



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

SECOND SECTION

CASE OF HAVELKA v. THE CZECH REPUBLIC

(Application no. 76343/01)

JUDGMENT

STRASBOURG

2 November 2004

FINAL

02/02/2005

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

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 76343/01) 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, Josef Havelka (“the applicant”), on 8 April 1999.

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

3. On 4 December 2001 the Court declared the application partly inadmissible and decided to communicate the remainder of the application under Article 6 of the Convention to the Government. (A question was raised *ex officio* under Article 13 of the Convention which the Court now sets aside, as having been shown to be superfluous). Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the remainder of the application at the same time.

THE FACTS

4. The applicant was born in 1946 and lives in Jablonec nad Nisou.

5. On 12 January 1995 the applicant brought an action for damages before the Jablonec nad Nisou District Court (*okresní soud*) (hereinafter “the District Court”) against Mr S. who had allegedly caused damage to the applicant's house in Deštná.

6. On 27 July 1995 the District Court held a hearing and adjourned the case to 14 September 1995. The applicant claims that he was not summoned to appear at the hearing of 27 July 1995. The hearing held on 14 September 1995, at which the applicant and Mr S. did not appear due to

illness, was adjourned to 10 October 1995. The hearing took place on that date but had to be adjourned at the request of the applicant when he suddenly felt sick. On 7 November 1995 another hearing took place and was then adjourned until 5 December 1995. The applicant apologised for his absence at the latter hearing. The next hearings were held on 4 January, 6 and 27 February 1996.

7. In the meantime, on 21 February 1996 the applicant and his legal representative had been informed that the proceedings had been suspended pending the submission of the applicant's modified claim.

8. On 28 June 1996 the applicant's legal representative, following the District Court's renewed request of 29 May 1996, submitted the modified version of his client's claim. By a decision of 15 July 1996 the District Court requested the applicant to pay court fees. On 4 November 1996 this decision was quashed.

9. A hearing held on 28 January 1997 was adjourned to 18 February 1997 because of the absence of Mr S. and his lawyer. Mr S. and his lawyer also failed to appear at the latter hearing. On 26 March 1997 the Prague 4 District Court interviewed Mr S. upon the request of the District Court, which received the records of the interview on 10 April 1997.

10. At the hearing held on 6 November 1997, the District Court heard the applicant in the absence of any representative of the interests of Mr S. According to the applicant, Judge V. was responsible for making certain illegal modifications to the record of this hearing. On 10 November 1997 (6 November 1997, according to the applicant), the District Court appointed an expert to evaluate the damage caused by Mr S. The expert report was drawn up on 8 January 1999.

11. On 10 February 1999 the applicant complained of delays in the proceedings and of certain procedural steps taken by judges at the District Court.

12. On 9 and 10 March 1999 he requested the District Court to adopt an interim measure. He alleged that Mr S. was the president of the management board of a private company whose shareholders had already lost CZK 1,500,000,000 (47,318,612 EUR), and that a criminal complaint had been lodged against Mr S. He therefore requested the court to prohibit the latter from disposing of his immovable and movable property.

13. On 11 May 1999 the Ústí nad Labem Regional Court (*krajský soud*) excluded Judge V. of the District Court from the consideration of the applicant's action for damages. According to the applicant, on 12 June 1999 the case was assigned to Judge T.

14. On 10 September 1999 the Regional Court, following the institution by the applicant of proceedings against Judge V., ruled that five other judges of the District Court should be excluded from hearing the case and that the case should be transferred to the Liberec District Court.

15. On 16 November 1999 the District Court dismissed the applicant's request for an interim measure. On 22 December 1999 the Regional Court, upon the applicant's appeal of 7 December 1999, quashed this decision and ordered Mr S. not to sell, pledge, mortgage or otherwise dispose of certain building plots in Klánovice. For the remainder, the Regional Court sent the case back to the District Court. The decision was notified to the District Court on 14 January 2000.

16. According to the applicant, on 10 February 2000 the District Court received his request to secure documents in support of the remaining part of the interim measure. On 1 March 2000 he submitted the documents himself in order to expedite the proceedings.

17. On 23 March 2000 the applicant filed a constitutional appeal (*ústavní stížnost*) alleging delays in the proceedings before the District Court. He invoked Article 38 § 2 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*). The appeal was delivered to the Constitutional Court (*Ústavní soud*) on 10 April 2000.

18. On 17 April 2000 Judge T. dismissed the applicant's request to have his current legal representative appointed under the free legal-aid scheme. On 10 May 2000 the Regional Court upheld this decision.

19. On 25 May 2000 the District Court informed the applicant that it had not been possible to decide on the remaining part of the interim measure as the case file had been sent to the appellate court.

