



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

SECOND SECTION

CASE OF ŠKODÁKOVÁ v. THE CZECH REPUBLIC

(Application no. 71551/01)

JUDGMENT

STRASBOURG

21 December 2004

FINAL

21/03/2005

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 Škodáková v. the Czech Republic,

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

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

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 30 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 71551/01) 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, Simona Škodáková (“the applicant”), on 17 April 2001.

2. The applicant was originally represented by Mrs Jablonská and Mr V. Jablonský, lawyers practising in Prague. From July 2004 onwards she was represented by Mrs K. Veselá-Samková, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V. A. Schorm, Ministry of Justice.

3. On 18 June 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1938 and lives in Prague. She is the co-owner of a building and plot of land in the Strakonice region.

5. On 21 September 1988 the other owner instituted civil proceedings before the Strakonice District Court, seeking the termination of the co-ownership arrangement and the assignment of entire property to him. On 31 October 1988 the District Court heard the co-owner. Another hearing was scheduled for 16 November 1988 but, as the applicant failed to attend, it was adjourned. On 13 December 1988 the applicant was heard by the Prague 6 District Court at the request of the Strakonice District Court.

6. On 14 February 1989 the District Court appointed an expert in order to determine the manner in which the property should be divided. The report was submitted on 6 April 1989.

7. Three other hearings were held by the District Court on 23 and 30 October 1990 and 7 January 1991.

8. On 18 July 1991 the District Court ordered an on-site visit to the property.

9. On 16 March and 14 April 1992 the applicant requested the District Court to explain why her case was not progressing. On 4 September 1992 she filed a complaint with the Ministry of Justice alleging unreasonable delays in the proceedings.

10. On 25 September 1992 the President of the České Budějovice Regional Court (*krajský soud*) admitted that her complaint was justified, but explained that the District Court had serious staffing problems.

11. On 17 June 1993 the applicant again complained of delays to the President of the Regional Court.

12. On 9 July 1993 a geometric plan was submitted upon the District Court's request of 7 May 1992.

13. On 5 August 1993 the District Court held a hearing at which the applicant presented her proposal for the division of the property. She finalised her proposal on 23 August 1993. Another hearing was held on 30 September 1993, but was adjourned because the professional licence of the expert had to be verified.

14. On 25 October 1993 the District Court carried out an on-site visit to the property. On the same day, it adjourned the proceedings pending the production of the reports on the division of the property and its value.

15. On 6 June 1994 the court appointed an expert to assess the value of the property.

16. The next hearing was held before the District Court on 27 July 1995. At that hearing the parties disagreed on how to divide the property and settle the co-ownership issue.

17. On an unspecified date in 1994 the case was assigned to another judge.

18. A hearing held on 1 August 1995 was adjourned because a new expert had to be appointed to determine the manner in which the property should be divided.

19. On 16 February 1996 the applicant complained of delays in the proceedings to the Regional Court and, on 7 March 1996, to the President of the District Court. On 28 February 1996 she was informed by the latter that the length of the proceedings was due to the complex nature of the case and the judge's inexperience.

20. On 12 April 1996 the District Court appointed a third expert to determine the manner in which the property should be divided. A hearing held on 23 June 1996 was adjourned because the expert report had not yet been submitted. This report was submitted on 24 July 1996 and sent to the applicant on 14 October 1996. The latter challenged the expert's impartiality on 19 November 1996. On 10 December 1996 the other owner of the property submitted his comments on the evaluation made of the property.

21. On 30 April and 23 June 1997 two hearings were held by the District Court which, on 28 August 1997, appointed an expert to carry out an on-site examination of the property by 17 October 1997. According to the Government, these hearings were adjourned at the applicant's request. On 23 October 1997 the expert submitted his conclusions.

22. On 25 February 1998 the court held a hearing at which the expert was heard. The hearing was then adjourned because a new expert had to be appointed to determine the value of the property. The applicant was invited to submit her opinion in this connection. She submitted her opinion on 30 July 1998, after having been urged to so. On 16 October 1998, after the case had been assigned to a third judge, an on-site examination of the property was carried out on 14 October 1998 in the presence of the expert. On 3 November 1998 the court ordered an expert report to evaluate the property.

23. On an unspecified date in 1999 the case was assigned to a fourth judge.

24. On 15 February 1999 the expert on property division matters inspected the premises. On 9 March 1999 he presented his report to the court which, on 12 July 1999, held a hearing. On 30 August 1999 it appointed, at the parties' suggestion, an expert to assess the market value of the property and its sale price. On 11 November 1999 the expert submitted his report. According to the Government, the applicant's proposal to commission a new expert report was dismissed.

