



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

SECOND SECTION

CASE OF MLYNÁŘ v. THE CZECH REPUBLIC

(Application no. 70861/01)

JUDGMENT

STRASBOURG

13 December 2005

FINAL

12/04/2006

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 Mlynář 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,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 70861/01) 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 Czech nationals, Mr Petr Mlynář and Mr Karel Mlynář (“the applicants”), on 31 October 2000.

2. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm.

3. On 10 December 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings and the lack of remedies in that respect 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 applicants were born in 1947 and live in Litomyšl and České Budějovice respectively.

5. On 26 September 1994 the applicants instituted restitution proceedings in the Žďár nad Sázavou District Court (*okresní soud*).

6. Received on 30 September 1994, the court sent the action on 31 October 1994 to the defendants for their observations. On

29 November 1994 and 25 January 1995 respectively, it requested the Land Registry (*katastr nemovitostí*) to provide it with supplementary documents.

7. On 22 February 1995 the District Court requested the applicants to complete their action in order to reflect the facts revealed by the Land Registry's documents. The applicants complied on 14 March 1995. The next day, the court requested the Land Registry to provide additional documentation.

8. On 6 April 1995 it invited the applicants to substantiate the defendants' liability to be sued (*pasivní legitimace*).

9. On 24 April 1995 the applicants requested the District Court to include a fourth defendant in the proceedings. The court had therefore to obtain information about this new defendant from the Register of Companies (*obchodní rejstřík*).

10. On 19 September 1995 it invited one of the defendants to submit written observations. On 23 October 1995 the court received the applicants' proposal to modify their restitution action. The same day, it admitted the new version of the action.

11. A hearing scheduled for 12 April 1996 was adjourned at the applicants' request until 4 June 1996.

12. On 25 April 1996 the court received observations from one of the parties to the proceedings.

13. One of the applicants did not attend the hearing of 4 June 1996 which was then adjourned *sine die* in order to produce the evidence suggested by the parties.

14. On 20, 21, 24, 25 and 27 June, 17 July and 4 September 1996, the District Court received documentary evidence.

15. In a judgment of 1 October 1996 the District Court dismissed the applicants' restitution action.

16. On 18 October 1996 the applicants appealed. On 23 October 1996 they motivated their appeal, which was forwarded to the Brno Regional Court (*krajský soud*) on 12 December 1996.

17. On 22 November 1999 the Regional Court, having requested further evidence on 3 November 1996 and having held a hearing on 15 November 1999, modified the first instance judgment.

18. On 29 December 1999 the case file was returned to the District Court and, on 3 January 2000, the Regional Court's judgment was sent to the parties.

19. On 3 March 2000 the applicants filed a constitutional appeal (*ústavní stížnost*), claiming that Articles 1 (equality of all), 3 (prohibition on discrimination) and 11 § 1 (right to property) of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*) had been violated.

20. On 12 April 2000 the Supreme Court (*Nejvyšší soud*) dismissed the appeal which the applicants had lodged on points of law (*dovolání*) on 4 February 2000.

21. On 17 May 2000 the Constitutional Court (*Ústavní soud*) invited the applicants to remove certain shortcomings in their appeal. The applicants complied on 2 June 2000. On 20 June 2000 the court dismissed the applicants' constitutional appeal.

THE LAW

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

22. The applicants 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..."

23. The Government contested that allegation.

24. The period to be taken into consideration began on 26 September 1994, when the applicants lodged an action with the Žďár nad Sázavou District Court, and ended on 20 June 2000 by the decision of the Constitutional Court. The proceedings thus lasted almost five years and nine months for four levels of jurisdiction.

A. Admissibility

25. The Government contended that the applicants had not exhausted domestic remedies.

26. The Court recalls that it has previously held that there was no effective remedy under Czech law to complain about the length of civil proceedings (*Hartman v. Czech Republic*, no. 53341/99, § 55-69, ECHR 2003-VIII (extracts)). It sees no reason for distinguishing the present case from that of Hartman and dismisses, therefore, the Government's objection. Accordingly, this complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

27. The Court finds that this part of 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

28. The Government submitted that the present restitution case had been complex. They further submitted that the applicants had contributed to the length of the proceedings as they had not properly specified their action in time, had failed to excuse their absence at the hearing on 4 June 1996 and had not tried to accelerate the proceedings. While the District Court, Supreme Court and constitutional jurisdiction had examined the applicants' case within a reasonable time, the Government acknowledged that there had been some delays in the proceedings before the Regional Court, caused by staffing and technical conditions.

