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. 43062/02
by Květa KRUGOVÁ
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 2 December 2002,

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, Mrs Květa Krugová, is a Czech national who was born in 1938 and lives in Mladé Buky. She was represented before the Court by Mr K. Krug, her husband. 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 9 June 1994 the applicant received dental treatment during which she suffered a cerebral haemorrhage. According to her, the dentist did not provide her with the necessary medical help.

i. Criminal proceedings

On an unspecified date the applicant lodged a complaint against the dentist with the Ministry of Health. On 17 June 1994 the Trutnov Regional Chamber of Stomatology (*oblastní stomatologická komora*) filed a criminal complaint against the dentist.

On 31 October 1995 the applicant joined the proceedings as a civil party, when her husband was heard by police officers and expressed, on behalf of his wife, a wish to join the proceedings.

On 22 April 1996 the dentist was formally indicted for failure to provide medical assistance. On 23 May 1996 his lawyer informed the Náchod District Court (*okresní soud*) about a possible friendly settlement of the case. On 17 June 1996 the District Court conditionally stayed the criminal proceedings for eighteen months, ordering the dentist to pay CZK 150,000 (EUR 5,472[1]) to the applicant. According to the Government, the dentist paid the sum requested.

In a judgment of 21 March 2002 the District Court acquitted the dentist and instructed the applicant that she may claim damages in civil proceedings.

On 8 August 2002 the Hradec Králové Regional Court (*krajský soud*) dismissed the appeals of the prosecutor and the applicant. This decision was apparently the last domestic decision taken in these proceedings.

ii. Civil proceedings for damages

On 30 May 1997 the applicant filed with the District Court an action in which she claimed compensation from the dentist for alleged malpractice.

On 22 April 2005 the District Court dismissed the applicant's action. According to the Government, the proceedings have not yet been meritoriously terminated.

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

[1] 1 EUR = 27.44 CZK

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 and the alleged unfairness of the above proceedings.

THE LAW

1. The Court first considers that the applicant's complaints concern the two proceedings – criminal and civil.

The criminal proceedings began on 31 October 1995, date on which the applicant's husband expressed on behalf of his wife, his intention to join the proceedings, and ended on 8 August 2002 with the decision of the Regional Court. The civil proceedings started on 30 May 1997 and are, apparently, still pending before the national courts.

This duration, according to the applicant, is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention which, so far as relevant, provides:

> "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 and, therefore, failed to exhaust domestic remedies available to her.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in the Czech Republic. In particular, it considered that it 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 she should not be required to exhaust such a remedy. It thus appears that she has chosen not to avail herself 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. This part of the application must therefore be declared inadmissible according to Article 35 § 4 of the Convention.

2. In so far as the applicant complained about the alleged unfairness of the proceedings, the Court observes that she did not lodge a constitutional appeal in the criminal proceedings and that the civil proceedings are apparently not meritoriously terminated.

Accordingly, this part of the application should also be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President