CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF PACHMAN AND MATES v. THE CZECH REPUBLIC

(Application no. 14881/02)

JUDGMENT

STRASBOURG

4 April 2006

FINAL

04/07/2006

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 Pachman and Mates v. the Czech Republic,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 14881/02) 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 two Czech nationals, Mr Lubomír Pachman and Mr Jiří Mates ("the applicants"), on 28 March 2002.

2. The applicants were represented by Mr P. Hrabák, a lawyer practising in Most. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm of the Ministry of Justice.

3. On 8 December 2004 the Court decided to communicate the application 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

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1953 and 1963 respectively and live in Most.

5. On 20 July 1992 they bought a building and plots of land from the Town of Most (*Město Most*) for CZK 1,600,000 (EUR 56,338). They intended to use them for business purposes. The purchase agreement stated that the property and all the relevant documentation would be handed over to the applicants within twenty days of the date of payment of the purchase

price but not before the registration of the transfer in the Cadastral Registry, and that the property was free of all legal burdens *vis-à-vis* third persons.

6. In August 1992 the seller allowed the applicants to begin work on the property. On 29 January 1993 the applicants received part of the documentation relating to the property. It revealed that a heating flue traversed (underneath) one of the plots, which made the property unsuitable for their envisaged business purposes.

7. On 23 May 1993 the applicants notified the seller of the discovery of the heating flue and requested a discount from the purchase price, in the sum of CZK 500,000 CZK (EUR 17,606). On 31 August 1993 they received the remainder of the documentation.

8. As the seller refused the applicants' request of 23 May 1993, they lodged a civil action in the Ústí nad Labem Regional Court (*krajský soud*) on 30 September 1993, claiming a discount from the purchase price.

9. On 3 May 1994 the Regional Court, having received the applicants' action on 4 October 1993, held that it was not competent to deal with the action which was, on 9 June 1994, transferred to the Most District Court (*okresní soud*). On 29 August 1994 the applicants' lawyer was invited to pay court fees, which he did on 23 September 1994.

10. On 2 January 1995 the applicants' lawyer, following the court's request of 2 December 1994, supplemented his clients' action. On 3 January 1995 the District Court issued a payment order against the defendant who, on 1 February 1995, filed a protest (*odpor*). On 13 March 1995 the case was given to another judge. On 16 March and 6 May 1995 respectively, the defendant was invited to provide reasons for his protest. He complied on 14 June 1995. On 20 June 1995 the document was sent to the applicants' lawyer.

11. On 21 August 1995 the court invited the Most Housing Association (*podnik bytového hospodářství*) to submit a report. It received the report on 5 September 1995.

12. A hearing held on 6 December 1995 was adjourned until 23 February 1996 in order, *inter alia*, to hear the second applicant, who had not attended the hearing.

13. On 19 and 30 April 1996 the applicants' lawyer, following the court's request of 6 March 1996, submitted supplementary documents.

14. A hearing held on 6 September 1996 was adjourned *sine die* in order to have an expert report drawn up. On 5 March 1997 an expert was appointed. However, on 2 April 1997, he asked to be released from his appointment because of health problems. On 20 May 1997 the court appointed a new expert, who presented his opinion on 5 August 1997. On 11 September 1997 the court decided on the expert's fees.

15. On 17 November 1997, in reply to the court's request of 29 October 1997, the applicants' lawyer informed the court that he would not adduce any supplementary evidence.

16. A hearing held on 23 January 1998 was adjourned until 16 March 1998 in order to summon two witnesses suggested by the defendant. A hearing on 16 March 1998 was adjourned as the applicants' lawyer requested a period of 14 days in order to submit supplementary evidence. The applicants' lawyer was urged, on 25 May and 12 August 1998, to identify the additional evidence. However, no additional evidence was adduced in the end.

17. On 30 October 1998 the District Court held a hearing.

18. Having heard the parties and several witnesses, and having relied on documentary evidence and an expert opinion, the District Court dismissed the applicants' action on 6 November 1998. It rejected their allegation that they had accepted the property only in January 1993 when the documentation relating to the property had been handed over to them. It established that the applicants had actually accepted it in August 1992, when the construction works had started. It concluded that the applicants' right to claim a warranty in respect of the property had expired due to their failure to notify the seller about their discovery of the heating flue within the six-month time limit, calculated from the date of their acceptance of the property, as provided for in Article 599 (1) of the Civil Code.

19. On 31 December 1998 the court delivered an ancillary judgment in which it decided on court fees.

20. On 24 November 1999 the Ústí nad Labem Regional Court (*krajský soud*), upon the applicants' appeals of 21, 27 and 28 January 1999, upheld the first-instance judgment. The appeal judgment became effective on 23 December 1999.

21. On 18 February 2000 the applicants filed a constitutional appeal (*ústavní stížnost*) in which they complained about the alleged unfairness of the proceedings and a violation of their right to the peaceful enjoyment of their possessions. On 24 March 2000 the applicants' lawyer presented relevant documentation.

22. On 7 April 2000 the Constitutional Court (*Ústavní soud*) invited the lower courts and the defendant to submit their written observations. It received the last set of observations on 23 May 2000.

23. On 30 October 2001 the Constitutional Court dismissed the constitutional appeal, finding no violation of the applicants' property rights, and held that the ordinary courts had conducted the proceedings in accordance with the principles of procedural fairness.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

24. The applicants 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 fair hearing within a reasonable time by [a] ... tribunal..."

