints concerning the length of the proceedings and the absence of effective domestic remedies in this respect 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* that there has been a violation of Article 13 of the Convention as regards the absence of a domestic remedy for complaining about the unreasonable length of the domestic proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into the currency of the respondent State at the rate applicable on the date of settlement, plus any tax that may be chargeable:
 - i) EUR 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage;
 - ii) EUR 450 (four hundred and fifty euros) in respect of costs and expenses;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President