



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

SECOND SECTION

CASE OF KOŘÍNEK AND OTHERS v. THE CZECH REPUBLIC

(Application no. 77530/01)

JUDGMENT

STRASBOURG

11 April 2006

FINAL

11/12/2006

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 Kořínek and Others 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 I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 77530/01) 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 six Czech nationals, Mr Karel Kořínek, Mrs Jindřiška Kořínková, Mr Marek Kořínek, Mr Hanuš Kořínek, Mr Aleš Kořínek and Mrs Renata Zamazalová (“the applicants”), on 29 June 2001.

2. The applicants were represented by Mr V. Petrů, 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. The applicant’s lawyer informed the Court, by a letter of 10 September 2003, that the first applicant had died on 25 February 2003. The lawyer did not specify whether legal successors wished to pursue the proceedings. However, the other applicants, members of the same family, requested an increase in any award of just satisfaction as a result of the first applicant’s death. The Court interprets this as a request to continue the proceedings in respect of the first applicant.

4. On 28 September 2004 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

5. The applicants were born in 1929, 1929, 1956, 1960, 1964 and 1966 respectively and live in Prostějov except for the sixth applicant who lives in Ostrov nad Ohří.

6. On 12 August 1992 the applicants lodged with the Prostějov District Court (*okresní soud*) a claim against the Ministry of Justice for damages caused by a violation of their personal rights and an unlawful court decision.

7. On 28 September 1992 the Brno Regional Court (*krajský soud*) referred the matter to the Brno Municipal Court (*městský soud*) which, in a decision of 25 June 1993¹, having received the defendant's observations on 5 March 1993, separated that part of the action relating to the damage caused by a violation of personal rights and transferred it to the Regional Court. On 29 October 1993 the Regional Court decided to send certain of the applicants' claims contained in this part of their action back to the Municipal Court. This decision became effective on 3 December 1993.

i. Proceedings for damages

8. At a hearing held on 24 November 1993 the Municipal Court heard the first three applicants; the sixth applicant was to be heard by the Karlovy Vary District Court (*okresní soud*). It appears from the minutes that the fourth applicant did not attend the hearing. According to the Government, as the fifth applicant had not attended the hearing, he submitted his written statement on 15 March 1994. On 25 March 1994 the first and second applicants supplemented the action.

9. In the meantime, on 30 November 1993, the Municipal Court had requested the Prostějov District Court, the Kroměříž District Court and the Prague High Court (*Vrchní soud*) to submit some documents.

10. On 17 May 1994 the Municipal Court contacted the Vyškov District Court and the Zlín District Court in order to obtain information concerning other judicial proceedings initiated by the applicants. On 8 September 1994 it re-contacted the Vyškov District Court.

11. On 1 July 1994 the Karlovy Vary District Court, at the Municipal Court's request of 2 June 1994, heard the sixth applicant who, on 7 July 1994, supplemented the action. The Municipal Court sent this document to the other parties to the proceedings on 13 January 1995, after the applicant having submitted the appropriate number of her supplement.

12. On 19 October 1995 the second applicant supplemented the action through the fourth applicant. On 31 October 1995 the Municipal Court held

¹ According to the Government, the decision was adopted on 4 May 1993.

a hearing which was adjourned in order to gather evidence and to clarify the stage of the other proceedings which the applicants had concurrently instituted. The fourth applicant did not attend the hearing.

13. On 9 August 1996 the applicants' lawyer, who did not have a power of attorney signed by the fourth applicant, asked for the latter's psychiatric examination. On 14 August 1996 the first and second applicants requested that the first and fourth applicants be heard in their home.

14. On 25 October 1996 an attempt to hear the fourth applicant was made.

15. On 14 March 1997 the Municipal Court contacted the Prostějov Health Centre (*zdravotní středisko*) with a view to obtaining information about the fourth applicant's state of health. On 10 July 1997 it asked the Prostějov District Court whether proceedings on limitation of the fourth applicant's capacity to act had been instituted. Having received a negative reply, it invited the applicants' lawyer, on 4 August 1997, to consider whether the other applicants could act as the fourth applicant's guardians in the proceedings. On 12 September 1997 the lawyer informed the court that the second applicant would be ready to undertake this function. However, on 27 November 1997 the Municipal Court informed the lawyer that this would not be possible due to the risk of a conflict of interest. On 23 January 1998 the lawyer informed the court that the family was looking for a guardian.

16. On 16 September 1998 the Municipal Court asked the Prostějov District Court to appoint a guardian to defend the fourth applicant's interests. On 29 March 1999 the District Court appointed the second applicant to represent the fourth applicant, finding that there was not any risk of a conflict of interest. On 15 October 1999 the Regional Court, having asked to have been provided with the case-file on 3 August 1999, sent it back to the Municipal Court.

17. On 29 October 1999 the applicants' lawyer submitted final written pleadings.

18. On 23 November 1999 the fourth applicant gave a power of attorney to the lawyer. On the same day, the Municipal Court held a hearing, at which it invited the applicants' lawyer to submit a supplementary statement, which the lawyer did on 22 December 1999. However, on 21 April 2000 the court asked him to explain the meaning of his statement.

