



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

SECOND SECTION

CASE OF KLEPETÁŘ v. THE CZECH REPUBLIC

(Application no. 19621/02)

JUDGMENT

STRASBOURG

21 February 2006

FINAL

03/07/2006

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

Having deliberated in private on 31 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 19621/02) 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, Mr Michal Klepetář (“the applicant”), on 28 April 2002.

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

3. On 15 October 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. 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 applicant was born in 1946 and lives in Prague.

5. On 25 March 1992 the applicant’s brother brought restitution proceedings before the Brno Municipal Court (*městský soud*) against the Brno I Housing Association (*podnik bytového hospodářství*).

6. Between 2 November 1992 and 4 January 1995, the court and the parties to the proceedings took a number of procedural steps, including

a query by the court on 7 December 1994 regarding a possible settlement, to which the defendant replied on 4 January 1995.

7. On 6 June 1995 the applicant requested the court to be added to the proceedings as a second claimant. His request was granted at a hearing held on 8 August 1995, which was then adjourned *sine die*, the claimants being requested to complete, within one month, their action.

8. On 10 May 1996 the claimants were urged to supplement their action.

9. On 16 December 1996 the court granted the claimants' request that two other defendants be added to the proceedings. At the same time, it invited the claimants to present documentary evidence.

10. On 19 February 1997 the court dismissed one of the defendants' appeals of 16 January 1997 against the previous decision. On 19 May 1997 it requested that evidence suggested by the applicant be adduced.

11. A hearing held on 4 September 1997 was adjourned until 14 October 1997. However, on 7 October 1997 it was again adjourned *sine die*, the plaintiffs' submissions and claims still being unclear.

12. A hearing held on 3 March 1998 was adjourned in order to complete the evidence. On 1 April 1998 the applicant adduced further documents in evidence. On 4 May 1998 the court invited the parties to submit their final written pleadings.

13. In a judgment of 30 June 1998 the Municipal Court dismissed the claimants' restitution action.

14. On 1 and 6 October and 18 November 1998 respectively, the court received the claimants' appeals. According to the applicant, his appeal was dated 27 September 1998.

15. On 8 December 1998 the Municipal Court sent the case file to the Brno Regional Court (*krajský soud*) which, on 26 February 1999, invited the applicant to clarify, within seven days, his challenge to the Municipal Court's presiding judge for bias. On 10 March 1999 the applicant complied, mentioning at the same time his new domicile. On 18 March 1999, the Regional Court remitted the case file to the Municipal Court, inviting the presiding judge to submit her comments. On 5 May 1999 the judge replied that she did not feel impartial.

16. On 3 January 2000 the Regional Court informed the Brno Municipal Prosecutor (*městské státní zastupitelství*) that the applicant's wording in his appeal of 27 September 1999 had to be interpreted as a criminal claim against the Municipal Court's presiding judge, with which the court could deal. On 4 February 2000 the Municipal Prosecutor informed the court that the motion in question could not be considered as a criminal claim.

17. On 5 September 2000 the Regional Court quashed the first instance judgment and remitted the case to the Municipal Court, stating that the judgment lacked sufficient reasoning, which consisted in mere references to the legal opinions of the parties and to facts presented by them. It also disqualified the Municipal Court's presiding judge from considering the

applicant's case, as she had herself filed a request to be withdrawn, whilst rejecting the applicant's allegation of anti-Semitism.

18. On 23 October 2000 the Constitutional Court (*Ústavní soud*) declared the applicant's constitutional appeal (*ústavní stížnost*) of 28 April 2000 inadmissible, stating *inter alia* that, although the restitution proceedings were long, the Regional Court had acted in the meantime by rendering its decision on 5 September 2000.

19. On 23 January 2001 the applicant, having received the Regional Court's decision on 13 December 2000 because, according to the Government, he had changed his domicile in the meantime, suggested a modification of the restitution action and the defendants. On 7 February 2001 his brother informed the court that he agreed with these modifications. On 19 April 2001 one of the defendants submitted its comments.

20. On 26 April 2001 the Municipal Court took a partial decision on the applicant's request that the original action be modified.

21. On 25 May 2001 the applicant appealed challenging, at the same time, the presiding judge for bias. Therefore, on 27 June 2001, the case file was sent to the Regional Court.

22. The applicant lodged a constitutional appeal, requesting the Constitutional Court to recognise the delays in the proceedings and to quash certain statutory provisions. On 20 June 2002 the Constitutional Court rejected this appeal as being manifestly ill-founded.