20. On 21 June 2000 the Constitutional Court dismissed the applicant's appeal finding that, since date of the introduction of his action for damages, the District Court had held seven hearings and that it had accepted the applicant's modification of the grounds of his action, a matter on which the Regional Court had ruled in 1996. Moreover, in the course of 1997 the District Court had taken further legal steps and ordered three hearings. In 1998 and at the beginning of 1999 the applicant criticised the conduct of the proceedings by the District Court. Consequently, another judge on that court was excluded from hearing the case. During 1999 the court adopted an interim measure, and in February 2000 it collected further documentary evidence necessary for its decision on the merits.

21. According to the Government, the case file remained at the Constitutional Court from 21 June to 23 August 2000.

22. On 29 August 2000 the District Court adopted an interim measure ordering Mr S. not to sell, pledge, mortgage, transfer or otherwise dispose of his property, intangible investments, shares or other interests in twelve private companies.

23. On 11 October 2000 Mr S. formally appealed, stating that he would substantiate his grounds of appeal later. On 2 and 22 November 2000 the applicant, after inspecting the court file on 1 November 2000, commented on the appeal. On 24 November 2000 Mr S. submitted his grounds of appeal.

24. On 8 and 11 December 2000 respectively, the applicant requested the District Court to extend the interim measure to real estates in Rabyň. On the same day, he proposed that the court grant him leave to extend the grounds of his action for damages.

25. On 11 December 2000 the case file was sent to the Regional Court. On 12 December 2000 the applicant finalised his observations on Mr S.'s appeal against the interim measure.

26. On 19 December 2000 the Regional Court upheld the interim measure. On 12 January 2001 the case file was sent back to the District Court.

27. On 15 February 2001 the applicant requested the District Court to appoint a free legal-aid lawyer. The court did so on 16 February 2001. However, on 12 April 2001 the lawyer asked to be released from his commission. Consequently, a hearing scheduled for 25 April 2001 had to be adjourned. On 15 May 2001 another lawyer was appointed for the applicant. On 14 June 2001, upon the lawyer's appeal, the appointment was cancelled. On 17 July 2001 a third lawyer was appointed.

28. On an unspecified date and again on 19 September 2001, the District Court invited Mr S. to submit information about his new legal representative, the previous one having died on 12 July 2001.

29. On 12 November 2001 the applicant requested the District Court to include a second defendant in the proceedings. His request was dismissed on 19 November 2001 by Judge T. who, at the same time, dismissed the applicant's request for an extension of the interim measure.

30. On 3 December 2001 the applicant appealed against both decisions, completing his appeal on 17 December 2001. The Regional Court quashed the District Court's dismissal decisions and, on 6 February 2002, extended the interim measure. According to the applicant, on 6 March 2002 the Regional Court upheld the District Court's refusal to include the second defendant in the proceedings.

31. According to the Government, in 2002 the case file remained for some time at the Prague Municipal Court in connection with criminal proceedings instituted against Mr S.

32. On 5 November 2002 the applicant requested the District Court to summon Mr S. to appear at the next hearing.

33. By letter of 4 December 2002, not having received a reply from the District Court to his request of 11 December 2000, the applicant urged the court to rule on this matter and to authorise him to extend the grounds of his action for damages.

34. According to the Government, on 11 February 2003 the applicant quantified his damage claim in the amount of CZK 31,705,276 (EUR 1,000,166). The District Court failed to notify the relevant documents to Mr S. in time and, therefore, had to adjourn the hearing scheduled for 19 February 2003.

35. On 20 February 2003 the applicant requested that Judge T. and other judges of the civil division of the District Court be excluded from trying the case. On 13 March 2003 the Regional Court dismissed his request. On 22 and 28 April 2003 the applicant instituted proceedings for the protection of his personal rights against Judge T. and three judges at the Regional Court.

36. On 23 April 2003 the District Court held a hearing. According to the Government, Judge T. was about to deliver a judgment. However, the applicant again requested Judge T.'s exclusion from his case and the suspension of the proceedings until his action for the protection of his personal rights had been decided. The next day, his action for damages was assigned to Judge P.V.

37. According to the Government, in May 2003 the applicant requested the District Court to suspend the proceedings until the Constitutional Court had decided his appeal filed against the Regional Court's decision of 13 March 2003. The request was dismissed.

38. On 31 July 2003 the applicant again requested the District Court to suspend the proceedings, arguing that, for the last nine years, Mr S. had not appeared at that court, having twice been heard by another court upon the District Court's request in the absence of the applicant or his lawyer. The District Court dismissed his request at a hearing on 4 August 2003.

39. A hearing held on 20 October 2003 was adjourned because of the applicant's challenge to Judge P.V. for bias. The applicant sent his reasoned request to the court on 30 October 2003, asking it to exclude all judges of the District Court from the examination of his case and to transfer the case to a court outside the competence of the Regional Court.