25. On 12 January 2000 a hearing was held before the District Court, but the applicant could not attend since he was ill. Another hearing took place on 10 February 2000 and was adjourned until 12 May 2000.

26. By a judgment of 17 July 2000 the court terminated the co-ownership, assigning the property to the other owner, who was ordered to pay CZK 127,500 (4,060 euros (EUR)) to the applicant in compensation for her share of the property.

27. On 2 March 2001 the Regional Court upheld the merits of this judgment.

THE LAW

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

28. 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...”

29. The Government contested that argument.

30. The period to be taken into consideration began only on 18 March 1992, when the recognition by the Czech Republic 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 on that date.

The period in question ended on 2 March 2001 with the judgment of the Regional Court. It thus lasted over eight years and eleven months.

A. Admissibility

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

32. 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 replaced on 1 April 2002 by Act no. 2/2002), is complemented by the possibility of filing constitutional appeals and complaints under State Liability Act no. 82/1998 (which amended Act no. 58/1969). Moreover, the system of domestic remedies against delays in the proceedings was completed by the appointment of the Ombudsman (Act no. 349/1999). The Government concluded that this system fully satisfied the requirements of Article 13 of the Convention.

33. The applicant disputed the Government's arguments.

34. 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). It is true that in the present case the Government also referred to Act no. 6/2002. However, the Court notes that this new Act did not introduce a new system of administrative complaints against delays in proceedings, nor does it

substantially modify the previous one. The Court therefore 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 length of proceedings complaint to the domestic authorities.

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

35. 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

36. The Government maintained that the case concerned an action for the termination and settlement of a co-ownership arrangement. A number of hearings had to be adjourned following the parties' suggestions and various submissions. Moreover, the parties had to be urged to submit their comments and observations in time. The Government admitted that the experts appointed during the proceedings had created difficulties for the processing of the case. However, in general, the District Court had, as far as possible, conducted the proceedings with due diligence, bearing in mind its staffing and operational difficulties at the relevant time.

37. The applicant disagreed with the Government's arguments.

38. 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).

39. Having regard to the fact that the domestic court had to obtain expert evidence, the Court considers that the case was of some complexity. However, this in itself cannot justify the overall length of the proceedings.

40. As regards the conduct of the parties, the Court observes that several hearings were adjourned at their request. Nevertheless, in the light of the overall length of the proceedings, it considers that the applicant cannot be held generally responsible for the delays in the proceedings.

41. As regards the conduct of the national authorities, the Court notes that apart from some short delays in the proceedings, there were two significant periods of total inactivity on the part of the District Court, amounting to over one year and two months and one year and one month respectively. The first occurred between 7 May 1992 and 9 July 1993 (see paragraph 12 above); the second between 6 June 1994 and 27 July 1995 (see paragraphs 15 and 16 above). Moreover, the District Court adjourned the hearing held on 1 August 1995 and only resumed the proceedings more than

eight months later (see paragraphs 17 and 19 above). The Government have not provided any satisfactory explanation for these delays.

42. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, 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

43. 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

44. Under the head of pecuniary damage, the applicant claimed CZK 72,782.50 (EUR 2,318) caused by the decrease in value of the property during the lengthy proceedings. She further claimed the sum of CZK 1,500,000 (EUR 47,771) for moral damage that she suffered as a result of the length of the proceedings.

45. The Government contested these claims.

46. The Court observes that in its judgment of 17 July 2000 the District Court terminated the co-ownership, assigning the property to the other owner, who was ordered to pay CZK 127,500 (4,060 EUR) to the applicant in compensation for her share of the property. It therefore rejects the applicant's pecuniary claim. However, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 8,000 under that head.

B. Costs and expenses

47. In her observations on the admissibility and merits of her application, the applicant did not seek reimbursement of any costs and expenses in connection with the proceedings before the Court. From her correspondence with her second lawyer it appears that the latter asked her to pay CZK 96,136.40 (EUR 3,062) for costs and expenses incurred for his services and those of the first lawyer in the proceedings before the Court.

48. The Government submitted that the claim for reimbursement of costs and expenses had been submitted too late. Moreover, they considered the figure mentioned in the lawyer's correspondence excessive.

49. The Court considers that EUR 400 constitutes a reasonable award for costs in the circumstances of this case.

C. Default interest

50. 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 8,000 (eight thousand euros) in respect of non-pecuniary damage, and EUR 400 (four hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Czech crowns at the rate applicable at the date of settlement;
 - (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 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President