



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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 6042/02
by Petr KAFKA
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 18 March 2008 as a Chamber composed of:

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 7 September 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Petr Kafka, is a Czech national who was born in 1949 and lives in Varnsdorf. The Czech Government (“the Government”) were represented by their Agent, Mr V.A. Schorm, from the Ministry of Justice.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings nos. 4 C 419/86 and 4 C 166/90

On 5 June 1986 the applicant's father brought proceedings before the Tábor District Court (*okresní soud*) against an agricultural cooperative. The proceedings terminated in the claimant's favour. On 31 May 1990 the Supreme Court (*Nejvyšší soud*), upon a complaint by the former Prosecutor General, alleging a breach of law (*stížnost pro porušení zákona*), quashed the judgments of the lower courts and sent the case back to the District Court. In October 1991 the claimant specified his court expenses of CZK 70,010 (EUR 2,728¹) which included a sum of CZK 68,600 (EUR 2,673) corresponding to damage caused by the courts' judgments. According to the Government, when presenting his final pleadings, the applicant qualified the amount of CZK 70,010 as court fees.

2. Proceedings no. 6 C 55/94

On 8 March 1994 the applicant's father brought proceedings against the same cooperative for reimbursement of court fees. In the course of the proceedings, he extended his action seeking to order the cooperative to pay him CZK 70,010 in respect of his court expenses. His action was dismissed. According to the Government, the proceedings finally terminated on 9 February 1995.

3. Proceedings no. 4 C 83/95

On 20 October 1995 a certain Z. brought an action in the District Court against the applicant's father seeking to be paid CZK 5,400 (EUR 210) for legal services he had provided. On 10 May 1996 the District Court ordered the applicant's father to pay the sum in question. The latter appealed and filed a counterclaim of CZK 7,179 (EUR 280). On 13 December 1996 the České Budějovice Regional Court (*krajský soud*) upheld this judgment, separating the counterclaim for a separate hearing (no. 4 C 291/97).

On 22 December 1996 the applicant's father died. Inheritance proceedings were instituted.

On 20 November 1997 the Constitutional Court (*Ústavní soud*) declared manifestly ill-founded the applicant's constitutional appeal (*ústavní stížnost*) challenging the judgments of the lower courts.

¹ 1 EUR = 25,69 CZK

On 8 March 2001 the Constitutional Court dismissed the applicant's second constitutional appeal which was directed against the same judgments. It stated, *inter alia*, that in respect of his claim relating to the manner of which the lower courts had considered the sum of CZK 68,600, the applicant's father had died and that the applicant was not a party to these proceedings.

4. Proceedings no. 4 C 291/97

On 9 April 1999 inheritance proceedings concerning the applicant's father's estate terminated. The applicant as the only heir expressed his wish to continue pursuing the proceedings before the District Court in his late father's stead.

On 27 September 1999 the District Court dismissed the counterclaim filed by the applicant's father. On 1 June 2000 the Regional Court partly quashed this judgment and remitted the relevant part of the case back to the District Court which, on 20 September 2000, again dismissed the counterclaim. On 10 May 2001 the Regional Court upheld this judgment.

On 8 November 2001 the Constitutional Court rejected *a limine* the applicant's constitutional appeal.

On 22 January 2004 the Supreme Court dismissed his appeal on points of law (*dovolání*).

B. Relevant domestic law and practice

The relevant domestic law and practice concerning remedies for the allegedly excessive length of judicial proceedings are set out in the Court's decision in the case of *Vokurka v. Czech Republic*, no. 40552/02 (dec.), §§ 11-24, 16 October 2007).

COMPLAINTS

Invoking Article 6 § 1 of the Convention, the applicant complained that the courts had not dealt with his compensation claim of CZK 68,600, that his father concluded with him a cession contract transferring him his unsettled claims and that the national courts including the Constitutional Court had not been interested in examining his compensation claim.

THE LAW

1. The applicant alleged a violation of Article 6 § 1 of the Convention which, so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal.”

The Court considers that the applicant’s allegations should be partly understood as a complaint about a breach of the right to a hearing within a reasonable time.

The Government, disputing the statement of facts as presented by the applicant, described in detail the four above judicial proceedings.

The applicant stated that his application did not relate to proceedings nos. 4 C 83/95, 4 C 291/97 and 6 C 55/94.

In their complementary observations, the Government submitted that the applicant could have resorted to the compensatory remedy provided for by Act no. 82/1998.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of certain complaints about the length of judicial proceedings in the Czech Republic. In particular, it considered that the remedy was capable of providing adequate redress for any breach of the reasonable time requirement that has already occurred (see *Vokurka v. Czech Republic*, cited above, §§ 58-65).

Turning to the present case, the Court observes that the applicant applied, in respect of proceedings no. 4 C 419/86, for compensation pursuant to Act no. 82/1998 as amended on 10 July 2006. In a letter of 12 November 2007 he informed the Court that he had filed an action for damages under section 15(2) of the Act as amended, in the Prague 2 District Court before which the proceedings seem to be still pending.

In these circumstances, the Court considers that the applicant has not exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention. This complaint must therefore be declared inadmissible according to Article 35 § 4 of the Convention.

2. Insofar as it can be understood that the applicant complains that the proceedings in his case were unfair, the Court reiterates that it is not called upon to deal with errors of fact and 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, § 28, ECHR 1999-I).

Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court does not disclose any appearance of a violation of the rights and freedoms set out in the Convention. In particular, assessing the proceedings in the applicant’s case as a whole, it finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

3. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention and to reject the application.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President