



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

FIFTH SECTION

CASE OF JEŠINA v. THE CZECH REPUBLIC

(Application no. 18806/02)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

10/12/2007

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 Ješina v. the Czech Republic,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 18806/02) 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 Bohuslav Ješina (“the applicant”), on 28 October 2001.

2. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, Ministry of Justice.

3. The applicant complained, in particular, about the decision of the Constitutional Court of 14 May 2001 by which his constitutional appeal had been dismissed for failure to exhaust statutory remedies by appealing on points of law.

4. On 4 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the aforesaid decision of the Constitutional Court to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Bruntál.

6. On 26 September 1996 a certain S. brought proceedings for damages against the applicant in connection with a traffic accident which had occurred on 5 March 1996.

7. On 21 October 1996 the Bruntál District Court (*okresní soud*) granted his action and delivered a payment order against the applicant who filed a protest (*odpor*) on 3 November 1996 alleging that S. was responsible for the accident.

8. On 28 March 1997 the Ostrava Regional Court (*krajský soud*) dismissed the applicant's challenge of the District Court's judge for bias.

9. On 5 February 1998 the District Court appointed an expert in the price and valuation of motor vehicles. On 27 March 1998 the expert drew up his opinion.

10. In the meantime, on 9 March 1998, S. had died.

11. On 30 December 1998 the applicant requested the District Court to suspend the proceedings in order to bring the case to the Constitutional Court (*Ústavní soud*), for a preliminary ruling on the constitutionality of a certain provision of the Code of Civil Procedure which was allegedly in contradiction with certain provisions of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*).

12. On 20 January 1999 the District Court dismissed his request. It further allowed S.'s heirs' request to modify their action. On 30 April 1999 the Regional Court upheld this decision. On the same day, the court dismissed the applicant's challenge of the District Court's judge for bias.

13. On 17 August 1999 the District Court adjourned the proceedings pending the outcome of inheritance proceedings.

14. On 2 September 1999 the court resumed the proceedings and ordered the applicant to pay the damages claimed plus 16% default interest as of 1 November 1996. The court based its finding that the applicant was responsible for the accident on the parties' statements, the police file concerning the traffic accident and other documentary evidence. The court did not grant the applicant's request to suspend the proceedings pending the outcome of proceedings for damages which he had brought against the police officers who had investigated the accident.

15. On 11 October 1999 the applicant appealed against this judgment.

16. In a letter of 3 September 2000 the applicant informed the Regional Court that he could not take part in a hearing scheduled for 26 September 2000. He asked the court that his letter be read out if the appellate proceedings continued.

17. On 26 September 2000 the Regional Court upheld the District Court's judgment. It also dismissed an application by the applicant for leave to appeal on points of law (*dovolání*) against its decision.

18. On 27 February 2001 the applicant lodged a constitutional appeal (*ústavní stížnost*) alleging, *inter alia*, a violation of Articles 37 § 2 (the right to legal assistance) and 37 § 3 (equality of the parties) and 38 § 2 (the right

to a public hearing without delay and the right to comment on submitted evidence) of the Charter.

19. On 14 May 2001 the Constitutional Court declared the applicant's appeal inadmissible for failure to exhaust statutory remedies by appealing on points of law. It referred to Article 239 § 2 of the Code of Civil Procedure¹.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the national law and practice are described in detail in *Běleš and Others v. Czech Republic* of 12 November 2002 (no. 47273/99, §§ 17-41, ECHR 2002-IX), *Zvolský and Zvolská v. Czech Republic* of 12 November 2002 (no. 46129/99, §§ 18-36, ECHR 2002-IX) and *Vodárenská akciová společnost, S.A. v. Czech Republic* of 24 February 2004 (no. 73577/01, § 21).

THE LAW

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

21. The applicant complained that the Constitutional Court had declared his appeal inadmissible for failure to exhaust statutory remedies in violation 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 ... by [a] ... tribunal...”

¹ Article 239 § 2 of the Code of Civil Procedure as worded at the material time provided that if an appeal court refused to grant an application for leave to appeal on points of law that had been made by one of the parties before the decision upholding the decision at first instance was adopted, leave to appeal could only be obtained if the Supreme Court itself considered that the appeal court's decision gave rise to a question of crucial legal importance.

A. Admissibility

22. 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

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

24. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of procedural rules such as time-limits for filing documents or lodging appeals (*Běleš and Others v. the Czech Republic*, cited above, § 60; *mutatis mutandis*, *Tejedor García v. Spain*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 31). The rules on the procedure and time-limits for appeals are designed to ensure the proper administration of justice and, in particular, legal certainty. Litigants should normally expect those rules to be applied (*Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41787/98 and 41509/98, § 33, ECHR 2000-I).

