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

FIRST SECTION

DECISION

Application no. 16782/15
Tatjana Ivanovna ZAŇKO
against the Czech Republic

The European Court of Human Rights (First Section), sitting on 23 May 2017 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 April 2015,

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

1. The applicant, Ms Tatjana Ivanovna Zaňko, is a Belarusian national, who was born in 1977 and lives in Brno. She was represented before the Court by Mr D. Zahumenský, a lawyer practising in Brno.

2. 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

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

4. On 23 March 2007 the applicant lodged a petition for substitution of consent of the other parent for filing a request for naturalisation of a minor and, on 21 July 2009, a petition for suspension of paternal rights of the

father, who is a Czech national. Both petitions were registered at the Ústí nad Labem District Court (*okresní soud*).

5. Upon the applicant's motion of 26 August 2009, which was granted on 9 September 2010, the case was transferred to the Brno Municipal Court (*městský soud*) on 24 July 2012.

6. On 20 April 2012 the District Court admitted delays in the proceedings while referring to the international aspects of the case.

7. On 8 October 2012 the applicant submitted a claim for just satisfaction of 130,265 Czech korunas (CZK) (EUR 4,819) under the State Liability Act to the Ministry of Justice, alleging a wrong official procedure resulting from an unreasonable length of the proceedings.

8. Eventually, as the decision on suspension of paternal rights of the father had been already handed down by the courts in Belarus, the applicant decided to withdraw her petitions pending before the Czech courts. The proceedings were discontinued on 11 December 2012 and the decision became final on 27 April 2013.

9. On 26 March 2013 the Ministry of Justice found that there was no wrong official procedure resulting from an unreasonable length of the proceedings and declined to award any compensation to the applicant.

10. On 14 October 2013 the latter filed an action for just satisfaction with the Prague 2 District Court (*obvodní soud*) which, on 30 January 2014, admitted that the applicant's right to have her case dealt with within a reasonable time had been violated, but it dismissed her claim for just satisfaction.

11. Upon the applicant's appeal of 23 May 2014, the Prague Municipal Court (*městský soud*) upheld the above judgment on 10 September 2014.

12. According to the Government, on 1 December 2014 the applicant appealed on points of law to the Supreme Court (*Nejvyšší soud*) which, on 17 June 2015, re-affirmed that there was a rebuttable presumption that excessively long proceedings would cause non-pecuniary damage and that the State might rebut it on a case-by-case basis only, provided that the contrary had been shown. In the applicant's case, however, the Supreme Court found no indication that the above presumption had been rebutted, thereby justifying the award of no financial compensation. It quashed the lower court's judgment and remitted the case for further hearing.

13. The Government further maintained that on 2 December 2015, negotiations between the parties had resulted in the settlement agreement that was further endorsed by the court having jurisdiction over the case. Thus, according to the decision of the Prague Municipal Court of 2 December 2015, approving the settlement reached between the parties, the applicant was awarded compensation in an amount of CZK 102,938 (EUR 3,808), the default interest amounting in total to CZK 21,908.17 (EUR 810) plus the reimbursement of the costs of proceedings

corresponding to CZK 30,637.20 (EUR 1,133). Those amounts were transferred to the applicant on 23 December 2015.

COMPLAINT

14. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings had been excessive.

THE LAW

15. The applicant complained of a violation of her right to a hearing within a reasonable time, as provided for in Article 6 § 1 of the Convention, which, in its relevant part, 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 ..."

A. The parties' submissions

16. The Government argued that the applicant had not exhausted all domestic remedies within the meaning of Article 35 § 1 of the Convention. They pointed out that according to the well-established national case-law, delays in the compensatory proceedings shall be taken into account and the compensation awarded should be increased, but only on demand of the entitled person. However, the applicant had not complained before the domestic courts that the compensatory proceedings had been unreasonably lengthy, nor had she suggested the increase of the compensation on that ground. Moreover, the applicant had not even mentioned her request for increased compensation to be awarded in the course of the domestic negotiations concerning the possibility to reach a friendly settlement of her case pending before the Prague Municipal Court (see paragraph 13 above).

17. The Government further submitted that the applicant could not, or could no longer, claim to be a victim of a violation of Article 6 § 1. The domestic courts had explicitly admitted that the original proceedings in her case were unreasonably lengthy. Moreover, the Government had initiated negotiations with the applicant to settle the case amicably. The applicant was awarded a relatively high compensation amounting in total to roughly EUR 5,751. The Government were convinced that the compensation awarded to the applicant by virtue of the settlement agreement was sufficient to deprive her of a victim status in the sense of Article 34 of the Convention.

18. As to the merits, the Government argued that the case is manifestly ill-founded or, alternatively, that there has been no violation of Article 6 § 1 of the Convention.

19. The applicant contested these arguments. She maintained that a compensatory remedy could be considered an effective remedy for a violation of the right to a reasonable length of proceedings provided that it was dealt with by national authorities within a reasonable time; however this was not the case. According to the Court's case-law, the compensatory proceedings should not exceed two years. Nonetheless, the applicant had been compensated within 14 months. Thus, the compensatory remedy could not be considered effective and Articles 6 § 1 and 13 of the Convention were violated. This situation could still be remedied if the decision body acknowledged an unreasonably length of the compensatory proceedings and, accordingly, increased the compensation to be awarded. However, the negotiations were carried out only in respect of the compensation for the original proceedings. It was for the Government, if they had wished to compensate the applicant also for the length of the compensatory proceedings, to include it into the negotiations and to make her a relevant offer, which did not happen. The Government, by all means, were reluctant to increase the award due to the applicant.

20. In their complementary observations the Government maintained that since the applicant had revealed in her observations the details of the friendly settlement negotiations, she had abused of the right of individual petition. