



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

SECOND SECTION

CASE OF DUŠEK v. THE CZECH REPUBLIC

(Application no. 30276/03)

JUDGMENT

STRASBOURG

14 February 2006

FINAL

14/05/2006

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 Dušek 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 24 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 30276/03) 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, Milan Dušek (“the applicant”), on 12 September 2003.

2. The applicant was represented by Mrs H. Peterková, a lawyer practising in Litomyšl. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm.

3. On 15 March 2005 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

4. The applicant was born in 1957 and lives in Litomyšl.

5. On 25 May 1998 the applicant brought proceedings against C. seeking restitution of a lorry or, alternatively, the payment of compensation.

6. On 19 June 1998 the Blansko District Court (*okresní soud*) invited the applicant to pay court fees. On 24 June 1998 the applicant requested to be exempted from court fees. On 10 September 1998 he informed the court that he did not receive welfare benefits. On 16 December 1998 the court granted the applicant’s request.

7. In the meantime, on 7 October 1998, the court had received the applicant’s request for an interim measure.

8. On 18 February 1999 the court invited the applicant to clarify his action. Having received this invitation on 12 March 1999, the applicant replied on 18 March 1999.

9. On 18 May 1999 the court asked the Svitavy District Police Directorate (*okresní ředitelství policie*) to verify the identification data of the lorry concerned. The court received this information on 24 May 1999.

10. According to the Government, the applicant did not attend, without an excuse, a hearing held on 27 May 1999 which was then adjourned *sine die*. The applicant submits that his legal representative was present at the hearing, together with his ex-wife who was ready to be heard as a witness and that, actually, it was the defendant who did not attend the hearing.

11. On 30 June 1999 the District Court discontinued the proceedings for an interim measure sought by the applicant. On 16 September 1999 the latter appealed to the Brno Regional Court (*krajský soud*) which, on 24 October 2000, quashed this decision and remitted the case to the District Court, which decided in the applicant's favour on 22 November 2000.

12. On 15 January 2001 the applicant modified his action, claiming CZK 140,000 (EUR 4,667) should C. could not return the lorry.

13. After a hearing on 30 January 2001, the District Court delivered a judgment in which it ordered C. to pay this sum together with the court fees. On 14 March 2001 C. appealed requesting, at the same time, to be exempted from court fees. On 27 July 2001 the District Court granted his request and, on 14 September 2001, sent the case file to the Regional Court which, on 24 November 2003, modified the first instance judgment, ordering C. to pay CZK 28,000 (EUR 966) to the applicant.

14. On 11 May 2004 the latter filed an appeal on points of law (*dovolání*) with the Supreme Court (*Nejvyšší soud*) where, it seems, the proceedings are still pending.

THE LAW

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

15. The applicant complained that the length of the proceedings had been incompatible with 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...”

16. The period to be taken into consideration began on 25 May 1998 and has not yet ended. It has thus lasted seven years and nine months for three levels of jurisdiction.

A. Admissibility

17. 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

18. The Government conceded that the case had not been particularly complex. However, although the applicant had not complicated the proceedings by unreasonable procedural activities, his behaviour had had a considerable influence on the overall length of the proceedings. The Government referred in this respect to the applicant's belated payment of the court fees and his subsequent request for exemption from court fees, as well as to his failure to attend, without excuse, the hearing of 27 May 1997 which had had to be adjourned.

19. The Government further submitted that the parties to the proceedings had systematically used all the available legal remedies against the court decisions delivered against them. As to the conduct of the national courts, the Government maintained that they had shown due diligence.

20. The applicant disagreed with the Government. In conclusion, he stressed that there had been a violation of Article 6 § 1 of the Convention.

21. 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).

22. The Court considers that the proceedings were not particularly complex. It finds no reason to conclude that the exercise by the applicant's or the defendant of their procedural rights was unreasonable or amounted to dilatory conduct. It is not, therefore, persuaded by the Government's arguments that they had contributed to the length of the proceedings.

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

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing argument capable of persuading it to reach a different conclusion in the present application. Having regard to its case-law on the subject, the Court finds that, in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed CZK 1,640,000 (EUR 52,556) in respect of pecuniary damage and CZK 100,000 (EUR 3,450) in respect of non-pecuniary damage.

28. The Government argued that the pecuniary damage alleged was excessive and, in any event, unrelated to the violation complained of, but found the claim for non-pecuniary damage reasonable.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,450 in respect of non-pecuniary damage.

B. Costs and expenses

30. The applicant also claimed CZK 14,263.10 (EUR 492) for the costs and expenses incurred before the domestic courts and CZK 2,408 (EUR 83) for those incurred before the Court.

31. The Government requested the Court, should it find a violation of Article 6 § 1 of the Convention, to award the applicant a maximum of EUR 500 for his legal costs and expenses.

32. According to the Court’s case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also have been incurred to prevent or obtain redress for the violation found.

Making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 500.

C. Default interest

33. 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 in accordance with Article 44 § 2 of the Convention, EUR 3,450 (three thousand four hundred and fifty euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) for costs and expenses, to be converted into the currency of the respondent State at the rate on the date of the 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President