25. The Government contested that argument.

26. The period to be taken into consideration began on 4 October 1993 and ended on 30 October 2001. It thus lasted over eight years for three levels of jurisdiction.

A. Admissibility

27. 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

28. The Government admitted that the present case had not been particularly complex. As to the applicants' conduct and the conduct of other parties to the proceedings, the Government stated that the applicants' lawyer had caused considerable delays in the proceedings by his distracted behaviour: he had been repeatedly requested or urged to pay the court fees, to complete his clients' action and to furnish the evidence he had proposed. The Government referred in particular to the period from 16 March to 15 September 1998. Moreover, the applicants' lawyer had been requested to supplement the documentation in the proceedings before the Constitutional Court. The Government further suggested that the defendant had contributed to the overall length of the proceedings having, for instance, been twice urged to provide reasons for his protest, which he had filed on 1 February 1995 but had only substantiated on 14 June 1995.

29. As to the conduct of the national courts, the Government conceded that there were some delays before the District Court (from 6 September 1996 to 25 March 1997), but underlined that the Regional Court had proceeded within a reasonable period of time. The Government noted that, having received the file from the Regional Court, the District

Court had had to request the applicants to pay the court fees and to complete their action. It had issued the payment order promptly afterwards. Moreover, it had held seven hearings. Moreover, the court had been understaffed. The Government further noted that the Constitutional Court, having received the last written observations from the parties to the proceedings, had not taken any procedural steps before its decision.

30. The applicants disputed the Government's arguments. They maintained in particular that the question of the court's competence had been finally resolved on 29 August 1994, when they were informed that their action had been transferred to the Most District Court and they were requested to pay court fees. The applicants further maintained that the first hearing had been held two years and two months after the introduction of their action. They further noted that, although the District Court had adjourned its hearing of 6 September 1996 with a view to appointing the expert, it had not finally done so until 20 May 1997. They admitted that their lawyer had been invited, on 25 May and 12 August 1998, to identify the additional evidence. This had been explained, however, by difficulties in finding witnesses to the events which had taken place in 1992.

31. 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).

32. The Court considers that the case was not factually or legally complex. It accepts that the length of the proceedings was due, to a certain extent, to the conduct of the parties, as argued by the Government. However, this does not account for the overall length of the proceedings.

33. As regards the conduct of the domestic courts, the Court notes that the Regional Court took about seven months to decide that it was not competent to deal with the applicants' case and to transfer it to the District Court (see paragraphs 8-9 above). It further shares the applicants' opinion concerning the undue delay of about six months which occurred between 6 September 1996 and 5 March 1997 (see paragraph 14 above). Moreover, the Regional Court took about ten months to decide on the applicants' appeal against the District Court's judgment (see paragraph 20 above). The Court also notes that the Constitutional Court, having received the last of the parties' written observations on 23 May 2000, decided on the applicants' constitutional appeal on 30 October 2001, i.e. one year and five months later (see paragraphs 22-23 above). This undeniably had an impact on the length of the proceedings.

34. 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

overall 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

35. The applicants alleged a breach of Article 6 § 1 in that the national courts had incorrectly determined the date of expiry of the warranty period.

36. The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the States Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no 30544/96, ECHR 1999-I, § 28). The Court observes that the applicants do not allege any particular procedural failure to respect their right to a fair hearing. In the light of the material in its possession, the Court finds no indication that the impugned proceedings were unfairly conducted.

37. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible in accordance with Article 35 § 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicants also complained under Article 1 of Protocol No. 1 and Article 14 of the Convention that, as a result of the allegedly unfair proceedings, their right to the peaceful enjoyment of the property had been limited by the presence of the heating flue, and that they had been discriminated against in their enjoyment of the property.

39. The Court considers that the applicants' complaint under Article 1 of Protocol No. 1 relates to the outcome of the proceedings. It recalls that domestic court regulation of property disputes according to domestic law does not, by itself, raise any issues under Article 1 of Protocol No. 1 to the Convention. The Court has only limited power to deal with alleged errors of fact or law committed by the national courts, to which it falls in the first place to interpret and apply the domestic law (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 56, ECHR 2004-...).

40. In the circumstances of this case, the applicants' complaint about an interference with their property rights discloses no appearance of any violation.

41. The Article 14 claim is wholly unsubstantiated and, therefore, manifestly ill-founded. Moreover, the applicants failed to raise the issue before the Constitutional Court.

42. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicants claimed CZK 500,000 (EUR 17,606) in respect of pecuniary damages and CZK 500,000 in respect of non-pecuniary damage.

45. The Government contested these claims.

46. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 3,500 under that head.

B. Costs and expenses

47. The applicants also claimed CZK 42,375 (EUR 1,492) for the costs and expenses incurred before the domestic courts submitting, at the same time, that their costs and expenses amounted to CZK 591,488 (EUR 20,827).

48. The Government contested these claims.

49. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court notes that the costs of the domestic proceedings may be awarded if they are incurred by an applicant in order to try to prevent the violation found by the Court or to obtain redress therefore (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium* (Article 50), judgment of 18 October 1982, Series A no. 54, p. 8, § 17). However, the Court finds that, in the present case, the costs of the proceedings before the domestic courts cannot be considered to have been actually and necessarily incurred in order to prevent or to have redressed a breach of the Convention.

C. Default interest

50. 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 complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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 to each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of 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 amount 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 4 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President