



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

SECOND SECTION

CASE OF HAVLÍČKOVÁ v. THE CZECH REPUBLIC

(Application no. 28009/03)

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 Havlíčková 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. 28009/03) 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, Věra Havlíčková (“the applicant”), on 27 August 2003.

2. The applicant was represented by Mr V. Pak, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm from the Ministry of Justice.

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 lives in Frýdlant v Čechách.

5. On 21 November 1988 the applicant, having been divorced on 27 June 1988, lodged an action with the Liberec District Court (*okresní soud*) for the separation of the matrimonial property.

6. On 13 January and 13 February 1989 the court held two hearings. On 28 April and 8 June 1989 it appointed two experts with a view to evaluating real estate, antiques and jewellery. Subsequent hearings were held on 13 December 1989, 29 November 1990 and 5 March 1991. In the meantime, the expert in real estate delivered his opinion. Another hearing was scheduled for 28 June 1991.

7. On 15 March 1992 a new expert opinion concerning the real estate was submitted to the court, which had appointed another expert in antiques and jewellery.

8. On 20 August 1993 the District Court ordered a new expert opinion concerning the real estate. The expert submitted his report on 6 September 1993.

9. On 4 January 1994 the case was transmitted to another judge at the District Court.

10. Two hearings were held on 19 May and 9 June 1999. The parties expressed their wish to reach a friendly settlement. The last hearing was therefore adjourned *sine die*.

11. As the parties had not informed the court about a friendly settlement, a hearing was held on 7 February 2002. It was adjourned in order to evaluate the antiques and jewellery claim. Moreover, the applicant was invited to submit the address of a witness she had suggested be heard.

12. On 4 October 2002 the court appointed a new expert in real estate. The expert submitted his opinion in February 2003.

13. On 31 October 2002 and 29 April 2003, the District Court held hearings. The applicant did not attend the last hearing, being in the United States of America. The court therefore adjourned the hearing *sine die*.

14. On 17 July 2003 the applicant's lawyer informed the court that her client had returned to the Czech Republic and that a friendly settlement of the case was not excluded. On 3 September 2003 she informed the court of the continuation of the dispute. On 16 October 2003 the applicant notified the court that she would be abroad until December 2003.

15. A hearing scheduled for 4 May 2004 was adjourned at the request of the applicant's lawyer until 18 May 2004. At this hearing, the defendant challenged the judge for bias. On 15 July 2004 the Ústí nad Labem Regional Court (*krajský soud*) decided that the judge was not biased, and remitted the case to the District Court.

16. A hearing scheduled for 2 November 2004 was adjourned, the defendant being ill.

17. A hearing held on 25 January 2005 was adjourned *sine die*, the parties not agreeing on the value of the antiques and jewellery. The court requested the Czech Insurance and Police Office to submit written opinions as the defendant claimed that certain antiques had been stolen in 1995.

18. It appears that the proceedings are still pending at first instance.

THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The period to be taken into consideration only began 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 length of the proceedings as a whole, account must be taken of the stage they had reached by that date.

The period in question has not yet ended. It has thus lasted some thirteen years and ten months for one level of jurisdiction dealing with the merits of the case.

The case has actually been pending, however, for more than seventeen years.

A. Admissibility

22. 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

23. The Government argued that the case had been particularly complex. They admitted that there had been two periods of inactivity between 1994 and 1999 and between 1999 and 2002 due to the heavy workload and understaffing of the District Court. As to the parties’ conduct, the Government submitted that the applicant and her ex-husband had not been able to reach agreement on the designation of the antiques and jewellery or to reach a friendly settlement. They had constantly suggested new witnesses when the applicant herself had failed to identify certain items on the lists of property submitted to the court.

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

25. 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).

26. The Court considers that the present case involved a certain degree of complexity on account of the apparent difficulty in establishing the facts and collecting evidence in respect of the parties' claims. However, this alone cannot justify the length of the proceedings.

27. While it is true that the conduct of the parties contributed to some extent to the length of the proceedings, the Court reiterates that even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious determination, required by Article 6 § 1 of the Convention (see *Pafitis and others v. Greece*, judgment of 26 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 458, § 93).

28. As regards the conduct of the authorities, the Court observes that the case is still pending before the first instance court since its introduction in November 1988. It notes the Government's concession that there were delays imputable to the courts.

Having examined all the material submitted to it and 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

29. 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

30. The applicant submitted that in 1988 the value of the marital property was about CZK 400,000, but since then it has doubled. She maintained that she had been significantly prejudiced by the length of the proceedings. She did not quantify the alleged damage.

31. The Government was of the opinion that the applicant's possible claims for just satisfaction should be dismissed.

32. The Court considers that there is no causal link between any possible pecuniary damage sustained by the applicant and the violation found. In particular, it is not for the Court to speculate what the outcome of the proceedings would be if they were in conformity with the reasonable time requirement laid down in Article 6 § 1 of the Convention (see *Werner v. Austria*, judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

However, the Court considers that the applicant must have sustained some non-pecuniary damage, which the mere finding of a violation cannot adequately compensate. The Court decides to award on an equitable basis EUR 10,000 under this head.

B. Costs and expenses

33. The applicant did not seek reimbursement of her costs and expenses.

C. Default interest

34. 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 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into currency of the respondent state at the rate applicable at the date of settlement, together with 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;

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