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. 14775/04
by Zdeněk MARCÍN
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 20 April 2004,

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 Zdeněk Marcín, is a Czech national who was born in 1943 and lives in České Budějovice. 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.

In 1971 the applicant inherited a house with a garden and surrounding land belonging to his grandmother who, in 1953, together with her husband, incorporated her real estate in a local agricultural cooperative.

In November 1990 another grandson living abroad appealed against the original inheritance decision.

In November 1992 the cooperative was transformed into a private enterprise.

On 13 April 1993 the applicant brought a civil action at the Kolín District Court (*okresní soud*) against the cooperative in order to recover the incorporated property.

On 21 September 1995 the proceedings were suspended pending the reopened inheritance proceedings.

A bankruptcy order was made regarding the cooperative's property. The proceedings were therefore stayed *ex lege*.

On 28 February 2000 the District Court distributed the inheritance among the applicant and other heirs. On 6 September 2000 the Prague Regional Court (*krajský soud*) partly modified this decision. The Regional Court's decision became final on 23 November 2000.

In a resolution of 18 October 2004 the bankruptcy proceedings against the bankrupt's property were cancelled. The resolution became final and conclusive on 17 November 2004.

In a judgment of 19 September 2005 the District Court ordered the cooperative to pay CZK 48,410 (EUR 1,809[1]) to the applicant, dismissing the remainder of his claims.

On 4 November 2005 the applicant appealed.

On 7 February 2006 the District Court rejected his appeal as having been filed outside the statutory time-limit which had expired on 3 November 2005, the District Court's judgment having been notified to the applicant on 19 October 2005. The applicant filed a complaint against this decision. In a letter of 25 July 2006 the President of the District Court informed him that the Regional Court had returned the case-file to the District Court with an instruction that the judgment of 19 September 2005 should be properly notified to the applicant.

It appears that the proceedings are still pending.

[1] 1 EUR = 26.80 CZK

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 of the Convention of the length and unfairness of the proceedings before the Czech civil courts which, he maintained, had lacked impartiality and independence.

He further complained, with reference to Article 1 of Protocol No. 1, that he had been prevented from using his property.

THE LAW

1. The applicant's first complaint relates to the length of the proceedings, which, 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, 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. This part of the application must therefore by declared inadmissible according to Article 35 §§ 4 of the Convention.

2. The applicant further complained of the unfairness of the proceedings before the Czech civil courts which had lacked impartiality and independence. He further alleged that he had been prevented from using his property in breach of Article 1 of Protocol No.1.

However, the Court observes that the proceedings in the present case seem to be still pending. It therefore finds that this part of the application is premature and must be rejected pursuant to Article 35 §§ 1 and 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