CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF ZBOŘILOVÁ AND ZBOŘIL v. THE CZECH REPUBLIC

(Application no. 32455/02)

JUDGMENT

STRASBOURG

18 April 2006

FINAL

18/07/2006

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 Zbořilová and Zbořil 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 28 March 2006,

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

PROCEDURE

1. The case originated in the application (no. 32455/02) 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, Ms Františka Zbořilová and Mr Milan Zbořil ("the applicants"), on 26 August 2002.

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

3. On 23 September 2004 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 applications at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1944 and 1936 respectively and live in Brno.

5. On 28 December 1992 the applicants prepared a civil action against the private company V. and Ms M. for the return of their ownership share in the private company V., amounting to CZK 120,000 (EUR 4,229). According to the Government, having received the applicants' action on 13 January 1993, the Brno Regional Commercial Court (*krajský obchodní soud*) sent it to the defendants for their written comments.

6. On 20 July 1994 the applicants requested the court to accept an extension of their action to include Mr S. and the private company R. as defendants. The court received the request on 10 August 1994.

7. On 20 September 1994 the applicants requested the court to adopt interim measures against Ms M., but the court did not react to their request.

8. On 20 January 1997 the court accepted the applicants' extension of their action, against which Mr S. and the company R. appealed on 3 February 1997. The next day, the appeal was sent to the other parties to the proceedings. On 3 July 1997 the appellants were invited to supplement their appeal.

9. On 21 July 1999 the Olomouc High Court (*vrchní soud*) received new submissions. On 30 November 1999 it sent the case back to the Regional Commercial Court.

10. On 2 June 2000 the second applicant, upon the court's request of 3 May 2000, provided information as to the name of his legal representative in 1997.

11. On 4 October 2001 the Regional Commercial Court invited the appellants, once again, to supplement their appeal.

12. On 5 February and 14 May 2002 respectively, the court contacted the central register of citizens (*centrální evidence obyvatel*) to determine the second defendant's domicile.

13. On 2 June 2003 the court asked the Czech Post Office (*Česká pošta*) about the effective delivery of mail to the second defendant. It repeated its request on 5 January and 30 June 2004 respectively.

14. It appears that the proceedings are still pending before the High Court.

THE LAW

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

15. 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 ... hearing within a reasonable time by [a] ... tribunal..."

16. The Government left the matter to the Court's discretion.

17. The period to be taken into consideration began on 13 January 1993 and has not yet ended. It has thus lasted some thirteen years and two months for two levels of jurisdiction.

A. Admissibility

18. 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

19. 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).

20. 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).

21. 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

22. 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

23. The applicants claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government considered the claim highly excessive. They left the matter to the Court's discretion.

25. The Court, taking into account the circumstances of the case and making its assessment on an equitable basis, awards the applicants, jointly, EUR 10,000 under this head.

B. Costs and expenses

26. The applicants also claimed EUR 4,455.92 for the costs and expenses incurred before the domestic courts and EUR 1,798 for those incurred before the Court.

27. In respect of the costs claim for the domestic proceedings, the Government submitted that only those costs incurred in an attempt to prevent the violation found could possibly be reimbursed. As regards the costs claim for the Convention proceedings, the Government considered that they were excessive. They submitted that a sum of 300 would be sufficient.

28. As to the costs claim concerning the domestic proceedings, the Court agrees with the Government that these costs were not incurred to prevent or rectify the Convention violation. It accordingly dismisses this aspect of the claim.

29. With regard to the Convention costs, the Court finds the sum claimed by the applicants to be excessive. It further notes that no documentary evidence was submitted by them to establish that these costs and expenses were actually incurred. Deciding on an equitable basis, the Court considers that EUR 500 constitutes a reasonable award for costs in the circumstances of the present case.

C. Default interest

30. 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 applicants, jointly, 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 and EUR 500 (five hundred euros in respect of costs and expenses, plus any tax that may be chargeable; these sums are to be converted into the currency of the respondent State at the rate applicable on the date of settlement;

(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 18 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President