



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

SECOND SECTION

CASE OF PIŠTOROVÁ v. THE CZECH REPUBLIC

(Application no. 73578/01)

JUDGMENT

STRASBOURG

26 October 2004

FINAL

26/01/2005

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 Pištorová 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 an application (no. 73578/01) 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, Mrs Helena Pištorová ("the applicant"), on 12 February 2001.

2. The applicant was represented by Mr J. Kalista, a lawyer practising in Praha 1. The Czech Government ("the Government") were represented by their Agent, Mr Vít A. Schorm, from the Ministry of Justice.

3. On 4 June 2002 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1935 and lives in Prague.

5. The applicant's parents owned a house with a garden and private road. On 24 April 1967 they donated their property to the State. The property was then administered by the Humpolec Municipality (*město Humpolec*).

6. On 24 April 1991 the applicant requested the Municipality to conclude a restitution agreement with her, pursuant to the Extra-Judicial Rehabilitation Act (hereinafter "the Act"). The Municipality refused.

7. On 10 February 1993 the Pelhřimov District Court (*okresní soud*), after having held two hearings on 17 June 1992 and 9 February 1993, dismissed the applicant's action for restitution of the property in question, introduced on 31 March 1992 and completed on 8 and 16 June 1992, stating

that the contract of donation had not been concluded under pressure, as envisaged by the Act.

8. On 13 May 1993 the České Budějovice Regional Court (*krajský soud*), upon the applicant's appeal of 17 March 1993, quashed this judgment and remitted the case to the District Court.

9. On 20 October and 10 December 1993 and on 26 and 29 July 1994 the District Court held hearings.

10. On 29 July 1994 it ordered the Municipality to restore the property to the applicant. The court, having assessed certain additional evidence, found that the applicant's parents had signed the contract of donation under pressure.

11. On 8 December 1994 the Regional Court, on the defendant's appeal of 28 August 1994, to which the applicant had made her comments on 4 September 1994, modified the District Court's judgment, dismissing the applicant's claim for restitution. It found that the Municipality had not owned the house on 1 April 1991, as provided for in the Act, and that it had not been transferred to the Municipality after the entry into force of Act no. 172/1991 with the obligation to restore it to the former owners.

12. On 13 February 1995 the judgment was notified to the applicant who, on 27 February 1995, filed an appeal on points of law (*dovolání*) with the Prague High Court (*Vrchní soud*), raising the question of the position of the Municipality as defendant.

13. On 17 December 1998 the Supreme Court, to which the applicant's case had been transferred for reasons of material competence on 2 January 1996, dismissed the applicant's appeal, endorsing the reasons given by the Regional Court.

14. On 23 March 1999 the applicant lodged a constitutional appeal (*ústavní stížnosti*) claiming that the proceedings had been unreasonably long, and that her right to a fair and public hearing respecting the principle of equality of arms had been violated.

15. On 3 August 2000 the Constitutional Court (*Ústavní soud*) dismissed her appeal, stating *inter alia* that there had been no unjustified delays in the proceedings. It considered that any delay in the proceedings before the Supreme Court had been caused by the amendments to the Code of Civil Procedure (*občanský soudní řád*). The decision was notified to the applicant's lawyer on 14 August 2000.

THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

17. The Government contested that argument.

18. The period to be taken into consideration began on 31 March 1992, when the applicant lodged an action with the Pelhřimov District Court and ended on 14 August 2000 when the Constitutional Court's decision was served on the applicant. The proceedings thus lasted eight years, four months and fourteen days.

A. Admissibility

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

20. The Government contended that the applicant had not exhausted available domestic remedies with regard to her complaint about the length of the proceedings. They submit that administrative hierarchical complaints about the length of proceedings may be 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, governed by Act no. 335/1991 which was, on 1st April 2002, replaced by Act no. 2/2002, is complemented by the possibility of constitutional appeals.

21. The applicant disputed the Government's arguments.

22. The Court recalls that there was no effective remedy under the Czech law to complain about the length of civil proceedings (*Hartman v. Czech Republic*, no. 53341/99, § 84, ECHR 2003-VIII (extracts)). It is true that in the present case the Government also referred to new Act no. 6/2002. However, the Court considers that this Act did not introduce a new system of administrative complaints against delays in proceedings, nor did it modify the previous one in a substantive manner. Therefore, the Court finds that it has not been established that the applicant had any effective remedy at her disposal which would have enabled her to submit her complaint under Article 6 § 1 of the Convention to the domestic authorities.

Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

23. The Court finds that 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

24. The Government submitted that the present restitution case had been complex. The evidence had included an expert report, a number of witness statements and hearings, with one witness having to be interviewed by another court. The Government further submitted that the proceedings had been adjourned as the applicant had often adduced new evidence. Moreover, the appellate court had to examine the case file and order a hearing upon the applicant's appeal. Summarising the procedural steps undertaken by the national courts, the Government argued that the first and second instance courts had examined the applicant's case within a reasonable time. As far as the proceedings before the High Court and Supreme Court are concerned, they left the question open for the Court's assessment.

25. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

26. The Court considers that even though the case involved a certain degree of complexity on account of the need for expert evidence and witness hearings, it cannot be said that this in itself justified the total length of the proceedings.

27. It also considers that the applicant's conduct, in particular the manner in which she exercised her procedural rights, did not substantially contribute to the length of the proceedings.

28. As regards the conduct of the authorities, the Court observes that there were periods of inactivity in the proceedings. In particular, there were two intervals of almost eight months (from 17 June 1992 to 9 February 1993 and from 10 December 1993 to 26 July 1994 - see paragraphs 7 and 9 above). The Court notes that the Regional Court needed more than two months to notify its judgment of 8 December 1994 to the applicant (paragraph 12 above). Furthermore, there was a significant delay of three years and more than nine months when the applicant's appeal on points of law was pending before the High Court and subsequently before the Supreme Court - from 27 February 1995 to 17 December 1998 (paragraphs 12-13 above). The Court also notes that the Constitutional Court was

responsible for a delay of one year and more than four months in its examination of the applicant's appeal - between 23 March 1999 and 3 August 2000 (paragraphs 14-15 above).

29. Consequently, having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

31. The applicant alleged that her right to a fair hearing had been violated by the national courts, which had manipulated the merits of her action and not examined her request for the protection of her property right.

Admissibility

32. 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, e.g., *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

33. The Court considers that there is nothing in the case file which indicates that the national courts, when dealing with the applicant's action, 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.

34. 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.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

35. The applicant further complained that the domestic courts had violated her right to the peaceful enjoyment of her possessions, as

guaranteed by Article 1 of Protocol No. 1, in that they decided that the defendant was not liable to be sued under the Extra-Judicial Rehabilitation Act. She maintained that she had never legally lost her property but that she was deprived of her right to use it.

36. The Government contested that argument.

37. Article 1 of Protocol No. 1 provides:

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

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

Admissibility

38. The Court recalls that Article 1 of Protocol No. 1 applies only to existing possessions and does not guarantee a right to acquire property (see, e.g., *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48). Accordingly, anyone who complains of an interference with one of his or her property rights must show that such a right existed. In accordance with the Court's practice, a conditional claim which lapses as a result of the non-fulfilment of a statutory condition cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1 (see, e.g., *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII).

39. In the present case, the Regional Court, for the reasons clearly set out in its decision of 8 December 1994 that the property in question could not be restored since one of the requirements laid down in the Extra-Judicial Rehabilitation Act was not met – held that the defendant had not owned the property on 1 April 1991, the date of the entry into force of the Act. The Supreme Court upheld this finding. The Court finds no indication that the conclusion of the national authorities was arbitrary or incompatible with the relevant provisions of Czech law.

40. In these circumstances, the Court concludes that the applicant's claim falls outside the scope of Article 1 of Protocol No. 1.

41. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant initially claimed CZK 2,520,000 (EUR 79,121) as compensation for the lost possibility to use and loan the property at issue between 1 January 1994 and 31 December 2002. She modified her claim later, asking for CZK 100,800,000 (EUR 3,164,835) to cover the period from 1 April 1995 to 31 March 2000.

44. The Government submitted that no causal link had been shown between the facts of the case and the damage allegedly suffered by the applicant.

45. The Court considers, on the evidence before it, that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by the violation of the Convention in her case. Consequently, there is no justification for making any award under that head (see, *mutatis mutandis*, *Nowicka v. Poland*, no. 30218/96, § 82, 3 December 2002, unreported).

46. The Court further considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot be sufficiently compensated by finding a violation. 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 EUR 1,600 under that head.

B. Costs and expenses

47. The applicants did not request the reimbursement of any costs and expenses in connection with the proceedings before the domestic courts and the Court. Therefore, no award is made under this head.

C. Default interest

48. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,600 (one thousand six hundred euros) in respect of non-pecuniary damage 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;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *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