19. On 3 August 2000 the Municipal Court, taking into account the aforesaid statement of the applicants' lawyer, interpreted this as a withdrawal of the claims of the third, fourth, fifth and sixth applicants and discontinued the proceedings in respect of these claims. The decision became effective on 4 September 2000.

20. On 21 September 2000 the Municipal Court requested the first and second applicants to specify of their claims for damages. On

7 November 2000 their lawyer requested the court to extend the time-limit for that purpose.

21. On 15 February 2001 the Municipal Court discontinued the proceedings in respect of the claims of the first and second applicants due to their failure to specify their claims.

ii. Proceedings for protection of personal rights

22. On 10 August 1994 the Regional Court declared that it was not territorially competent to deal with the applicants' action for protection of their personal rights and transferred it to the Prague Municipal Court.

23. On 10 October 1994 the applicants appealed.

24. On 29 March 1996 the Prague High Court, having received the case-file on 10 March 1995, quashed the aforesaid decision and on 20 May 1996 remitted it to the Regional Court for further consideration.

25. On 25 July 1996 the applicants were invited to supplement their action, which they did on 4 September 1996¹.

26. On 20 February 1997 the Regional Court separated certain of the applicants' claims for a separate hearing. On 18 March 1997 it declared that it was not territorially competent to deal with the case and transferred it to the Municipal Court, which did not agree with the transfer and brought the competence conflict to the High Court. On 28 March 1998 the High Court held that the Regional Court was competent to deal with the applicants' case.

27. On 30 October 1998 the Regional Court held a hearing. On 9 November 1998 the first applicant, not having attended the hearing, submitted his written statement.

28. Another hearing was held on 29 September 2000. The court requested the applicants to pay court fees. On 30 October 2000 the applicants' lawyer disagreed and three of the applicants appealed against the request.

29. Between 2 November 2000 and 30 April 2001 the judge dealing with the applicants' case was sick.

30. On 1 October 2001 the applicants' appeal was sent to the High Court, which on 11 October 2001 returned the case-file to the Regional Court with a request to remove certain formal shortcomings.

31. On 15 September 2003 the Regional Court invited the applicants to complete their action and, on 17 September 2003, requested the applicants' lawyer to clarify his previous pleadings. The lawyer complied on 27 September 2003. As the first applicant had died on 25 February 2003, the lawyer modified and extended the applicants' original action on 22 October 2003.

¹ According to the Government, the applicants complied on 14 October 1996.

32. On 26 January 2004 the Regional Court separated certain of the applicants' claims for a separate hearing. The next day, it requested the applicants to specify their action. The applicants' lawyer replied on 4 February 2004.

33. Between 28 January and 8 August 2004 the judge dealing with the case was sick.

34. It seems that the proceedings are still pending.

THE LAW

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

35. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in 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..."

36. The Government contested that argument.

37. The period to be taken into consideration began on 13 August 1992 and has not yet ended. It has thus lasted thirteen years and seven months for two levels of jurisdiction.

A. Admissibility

38. 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

39. The Government argued that the present case had been complex and that the applicants had repeatedly supplemented and modified their action, either themselves or through their lawyer. Moreover, the situation with their power of attorney had not been clear. Nevertheless, the Government admitted that the applicants had not negatively contributed to the overall length of the proceedings. As to the conduct of the national authorities, the Government submitted that the courts had faced difficulties in particular with obtaining documents relevant to the applicants' case from other national courts.

40. The applicants maintained their claim that the proceedings had lasted an unreasonably long time.

41. 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).

42. 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).

43. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or 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

44. 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

45. Under the head of non-pecuniary damage, the applicants claim 1,000,000 euros (EUR) each, noting that the question of pecuniary damage was the subject of the proceedings held before the national courts.

46. The Government considered this sum excessive but left the matter to the Court’s discretion.

47. The Court accepts that the applicants have certainly suffered non-pecuniary damage – such as distress and frustration resulting from the excessive length of the proceedings – which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicants, jointly, EUR 12,000 under this head.

B. Costs and expenses

48. The applicants also claimed CZK 145,800 (EUR 5,134) for the costs and expenses incurred before the domestic courts and CZK 72,300 (EUR 2,546) for those incurred before the Court.

49. The Government contested these claims considering that a reasonable sum for costs and expenses in the present case was between EUR 300 and 400.

50. The Court observes that, according to its constant case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek to prevent or rectify a violation of the Convention, to have the same established by the Court and to obtain redress therefore. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, *Krčmář and Others v. the Czech Republic*, no. 35376/97, 3 March 2000, § 52). The Court further recalls that in assessing the reasonableness of the sums claimed in respect of costs and expenses, it does not regard itself as bound by domestic scales and practices, although it may derive some assistance from them (*ibid.*).

51. The Court finds the sums claimed by the applicants in respect of costs and expenses to be excessive. The Court further notes that no documentary evidence was submitted by the applicants to establish that the costs and expenses claimed by them were actually incurred. Deciding on an equitable basis, the Court rejects the applicants' claims in respect of the costs and expenses incurred in the domestic proceedings, and awards the applicants, jointly, EUR 1,000 in respect of the costs and expenses incurred before the Court.

C. Default interest

52. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President