



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

SECOND SECTION

CASE OF VRÁBEL AND ĎURICA v. THE CZECH REPUBLIC

(Application no. 65291/01)

JUDGMENT

STRASBOURG

13 September 2005

FINAL

13/12/2005

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 Vrábek and Ďurica v. the Czech Republic,

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

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

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 25 August 2005,

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

PROCEDURE

1. The case originated in an application (no. 65291/01) 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 two Slovakian nationals, Mr Pavel Vrábek and Mr Cyril Ďurica (“the applicants”), on 10 October 2000.

2. The applicants were represented by Mr I. Jurčičín, a lawyer practising in Prešov. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm.

3. On 18 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

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1955 and 1931 respectively, and live in Prešov.

5. On 28 May 1992 the applicants requested the Prague Regional Commercial Court (*krajský obchodní soud*) to order a private company to cease using their patent illegally, and to pay them compensation for it. On 15 June 1992 the court received their action.

6. On 23 March 1994 the applicants were invited to pay the court fees.

7. On 5 October and 16 November 1994 and 24 January 1995, the court held hearings.

8. In the meantime, between 3 August and 10 November 1994, the parties to the proceedings, upon the court's request of 11 July 1994, had submitted their respective observations and comments concerning the merits of the case.

9. On 30 January 1995 the court received the applicants' patent certificate (*patentová listina*), issued by the Office of Industrial Intellectual Property (*Úřad průmyslového vlastnictví*) (hereinafter the "OIP") on 9 January 1995.

10. On 10 June and 9 October 1996 respectively, the applicants, upon the court's requests of 16 May and 1 October 1996, specified the product allegedly violating their patent. The specifications were received by the court on 14 June and 14 October 1996 respectively.

11. On 15 October 1996 the court received the OIP's information that, on 11 November 1995, the patent in question had been partly quashed and that, on 15 December 1995, new proceedings before the OIP concerning the patent had commenced.

12. On 22 October 1996 the court requested the defendant to submit documentation related to its product, specified by the applicants on 14 October 1996.

13. On 18 December 1996 the applicants sent to the court a copy of the OIP's decision of 12 December 1996, confirming that the product manufactured by the defendant fell within the ambit of the applicants' patent.

14. On 31 March 1998 the applicants sent to the court the OIP's decision and a decision of the OIP's President of 17 March 1998, dismissing the defendant's appeal against the OIP's decision of 12 December 1996.

15. On 14 October 1999 the court adjourned the hearing scheduled for 19 November to 9 December 1999 due to the judge's illness.

16. On 18 November 1999 the applicants specified their claim. On 25 November 1999 the court received the specifications.

17. On 9 December 1999 the court held a hearing, at which the applicants again modified their action. The court requested them to specify the facts and to supplement their request for modification of the action of 18 November 1999. On 20 December 1999 the applicants specified their action.

18. On 25 September 2000 the court fixed a hearing for 27 November 2000, at which it partly accepted the applicants' modification of their action.

19. On 24 November 2000 the applicants specified their claim for damages.

20. On 27 November 2000 the court held a hearing, at which the applicants again requested modification of their action, which the court granted.

21. On 26 February 2001 the court held a hearing, at which it stayed the proceedings pending the

outcome of proceedings before the OIP concerning the defendant's request to annul the patent.

22. On 28 February and 28 August 2001 respectively, the court requested the OIP to inform it about the progress of the proceedings, which the latter did on 4 September 2001. On 10 January 2002 the court received the decision of the OIP's President of 9 January 2002, dismissing the defendant's appeal of 25 June 2001, against which the defendant had appealed to the High Court (*Vrchní soud*).

23. On 17 April 2002 the court stayed the proceedings pending the High Court's decision. Upon the applicants' appeal of 24 May 2002, supplemented on 29 May 2002, and after the case file had been submitted to the High Court on 6 June 2002, the latter modified the court's decision on 8 August 2002 so that the proceedings could be continued. On 13 August 2002 the case file was remitted to the Municipal Court.

24. On 15 November 2002, after having held a hearing on 6 November 2002, the Municipal Court partly granted the applicants' action.

25. On 2 October 2003 and 31 March 2004 respectively, the High Court and Supreme Court (*Nejvyšší soud*) upheld the judgment.

THE LAW

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

26. The applicants complained 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...”

27. The Government contested that argument. They maintained that the proceedings began on 15 June 1992, when the applicants' action had been received by the Regional Commercial Court.

28. The Court recalls that the time to be taken into consideration starts running with the institution of the proceedings (see *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, § 18).

29. The proceedings began on 28 May 1992, when the applicants lodged their civil action, and ended on 31 March 2004, when the Supreme Court

dismissed their appeal on points of law. The period to be taken into consideration by the Court thus lasted about eleven years and ten months for three levels of jurisdiction.

A. Admissibility

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

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

32. The applicants disputed the Government's argument.

33. 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 applicants had any effective remedy at their disposal which would have enabled them to submit their 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.

34. 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

35. The Government submitted that the case had been factually complex, the proceedings being inter-related to five administrative proceedings held before the OIP. They maintained that the applicants had modified their action on several occasions and that their submissions had not been clear.

36. As to the conduct of the authorities, the Government stated that the applicants had paid the court fees only upon the court's request, although they had pledged to do so in their action. However, they admitted that the Regional Commercial Court had taken twenty-one months to invite the applicants to pay the fees, explaining that the latter, being understaffed, had taken over 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.

37. The applicants argued that they could not have paid the court fees on lodging their action because they did not know the court's bank account

number and because the fees were too high to be paid in the form of legal stamps. They pointed out that the hearing of 24 January 1995 had been adjourned in order to adduce evidence by an expert, which had never been obtained and that the next hearing had taken place on 9 December 1999. They disputed the Government's argument that they had contributed to the length of the proceedings.

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. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Frydlender*, cited above).

40. 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

41. 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

42. Under the head of pecuniary damage, the applicants claimed CZK 562,500,000 (EUR 19,024,368) for loss of profit caused by the defendant's illegal use of their patent. They further claimed the sum of CZK 22,500,000 (EUR 760,975) in respect of non-pecuniary damage, representing their loss of license fees, caused by the defendant.

43. The Government contested these claims.

44. The Court does not discern any causal link between the violation of Article 6 § 1 of the Convention and the pecuniary damage alleged. It cannot speculate as to what the outcome of proceedings compatible with Article 6 § 1 of the Convention might have been. It accordingly dismisses

the applicants' claim under this head (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR 1999-II). However, it considers that the applicants undoubtedly 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 applicants, jointly, EUR 7,500 under this head.

B. Costs and expenses

45. The applicants also claimed CZK 406,625 (EUR 13,564) for the costs of the proceedings before the Municipal Court.

46. The Government contested the claim.

47. The Court finds that EUR 500 constitutes a reasonable award for costs in the circumstances of this case.

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 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 applicants, jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage, and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable; this sum is to be converted into the currency of the respondent State at the rate applicable on 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President