



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

SECOND SECTION

CASE OF VOJÁČKOVÁ v. THE CZECH REPUBLIC

(Application no. 15741/02)

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 Vojáčková 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. TÜRMEŇ,

Mr K. JUNGWIERT,

Mr M. UGREKHĚLIDZE,

Mrs A. MULAREŇ,

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. 15741/02) 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, Ms Danuše Vojáčková ("the applicant"), on 14 March 2002.

2. The applicant was represented by Mr J. Savko, a lawyer practising in Teplice. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm of the Ministry of Justice.

3. On 19 October 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings 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 applicant was born in 1933 and lives in Hrob.

5. On 25 November 1992 the applicant applied under the Land Ownership Act to the Teplice Land Office (*pozemkový úřad*) for the restitution of a building and plot of land in Hrob, which had been confiscated from her parents in 1961. On 10 August 1993 some documents identifying the property at issue, prepared *ex officio* by the Teplice Land

Registry (*katastrální úřad*) because the applicant had not included them with her original restitution claim, were sent to her.

6. On 15 October 1993 she requested the current owner, the District Housing Association (*okresní bytový podnik*)¹, a State-owned entity, to restore the property to her. Upon its refusal, she requested the Land Office to commence restitution proceedings on 19 November 1993.

7. On 7 December 1993 the applicant was requested to submit supplementary documents.

8. The District Housing Association, despite its knowledge of the applicant's restitution claim, transferred the property to the Hrob Municipality, which on 11 January 1994 sold it to other individuals.

9. On 24 February 1994 the Land Office interrupted the proceedings in order to appoint an expert, who drew up his opinion on 15 May 1994. In the meantime, on 10 March 1994, the Land Office had carried out an inspection of the site.

10. On 8 September 1994 it granted the applicant's restitution claim, with the exception of one of the buildings at issue.

11. On 1 December 1994 the Ústí nad Labem Regional Court (*krajský soud*), upon the applicant's appeal of 26 October 1994, quashed the Land Office's decision and remitted the case to it, due to an insufficient establishment of the facts.

12. On 3 July 1995 the Land Office granted the applicant's restitution claim, except for the building which had been substantially rebuilt.

13. On 29 November 1995 the Regional Court, on the Hrob Municipality's appeal, quashed the Land Office's decision and remitted the case to it, due to an insufficient establishment of the facts.

14. On 7 April 1997 the Land Office dismissed the applicant's restitution claim after obtaining an amended version of the expert opinion, on 12 November 1996, which had assessed the character of the building.

15. On 7 April 1998 the Regional Court, following the applicant's appeal sent to it on 7 May 1997, quashed the Land Office's decision finding, *inter alia*, that the expert opinion had been drafted without the applicant's participation, and that its conclusion had not been supported by objective measurements. It remitted the case to the Land Office.

16. On 29 September 1998 the Land Office ordered a new expert opinion, which was submitted on 8 February 1999.

17. On 19 April 1999 the Land Office granted the applicant's restitution claim for the plot of land but not for the building since it had undergone substantial reconstruction.

18. On 17 May 2001 the Regional Court, having received on 19 May 1999 the applicant's appeal in which she complained of an unsatisfactory establishment of the facts, as well as incorrect expert

¹ According to the Government, it was the Hrob Municipality (*obecní úřad Hrob*).

opinions and assessment of evidence, upheld the Land Office's decision, finding that the latter's admission and assessment of the evidence and the decision were in accordance with the law.

19. On 18 October 2001 the Constitutional Court (*Ústavní soud*) dismissed the applicant's constitutional appeal (*ústavní stížnost*) of 20 July 2001 against the Regional Court's judgment as being manifestly ill-founded, concluding that the court had conducted the proceedings in accordance with the domestic law. On 22 October 2001 the Constitutional Court's decision was served on the applicant.

THE LAW

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

20. 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..."

21. The Government contested that argument.

22. The period to be taken into consideration began on 25 November 1992 and ended on 22 October 2001. It thus lasted eight years and eleven months for two levels of jurisdiction which dealt with the case four times. The Constitutional Court was also involved.

A. Admissibility

23. 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

24. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant has also

to be taken into account (see *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

25. As to the complexity of the case, the Court notes the Government's argument that the present restitution case involved a large amount of evidence, such as historical documents, technical papers and expert opinions. An inspection of the site was carried out and oral evidence from a number of witnesses was also obtained. The Court further observes that the case disclosed a certain complexity as to its legal nature and background. It considers that the complexity of the case was also shown by the authorities' diverging conclusions.

26. As to the conduct of the applicant, the Court notes the Government's argument that when raising her restitution claim, she did not specify in detail the properties whose restitution she was seeking. The Land Registry had therefore to prepare a detailed identification of the plots of land and copies from land survey maps. The Court notes that this delayed, to some extent, the proceedings. Moreover, while it is true that the use of available remedies by the applicant and the Hrob Municipality, as was their procedural right under the national law, indeed prolonged the proceedings, this did not hinder the overall progress of the proceedings.

27. As to the conduct of the authorities, the Court observes that the Regional Court adopted its second judgment on 29 November 1995 and the Land Office decided anew on 7 April 1997, more than one year and four months later (see paragraphs 13-14 above). Moreover, having received the applicant's appeal against the aforesaid decision on 7 May 1997, it took the Regional Court until 7 April 1998 to deliver its third judgment (see paragraph 15 above). The Court finds no satisfactory explanation for these periods of inactivity. Finally, the Regional Court pronounced its fourth judgment about two years after the applicant had filed her appeal against the Land Office's last decision of 19 April 1999 (see paragraph 18 above).

28. In sum, the Court concludes that there were delays in the proceedings before the Land Registry and the Regional Court for which there has been no adequate explanation. Consequently, there has been a violation of Article 6 § 1 on account of the length of the proceedings.

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 in her application form that she claimed CZK 2,000,000 (EUR 238,095) in compensation for the market value of the building in dispute. In a letter of 28 February 2005 the applicant’s legal representative asked that adequate satisfaction should be awarded to her, as specified in the application form.

31. The Government noted that the applicant had confined her position to a mere general statement that she sought the award of adequate satisfaction. Without speculating about the actual content of this phrase, the Government considered that no just satisfaction should be awarded to the applicant for pecuniary damage.

As to non-pecuniary damage, the Government suggested that the Court, should it find a violation of the “reasonable time” requirement within the meaning of Article 6 § 1 of the Convention, award the applicant a sum not exceeding EUR 3,000.

32. 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 2,800 in respect of non-pecuniary damage.

B. Costs and expenses

33. In her application form, the applicant also claimed CZK 50,000 (EUR 1,761) for the costs and expenses incurred before the Court.

34. The Government maintained that the applicant had not sought the reimbursement of legal costs and expenses, and considered therefore that no just satisfaction should be granted to her under this head.

35. According to the Court’s case-law, an applicant is entitled to reimbursement of his or her 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, the Court notes that no documentary evidence has been submitted by the applicant to establish that the costs and expenses claimed by her in the original application form were actually incurred. The Court therefore rejects this claim.

C. Default interest

36. 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*
 - (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 2,800 (two thousand eight 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 applicant's 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