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

SECOND SECTION

CASE OF VITÁSEK v. THE CZECH REPUBLIC

(Application no. 77762/01)

JUDGMENT

This version was rectified on 22 March 2005
under Rule 81 of the Rules of the Court

STRASBOURG

2 November 2004

FINAL

30/03/2005

In the case of Vitásek v. the Czech Republic,

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. 77762/01) 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 Eduard Vitásek ("the applicant"), on 4 December 2001.

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

3. On 16 April 2002 the Court decided to communicate 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 application at the same time.

THE FACTS

4. The applicant was born in 1947 and lives in Ostrava.

5. On 6 October 1993 the applicant brought an action for damages (*žaloba na náhradu škody)*, following a theft in premises belonging to a defendant[1], before the Ostrava District Court (*okresní soud).*

[1] Rectified on 22 March 2005: The text read … following a road traffic accident … in the former version of the judgment.

6. On 27 September 1994 the District Court held a hearing. Another hearing was to be held on 14 March 1995 but was cancelled because of the judge's long-term illness. In September 1995 the case was then given to another judge who fixed a hearing for 11 June 1996. However, the hearing was cancelled due to the absence of the judge. The next hearing was held on 20 August 1996, but was adjourned, as two witnesses did not appear.

7. On 5 November 1996 the District Court held a hearing and ordered an expert opinion. The first expert appointed by the court on 11 April 1997 requested, on 6 May 1997, to be relieved of his commission. On 10 August 1997 the District Court appointed a new expert who received the case file on 9 October 1997. On 11 December 1997 he requested the judge to obtain technical documents about the applicant's damaged car. On the same day the judge forwarded this request to the Road Traffic Licensing Department of the Police of the Czech Republic *(Dopravní inspektorát policie České republiky).* The expert also contacted the applicant about the matter but he had sold the car in July 1993.

8. On 23 July 1998, the Road Traffic Licensing Department, after having been urged by the judge, informed the latter that it did not have the relevant technical documents. On 15 December 1998 the expert obtained the necessary data from the archives of the Road Traffic Licensing Department. On 9 February 1999 he drew up his report. On 4 and 22 March 1999 respectively, the parties submitted their comments.

9. In the meantime, on 20 February 1999, the applicant had sent a complaint about delays in the proceedings to the president of the District Court who, on 5 March 1999, had informed him that his case was being "dealt with by the chamber within the time-limits corresponding to the volume of this chamber's backlog of cases".

10. On 12 March 1999 the applicant complained of the delays in the proceedings to the Ostrava Regional Court (*krajský soud).* On 23 March 1999 the president of that court replied that the applicant's complaint was well founded. On 4 April 1999 the applicant sent a similar complaint to the Ministry of Justice through the president of the Regional Court. On 16 April 1999 the Ministry informed the applicant that they had received his complaint and were examining the situation.

11. Two hearings were held on 18 June and 17 August 1999. On the latter date, the District Court adopted a judgment, against which the applicant appealed on 23 November 1999. On 3 January 2000 the defendant[2] was invited to rectify certain shortcomings in his appeal, which he did on 28 January 2000.

12. On 26 May 2000 the Regional Court quashed the judgment of the District Court and sent the case back to it for further consideration.

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[2] Rectified on 22 March 2005: The text read … he … in the former version of the judgment.

13. The hearing scheduled for 24 October 2000 was adjourned until 28 November 2000 in order to hear the expert. On the same day, the District Court adopted an interim judgment approving the well-foundedness of the legal basis of the applicant's action for damages, the amount of which had to be quantified later.

14. On 18 June 2001 the Regional Court, upon the defendant's appeal of 20 December 2000, quashed the interim judgment and returned the case to the District Court.

15. On 21 September 2001 the District Court forwarded the defendant's challenge to the judge dealing with his case, on grounds of bias, to the Regional Court. On 16 October 2001 the latter dismissed the objection.

16. The hearing held before the District Court on 5 March 2002 was adjourned for a second expert report. On 13 May 2002 the court appointed an expert.

17. The proceedings are still pending.

THE LAW

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

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

19. The Government contested that argument.

20. The period to be taken into consideration began on 6 October 1993 and has not yet ended. It has thus lasted nearly 11 years for two levels of jurisdiction, who have both seen the case twice.

A. Admissibility

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

22. 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 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.

23. The applicant disputed the Government's arguments.

24. The Court recalls that at the material time 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). It is true that in the present case the Government also refer to a 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 substantial manner. 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, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

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

B. Merits

26. The Government submitted that the District Court was faced with organisational difficulties in holding hearings due to the long-term illness of the first judge dealing with the case, the overwhelming workload of the second judge who took over the case and the failure of witnesses to appear in court. Moreover, a certain delay was caused by the elaboration of the expert report and the examination of the defendant's challenge for bias of the second judge. Lastly, the Government pointed out that the case was twice considered by the Regional Court which quashed the first instance judgments and sent it back to the District Court.

27. The applicant continued to maintain that the proceedings had been too long.

28. 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).

29. The Court notes that the proceedings at issue, which are still pending, have already lasted nearly 11 years. It considers that the case is not factually or legally complex.

30. As to the applicant's conduct, the Court considers that, although the manner in which he exercised his procedural rights may have contributed to prolonging the proceedings, it is not in itself sufficient to explain their extensive duration.

31. As regards the conduct of the authorities, the Court observes that a number of specific and lengthy delays in the proceedings are attributable to the domestic authorities: a period of approximately one year between lodging the case on 6 October 1993 and the first hearing held by the District Court on 27 September 1994 (see paragraphs 5-6 above); a period of nearly a year and eleven months between the first and second hearings held on 27 September 1994 and 20 August 1996 respectively (see paragraph 6 above); a period of about five months for the District Court to appoint the expert (see paragraph 7 above); a period of seven months for the Road Traffic Licensing Department of the Police of the Czech Republic to react to the judge of the District Court's request to submit technical documents (see paragraphs 7-8 above); a period of three months between the date on which the applicant submitted his comments on the expert report and the next hearing held before the District Court (see paragraphs 8 and 11 above); a period of four months for the Regional Court to deal with the defendant's[3] appeal and to quash the first instance judgment (see paragraphs 11-12 above); a period of five months for the District Court to resume its consideration of the applicant's case, on 24 October 2000, after it had been sent back on 26 May 2000 (see paragraphs 12-13); a period of six months for the Regional Court to decide, on 18 June 2001, on the defendant's appeal against the interim judgment filed on 20 December 2000 (see paragraph 14 above); and a period of almost five months between the dismissal of the applicant's objection for bias by the Regional Court on 16 October 2001 and the next hearing held before the District Court on 5 March 2002 (see paragraphs 15-16 above).

32. Having examined all the material submitted to it, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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.”

[3] Rectified on 22 March 2005: The text read … the applicant’s … in the former version of the judgment.

A. Damage

34. The applicant claimed CZK 900,000 (28,662 EUR) in respect of pecuniary damage. He further claimed that a judgment of the Court would have important moral value.

35. The Government contested the claim. They argued that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

36. 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 finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under that head.

B. Costs and expenses

37. 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

38. 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 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 10,000 (ten 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