CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 26668/03
by Miroslav BÍLÝ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 4 January 2008 as a Chamber composed of:

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 15 August 2003,

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 Miroslav Bílý, is a Czech national who was born in 1926 and lives in Prague. He was represented before the Court by Mr Z. Koschin, a lawyer practising in Prague. 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.

On 3 August 1992 the Minister of Industry quashed *ab initio* a decree of 28 September 1950 by which the factory owned by the applicant's parents had been nationalised. The applicant and his sister recovered the property in January 1994. The factory was in a very poor state. As the former occupants refused to make repairs, the applicant and his sister brought proceedings for damages on 31 January 1995.

By an interim judgment of 5 March 1999, the Prague 9 District Court (*obvodní soud*) decided that the claim of the applicant and his sister was, in respect of the first defendant, well founded.

On 17 September 1999 the District Court adopted a supplementary judgment by which it dismissed the applicant's and his sister's action in respect of the second defendant.

On 27 October 1999 the applicant and his sister filed an appeal against the two judgments.

On 28 February 2000 the Municipal Court quashed the judgments and sent the case to the District Court.

On 21 July 2004 the applicant informed the court that his sister had died. He proposed to suspend the proceedings on his late sister's claim while the court continued to deal with his claim.

On 5 January 2005 the District Court decided to suspend the proceedings until the termination of the inheritance proceedings. The applicant appealed against this decision.

It seems that the proceedings are still pending.

B. Relevant domestic law and practice

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

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings. According to him, the procedural steps carried out by the Prague 9 District Court were uneconomical and constituted a financial burden for the parties to the proceedings.

THE LAW

The applicant's complaint relates to the length of the proceedings, which began on 31 January 1995 and are still pending. The applicant argued that the length of the proceedings had been incompatible with the "reasonable time" requirement under 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."

The Government noted that the applicant could have resorted to the compensatory remedy provided for by Act no. 82/1998. The applicant did not wish to use this remedy.

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).

However, the applicant despite having been informed by the Court of the possibility of using this remedy maintained that he should not be required to exhaust such a remedy. It thus appears that he has chosen not to avail himself of this remedy.

The Court therefore considers that the applicant has not exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention. The application must therefore be declared inadmissible according to Article 35 §§ 4 of the Convention.

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