25. Furthermore, the “right to a court”, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (*García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and *Běleš and Others v. Czech Republic*, cited above, § 61). Nonetheless, the limitations applied must not restrict or reduce the individual's access in such a way or to such an extent as to impair the very essence of the right. Furthermore, limitations will only be compatible with Article 6 § 1 if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued (*Guérin v. France*, judgment of 29 July 1998, *Reports* 1998-V, § 37; *Běleš and Others* cited above, § 62).

26. The Court notes that the situation of the applicant is identical to that of the applicants in the aforesaid case *Běleš and Others v. Czech Republic* in which the Court found a violation of Article 6 § 1 of the Convention. In *Běleš* the Court made the following findings (see paragraphs 63 et 68):

“63. ... [T]he decision whether or not to grant leave to appeal on points of law, within the meaning of Article 239 § 2 of the Code of Civil Procedure, was within the

sole discretion of the Supreme Court, which had to decide whether the impugned decision concerned a point of 'crucial legal importance'. In those circumstances, neither the applicants nor their lawyer were in a position to assess their prospects of obtaining leave from the Supreme Court, particularly it had been refused by the appeal court. In the event of leave to appeal on points of law being refused, there was a risk that the applicants' constitutional appeal would be dismissed as being out of time.

...

68. The Court also finds that the requirement in sections 72(2) and 75(1) of the Constitutional Court Act for 'all remedies' to be exercised, without any distinction being made between ordinary and special remedies (apart from applications to reopen proceedings), coupled with the unpredictability of applications for leave to appeal on points of law as a result of the way Article 239 § 2 of the Code of Civil Procedure is applied, undermines the very essence of the right of recourse by imposing on appellants a disproportionate burden that upsets the fair balance that has to be struck between the legitimate concern to ensure that the formal procedure for appealing to the Constitutional Court is complied with and the right of access to that court. Since, under Czech law, an appeal on points of law is a special remedy that is not automatically available and for which leave at the discretion of the Supreme Court is required, it cannot be regarded as an effective remedy that required exhaustion in the instant case (see, *mutatis mutandis*, *Esposito v. Italy*, no. 20855/92, Commission decision of 16 October 1996, unreported)."

27. Turning to the instant case, the Court sees no reason to depart from its conclusions reached in *Běleš and Others* case which are entirely pertinent in the case of the present applicant.

28. The Court notes with satisfaction that after the delivery of its judgments in cases of *Běleš and Others v. Czech Republic* (cited), and *Zvolský and Zvolská v. Czech Republic*, the Czech Constitutional Court announced a modification of its practice concerning the admissibility requirements of constitutional appeals. However, this modification could not have any impact on the situation of the applicant in the present case.

29. In these circumstances, the Court finds that the particularly restrictive interpretation by the Constitutional Court of a procedural rule deprived the applicant of his right of access to court.

30. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 12,424,000 Czech korunas (CZK), that is to say 441,319 euros (EUR) in respect of pecuniary damage and CZK 1,000,000 (EUR 35,522) in respect of non-pecuniary damage.

33. The Government contended that there was no causal link between the conduct of the Constitutional Court which could be considered as a violation of Article 6 § 1 of the Convention and the pecuniary damage the applicants claimed to have suffered. Accordingly, that claim should be dismissed.

34. As to the reparation sought by the applicant for non-pecuniary damage, the Government considered that the finding of a violation would afford sufficient just satisfaction.

35. The Court considers that the basis for an award of just satisfaction in the present case must be the denial of access of the applicant to a court, which is part of the right to a fair trial, within the meaning of Article 6 § 1 of the Convention. It finds no causal link between the pecuniary damage alleged by the applicant and its finding of a violation of Article 6. Nor can it speculate on what the outcome would have been if the Constitutional Court had declared the applicant's appeal admissible and proceeded to hear it. Accordingly, the Court makes no award under this head.

36. Having regard to the nature of the violation of Article 6 § 1 found in the present case, the Court considers – as it did in other similar cases (*Běleš and Others* cited above, §§ 76 and 77, *Vodárenská akciová společnost, S.A. v. Czech Republic*, cited above, § 40, *Šroub v. Czech Republic*, no. 5424/03, § 29, *Mařík v. Czech Republic*, no. 73116/01, § 21, *Soudek v. Czech Republic*, no. 56526/00, § 26) – that the finding of a violation constitutes sufficient just satisfaction in the circumstances.

B. Costs and expenses

37. The applicant did not make any claim in respect of the costs and expenses incurred before the domestic courts and before the Court. Accordingly, the Court makes no award under this head.

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 the non-pecuniary damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President