40. On 12 November 2003 the District Court requested the applicant to substantiate his challenge to these judges.

41. On 24 March 2004 the Prague High Court (*vrchní soud*) decided to exclude two judges of the Regional Court from the applicant's case. On 23 April 2004 the Regional Court held that, apart from Judge T. who had already been excluded, there was no reason to exclude other judges of the District Court from the case.

THE LAW

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

42. The applicant complained that the length of the proceedings has exceeded the "reasonable time" requirement 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...”

43. The Government contested that argument.

44. The period to be taken into consideration began on 12 January 1995, when the applicant lodged an action with the Jablonec Nad Nisou District Court and has not yet ended. It has thus lasted to-date some nine years and nine months for two levels of jurisdiction, which have dealt with the case and the applicant's requests for interim measures on more than one occasion.

A. Admissibility

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

46. The Government contended that the applicant had not exhausted available domestic remedies with regard to her complaint about the length of the proceedings. They submitted that administrative 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, is complemented by the possibility of introducing constitutional appeals under the Constitutional Court Act no. 182/1993 and filing petitions with the Ombudsman by virtue of Act no. 349/1999.

47. The applicant disputed the Government's arguments.

48. The Court recalls that there was no effective remedy under Czech law at the material time to complain about the length of civil proceedings (*Hartman v. Czech Republic*, no. 53341/99, § 84, ECHR 2003-VIII). A petition to the Ombudsman cannot be considered an effective remedy, given the limited powers of that office.

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

49. 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

50. The Government conceded that the overall duration of the proceedings could not be explained in terms of the complexity of the case alone. However, they were of the opinion that the applicant had substantially contributed to their length and referred in this connection to the various modifications he had made to his action, his requests for interim

measures and his requests and appeals to the courts. Moreover, he had on several occasions challenged the judges dealing with his case.

They maintained that the authorities had shown due diligence throughout the proceedings. In fact, up until 19 November 2001 thirteen hearings had been held, out of which seven had to be adjourned due to the illness of the applicant or his legal representative, one hearing had been adjourned for reasons attributable to the defendant and five other hearings had to be adjourned in order to rectify the applicant's submissions. The Government acknowledged that the preparation of the expert report on the immovable property took time. However, a re-evaluation of the property by a new expert would have further extended the proceedings. In conclusion, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

51. The applicant argued that he had not contributed to the duration of the proceedings and that the manner in which he had exercised his procedural rights had not substantially delayed the case. He claimed that the Jablonec nad Nisou District Court held eleven hearings. However, the defendant failed to appear at nine of them and his legal representative was absent from six hearings. The applicant or his lawyer did not appear at one hearing due to their respective illnesses. He further submitted that thirteen months elapsed between the commission of the expert opinion and its delivery to the District Court.

52. 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).

53. The Court notes that the proceedings at issue, which are still pending at first instance, have already lasted some nine years and nine months. It considers that the case is not factually or legally complex.

54. As to the applicant's conduct, the Court acknowledges that the applicant filed numerous and extensive submissions. However, although the manner in which he exercised his procedural rights may have contributed to prolonging the proceedings, this is not of itself sufficient to explain their length.

55. As regards the conduct of the authorities, the Court considers that two specific periods of delay are attributable to the domestic authorities. In the first place, a period of about seven months elapsed between the interview of Mr S. by the Prague 4 District Court of 26 March 1997 and the next hearing held before the Jablonec Nad Nisou District Court on 6 November 1997 (see paragraphs 9-10 above). Secondly, there was a considerable delay in issuing the expert report which was ordered on

10 November 1997 but only submitted to the District Court on 8 January 1999, some thirteen months later.

56. Furthermore, the Court does not find any justification for the two-month period between 21 June and 23 August 2000 during which the case file remained at the Constitutional Court, bearing in mind that the latter court had determined the applicant's constitutional appeal on 21 June 2000 (see paragraphs 20-21 above).

57. The Court further observes that on 11 December 2000 the applicant sought leave to extend the grounds of his claim for damages, but the District Court, although urged to deal with the matter on 4 December 2002, did not act until the applicant had quantified his claim for damages on 11 February 2003 (see paragraphs 24 and 33 above). Lastly, there were two intervals, involving the challenges for bias, of four months and twelve days and five months and twelve days, respectively (from 12 November 2003 to 24 March 2004 and from 12 November 2003 to 23 April 2004 – see paragraphs 40-41 above).

58. 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.

59. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant submitted that the damages claimed by him in the domestic proceedings amounted in May 2004 to CZK 38,000,000 (EUR 1,198,738). He left it to the Court's discretion to assess his pecuniary and non-pecuniary damage.

62. The Government contested the claim.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it 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 the finding

a violation alone. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 under that head.

B. Costs and expenses

64. The applicant 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

65. 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 remainder of the application admissible;
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 9,000 (nine thousand 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 2 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President