



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

SECOND SECTION

**CASE OF EKO-ENERGIE, SPOL. S R.O. v. THE CZECH
REPUBLIC**

(Application no. 65191/01)

JUDGMENT

STRASBOURG

17 May 2005

FINAL

17/08/2005

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 Eko-Energie, spol. s r.o. v. the Czech Republic,

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

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

Mr A.B. BAKA,

Mr R. TÜRMEŇ,

Mr K. JUNGWIERT,

Mr M. UGREKHĚLIDZE,

Ms A. MULARONI,

Ms F. FURA-SANDSTRÖM, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 26 April 2005,

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

PROCEDURE

1. The case originated in an application (no. 65191/01) 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 Eko-Energie, spol. s r.o., a limited liability company incorporated under Czech law with its head office in Prague (“the applicant”), on 20 December 2000.

2. The applicant was represented before the Court by Mr O. Choděra, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm.

3. On 4 December 2001 the Court decided to communicate the application to the Government. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a limited liability company with its registered office in Prague.

5. On 5 September 1997 the applicant lodged a civil action with the Prague Regional Commercial Court (*krajský obchodní soud*) against the National Property Fund (*Fond národního majetku*) for unjust enrichment in

the amount of 5,288,148 CZK (176,085 EUR). The court received the action on 18 September 1997.

6. On 22 February 2000 the applicant requested the Regional Commercial Court to schedule a hearing.

7. On 20 March 2000 the applicant received the Regional Commercial Court's request of 23 February 2000 to pay the court fees. A confirmation of their payment was delivered to the court on 13 April 2000.

8. On 28 April 2000 the Regional Commercial Court issued a payment order (*platební rozkaz*) in favour of the applicant. On 5 June 2000 it was delivered to the parties in the proceedings.

9. On 11 July 2000 the Regional Commercial Court invited the applicant to submit its observations on the defendant's appeal, which the court had received on 15 June 2000.

10. Upon its receipt of the court's invitation of 27 July 2000, the applicant sent its observations on 15 September 2000. They were delivered to the court on 18 September 2000.

11. Due to the reorganization of the Czech judicial system, the case was transferred to the Prague Municipal Court (*městský soud*) by 1 January 2001.

12. On 10 April 2001 the defendant's lawyer informed the Municipal Court about his representation of the defendant.

13. On 29 October 2001 the Municipal Court delivered the applicant's observations and the court's request of 23 October 2001 to supplement the defendant's appeal to the defendant's lawyer.

14. After it had received the supplement to the defendant's appeal on 7 November 2001, on 28 November 2001 the Municipal Court fixed a hearing for 31 January 2002, at which the applicant's lawyer presented new evidence and proposed an extrajudicial settlement of the dispute. The defendant's lawyer requested the Municipal Court to adjourn the hearing for and give him a month to study the evidence and the applicant's proposal.

15. After having held hearings of 26 September and 5 December 2002, the Municipal Court dismissed the applicant's action on 16 December 2002. On 20 February 2003 the judgment was delivered to the applicant's lawyer.

16. Upon the applicant's appeal of 21 February 2003, supplemented on 17 April 2003, the Prague High Court (*Vrchní soud*) held a hearing on 6 April 2004 and partly granted the applicant's action on 20 April 2004. On 28 May 2004 the judgment entered into force.

THE LAW

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

17. The applicant alleged that the length of the proceedings had infringed the “reasonable time” requirement of Article 6 § 1 of the Convention, worded as follows:

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

18. The Government contested that allegation.

19. They maintained that the period to be taken into consideration had begun on 18 September 1997, when the applicant’s action had been transferred to the Regional Commercial Court.

20. The Court recalls that the time to be taken into consideration starts running with the institution of the proceedings (*Scopelliti v. Italy*, judgment of 23 November 1993, §18).

21. Accordingly, the period to be taken into consideration began on 5 September 1997, when the applicant lodged its civil action, and ended on 28 May 2004, when the High Court’s judgment became effective. It thus lasted nearly six years and nine months for two levels of jurisdiction.