29. The applicants maintained that they had not contributed to the length of the proceedings.

30. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. 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.

32. It also considers that the applicants' conduct did not substantially contribute to the length of the proceedings.

33. As regards the conduct of the authorities, the Court notes that the proceedings generally progressed at a normal pace except on appeal before the Regional Court. The applicants appealed on 18 October 1996, but the court did not deliver judgment until 22 November 1999, after having requested additional evidence on 3 November 1996 and having held a hearing on 15 November 1999 (see paragraphs 16-17 above).

34. 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.

35. There has therefore been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicants complained that they had not had an effective remedy at their disposal in the domestic proceedings. In that connection, they relied on Article 13 of the Convention, which provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

37. The Government maintained that the applicants had not alleged a violation of Article 13 of the Convention in connection with the fairness and length of the proceedings, having challenged the domestic restitution legislation, in particular the Land Ownership Act. The Government considered therefore that the applicant's complaint was partly incompatible *ratione materiae* with the provisions of the Convention and partly manifestly ill-founded.

38. The applicants did not pursue the issue in their response.

39. In these circumstances, the Court considers that the applicants have not sufficiently substantiated their claim. It finds therefore that this part of the application is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed 578,232 Czech crowns (CZE) (EUR 19,270) for the pecuniary damage they had allegedly sustained.

42. The Government contested the claim.

43. The Court does not perceive any causal link between the violation found and the pecuniary damage alleged and, therefore, dismisses the claim.

B. Costs and expenses

44. The applicants did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the excessive length of the restitution proceedings admissible and the remainder of the application inadmissible;

2. *Holds*, by 5 votes to 2, that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* unanimously the applicants' claim for just satisfaction.

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

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, a joint dissenting opinion of Judges Costa and Mularoni is annexed to this judgment:

J.P.C.
S.D.

JOINT DISSENTING OPINION OF JUDGES COSTA AND MULARONI

(Translation)

We are sorry to have to disagree with the majority of our colleagues on the reasonable-time issue. This is, however, a matter of principle for us, especially as the Court has decided in the present case not to make an award to the applicants under Article 41 of the Convention.

In this unexceptional case, the applicants' claims were dismissed in turn by the District Court, the Regional Court (which amended the first-instance judgment), the Supreme Court and finally the Constitutional Court. They thus applied to four levels of jurisdiction and the overall length of the proceedings was five years and almost nine months.

The judgment acknowledges (in paragraph 33) that the proceedings generally progressed at a normal pace except as regards the time taken for the Regional Court to examine the appeal (more than three years).

We readily admit that this stage of the proceedings was long. But we firmly believe that, except in special circumstances, it is the length of the proceedings as a whole that should be deemed satisfactory or excessive. Everyone is entitled to have his or her case settled within a reasonable time, in accordance with Article 6 § 1 of the Convention, in which a "hearing" means the hearing of the case up to the final determination. Litigants are entitled to use the remedies available to them in domestic law; however, the more levels of jurisdiction there are, the longer it will take for their case to be heard.

The present case even seems a distortion of reality to us. On average, each of the four levels of jurisdiction took less than a year and a half to give a decision. Leaving aside the excessively slow Regional Court, the other three levels each examined the case in less than a year! Are there many other judicial systems in Europe that could do better than the Czech Republic in this case?

Furthermore, if in each case the Court condemns the unreasonable time taken by an individual court rather than looking at the case as a whole, on the one hand it will almost always find a violation of Article 6 § 1, and on the other hand it will have disregarded the requirements of the Convention whereby it is the case, and hence the case as a whole, that must be heard within a reasonable time.

In other words, and with all due respect, we find this judgment ... unreasonable.