23. On 16 August 2002 the Regional Court partly upheld the Municipal Court's decision of 26 April 2001. It also decided that the presiding judge was not excluded from the examination of the restitution case. The Regional Court's decision became effective on 23 September 2002.

24. On 18 October 2002 the Municipal Court invited the claimants to specify the defendants in their restitution case. On 19 November 2002 the applicant replied, but not his brother.

25. According to the applicant, the Municipal Court held a hearing on 3 February 2004. On 29 February 2004 the applicant, following the Municipal Court's request of 19 February 2004, expressed his opinion on the case.

26. On 11 March 2004 the Municipal Court refused the claimants' request that the defendant party be modified.

27. On 8 June 2004 the Municipal Court partly granted the claimants' restitution action.

28. On 9 July 2004 the claimants appealed. It appears that the proceedings are still pending.

THE LAW

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

29. 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 ...”

A. Admissibility

30. The Court notes that this complaint 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

31. The Government first pointed out that, although the restitution proceedings were originally initiated by the applicant’s brother on 30 March 1992, the applicant only joined the proceedings on 6 June 1995.

32. They further submitted that the restitution case was considerably complex due to the nature of the claim raised, both in terms of evidence and its legal assessment. Moreover, initially the case was complicated by the fact that the legal personality of the defendant was not clear.

33. The Government maintained that the duration of the proceedings was affected by the applicant’s behaviour: the claimants each took procedural steps without coordinating them with the other, which obscured the clarity of the claims raised. The applicant also challenged the judges involved in his case for bias. Furthermore, the proceedings were delayed as a result of his motion to amend the action of 23 January 2001. He filed an appeal against the court’s decision of 26 April 2001 despite having been advised by the court that an appeal on part of the decision would be inadmissible. The courts had therefore to deal with the procedural issues that arose from the applicant’s motions and objections, which prevented them from dealing with the merits of the case sooner. The proceedings were further delayed by the need to determine whether the contents of the applicant’s appeal against the Municipal Court’s judgment of 30 June 1998 constituted the notification of a crime allegedly committed by the presiding judge.

34. The Government conceded that the performance of the Municipal Court was not entirely seamless initially. As to the Regional Court's behaviour, they referred to insufficient staffing and the heavy workload of that court.

They invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

35. The applicant maintained that, despite the fact that he personally joined the proceedings in June 1995, he had suffered the same damage as if he had introduced his claim together with his brother in March 1992. He disputed the Government's argument that he had failed to respond to the decision of the Municipal Court of 8 August 1995 and, again on 10 May 1996, requiring him to specify further the exact nature of his claim. He noted in this respect that sufficient evidence on the real property in question was available to the Municipal Court throughout the proceedings. By the end of June 1995, new documents obtained from the Land Office were submitted to the court to supplement the applicant's motions of 6 and 28 June 1995. Moreover, he offered further evidence in March and May 1998.

The applicant also stated that he informed the Municipal Court about his new domicile on 10 March 1999.

According to him, the restitution case was not particularly complex.

36. The period to be taken into consideration began on 6 June 1995, when the applicant joined the proceedings, and has not yet ended. It has thus lasted some ten years and seven months before two levels of ordinary jurisdiction and the Constitutional Court, which dealt with the applicant's two constitutional appeals.

37. 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).

38. In the present case, although raising factual questions of some complexity, that would not constitute in itself sufficient reason for the considerable length of the proceedings.

Furthermore, the Court finds no reason to conclude that the applicant's exercise of his procedural rights was unreasonable or amounted to dilatory conduct. It is not, therefore persuaded by the Government's arguments that the applicant substantially contributed to the length of the proceeding.

Considering the conduct of the authorities, the Court observes that there was a significant period of inactivity between 18 November 2002 and February 2004.

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 case (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 convincing 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. The applicant claimed 16,580,800 Czech crowns (CZK), equivalent to EUR 567,059, in respect of pecuniary damage. The applicant considered that the finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage sustained.

43. The Government contested the applicant’s claim for pecuniary damage, but do not object to his submission concerning non-pecuniary damage.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Further, it considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained in the present case.

B. Costs and expenses

45. The applicant claimed CZK 500,000 (EUR 17,007) as compensation for the time he spent in writing twelve memorials submitted to the domestic courts and in his three year campaign for modification of the restitution legislation. He also claimed CZK 1,735,080 (EUR 59,016) for the costs and expenses incurred before the Constitutional Court and the Court.

46. The Government contested these claims.

47. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award a global sum of EUR 500 under this head.

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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *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 500 (five hundred euros) in respect of costs, which sum is to be converted into the national currency of the respondent State at the rate applicable on 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President