A. Admissibility

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

23. The Government contended that the applicant could not be regarded as having exhausted available domestic remedies.

24. The applicant disputed the Government’s argument.

25. 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, it finds that it has not been established that the applicant had any effective remedy at its disposal which would have enabled it to submit its 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.

26. 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

27. The Government submitted that the case had been rather complex and that the parties to the proceedings had not contributed to any delays. They admitted a delay in the initial stage of the proceedings, caused by the Regional Commercial Court's assumption of a large number of pending cases from the former Economic Arbitration Authorities (*orgány hospodářské arbitráže*), which had been abolished on 1 January 1992. They underlined that this exceptional situation was resolved by a reorganization of the Czech judiciary, which had taken place on 1 January 2001 and which had transferred the cases and personnel from the Prague Regional Commercial Court to the Prague Municipal Court. In this connection, the Government contested any affirmation that there was a practice in the Czech judiciary to register civil and commercial claims and then shelve them for several years. They considered the overall length of the proceedings reasonable within the meaning of Article 6 § 1 of the Convention.

28. The applicant submitted that the proceedings had not been particularly complex and that it had not contributed to their length. It did not express further views in respect of the merits of its application in its reply to the Government's observations.

29. 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).

30. The Court considers that even though the case may have been complex from a factual and legal point of view, it cannot be said that this in itself justified the total length of the proceedings.

31. The Court also considers that the applicant's conduct did not contribute to the length of the proceedings.

32. As regards the conduct of the authorities, the Court observes that there were periods of inactivity in the proceedings. In particular, there was a significant delay between 5 September 1997 and 23 February 2000 (see paragraphs 5 and 7 above). Furthermore, the Regional Commercial Court, and subsequently the Municipal Court, took more than a year to send the applicant's observations to the defendant (see paragraphs 10 and 13 above). The Court also notes that the High Court was responsible for a delay of eleven months in its examination of the applicant's appeal – between 17 April 2003 and 6 April 2004 (see paragraph 16 above).

33. The Court recalls that the Convention places a duty on the Contracting States to organize their legal system so as to allow the courts to comply with the requirements of Article 6 § 1 of the Convention, including that of trial within a "reasonable time. Nonetheless, a temporary backlog of

business might not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind (*Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66 § 29).

34. In the present case, the Court acknowledges the difficulties undeniably encountered by the Regional Commercial Court as well as the effort of the Contracting State to solve its problems. However, it observes that the Government failed to demonstrate that the measures adopted could be regarded as sufficient and capable of achieving satisfactory results (see, *mutatis mutandis*, *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81 § 40).

35. 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 of Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed CZK 1,762,716 (EUR 58,695) for the moral damage it alleged it had sustained as a result of the protracted proceedings. This amount was calculated as one third of the amount claimed in the proceedings.

38. The Government contested the method used by the applicant to determine the amount of moral damage, as it referred to factors of a material nature and led to an excessive sum. They also noted that the applicant was a legal entity and, therefore, its sensitivity to eventual moral damage was considerably limited. They considered that the Court’s finding of a violation of the Convention would constitute a sufficient just satisfaction.

39. The Court recalls that the Convention must be interpreted and applied in such a way as to guarantee rights that are practical and effective. Accordingly, since the principal form of redress which the Court may order is compensation, it must necessarily be empowered, if the right guaranteed by Article 6 of the Convention is to be effective, to award compensation for

non-pecuniary damage to commercial companies (*Comingersoll v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV).

40. In the instant case, the fact that the proceedings in issue continued beyond a reasonable time must have caused the applicant considerable inconvenience and prolonged uncertainty which, in the Court's view, justifies an award of compensation.

41. Accordingly, the Court, ruling on equitable basis, awards EUR 3,000 to the applicant for non-pecuniary damage.

B. Costs and expenses

42. The applicant did not claim any costs and expenses.

C. Default interest

43. 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 3,000 (three 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 17 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President