CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 76343/01
by Josef HAVELKA
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 4 December 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced on 8 April 1999 and registered on 12 November 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Czech national born in 1946. He lives in Dolní Polubný.

On **12 January 1995** the applicant brought an action for damages before the Jablonec nad Nisou District Court *(okresní soud)* against Mr S. who had allegedly damaged the applicant's house in Deštná.

On 27 July 1995 the Jablonec nad Nisou District Court held a hearing and adjourned the case to 14 September 1995. The applicant claims that he was not summoned to appear at the hearing.

The hearing held on 14 September 1995 was adjourned to 10 October 1995.

On 7 November 1995 another hearing took place, and was adjourned until 5 December 1995.

Next three hearings were held before the Jablonec nad Nisou District Court on 4 January, 6 and 27 February 1996.

On 5 November 1996 the applicant, upon the request of the District Court, confirmed that Ms V. was his mother, although he did not understand the reason for which the Jablonec nad Nisou District Court had asked for this information.

A hearing held before the Jablonec nad Nisou District Court on 28 January was adjourned to 18 February 1997. At the latter hearing, Mr S. was not present but his lawyer represented his interests.

On 26 March 1997 the Prague 4 District Court heard Mr S. upon a request by the Jablonec nad Nisou District Court

At the hearing held on 6 November 1997, the Jablonec nad Nisou District Court heard the applicant, nobody representing the interests of the defendant. According to the applicant, judge V. was responsible for certain illegal modifications to the record of this hearing.

On 8, 9 and 10 March 1999 the applicant requested the Jablonec nad Nisou District Court to adopt an interim measure. He alleged that Mr S. was the president of the management board of a private company whose clients had already lost all together CZK 1,500,000,000, and that a criminal complaint had been lodged against Mr S. He therefore requested the court to prohibit the latter to dispose of his immovable and movable property.

On 11 May 1999 the Ústí nad Labem Regional Court *(krajský soud)* excluded judge V. of the Jablonec nad Nisou District Court from the consideration of the applicant's action for damages.

On 9 September 1999 the applicant requested the adoption of an interim measure.

On 10 September 1999 the Regional Court, on proceedings being instituted by the applicant against judge V., decided that five other judges at the Jablonec nad Nisou District Court were excluded from the examination

of those proceedings, which were then to be transferred to the Liberec District Court.

On 16 November 1999 the Jablonec nad Nisou District Court dismissed the applicant's request for an interim measure.

On 22 December 1999 the Regional Court quashed this decision and ordered Mr S. not to sell, pledge, burden or otherwise dispose of certain building plots in Klánovice. For the remainder, the Regional Court sent the case back to the Jablonec nad Nisou District Court.

On 23 March 2000 the applicant filed a constitutional appeal alleging delays in the proceedings held before the Jablonec nad Nisou District Court.

On 25 May 2000 the District Court informed the applicant that it had been impossible to decide on the remainder of his request for an interim measure as the court file had been sent to the Regional Court.

On 21 June 2000 the Constitutional Court dismissed the applicant's appeal finding that, since the introduction of his action for damages, the Jablonec nad Nisou District Court had held seven hearings and that it had accepted the applicant's modification of the grounds of his action, on which the Regional Court had decided in 1996. Moreover, in the course of 1997, the District Court took further legal steps and ordered three hearings. In 1998 and at the beginning of 1999, the applicant criticised the conduct of the proceedings by the Jablonec nad Nisou District Court. Consequently, another judge at this court was excluded from the consideration of the applicant's case. During 1999 the District Court adopted an interim measure and in February 2000 it collected further documentary evidence necessary for its decision on the merits.

On 29 August 2000 the Jablonec nad Nisou District Court adopted an interim measure ordering Mr S. not to sell, pledge, burden, transfer or otherwise dispose of his property, intangible investments, shares or other interests in twelve private companies.

On 11 October 2000 Mr S. appealed against the interim measure.

On 2 and 22 November 2000 the applicant commented on Mr S.'s appeal.

On 24 November 2000 the applicant also appealed against the alleged inadequacy of the interim measure.

On 8 December 2000 he requested the Jablonec nad Nisou District Court to extend the interim measure to real estates in Rabyně, registered in the Benešov Land Register.

On the same day, he supplemented the grounds of his action for damages.

On 12 December 2000 the applicant completed his comments on the defendant's appeal against the interim measure.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that his civil action for damages has not been dealt with by the domestic courts impartially and within a reasonable time. He submits that the judge V. at the Jablonec nad Nisou District Court deliberately prolonged these proceedings. However, even after his exclusion from the examination of the applicant's case, the delays in the proceedings continued.

2. The applicant also complains that the judge V. at the Jablonec nad Nisou District Court did not deal with his case impartially which was proved by his exclusion from the consideration of the applicant's case. However, his exclusion was pronounced only four years after the proceedings have been instituted before the District Court. Moreover, in the applicant's view, the fact that the judges at the District Court, including the one to whom his case was assigned after the judge V.' exclusion, had been excluded, proved their bias and absence of objectivity. The applicant further complains that the record from the hearing at the Jablonec District Court held on 6 November 1997 was illegally modified and that the judge V. was responsible for the proceedings before the District Court including drafting this record. In these circumstances, the proceedings, according to the applicant, cannot be considered fair and impartial.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that his civil action for damages has not been dealt with within a reasonable time. He submits that judge V. at the Jablonec nad Nisou District Court deliberately prolonged these proceedings. However, even after his exclusion from the examination of the case, the delays in the proceedings continued.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice of it to the respondent Government.

2. The applicant also complains that his case has not been dealt with by the Jablonec nad Nisou District Court fairly and impartially.

However, the Court observes that the proceedings before the domestic courts are still pending and that, consequently, the applicant's complaint relating to the fairness of the proceedings and the impartiality of judges are premature and must be rejected at this stage under Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint that his action for damages has not been dealt with within a reasonable time;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P.COSTA
President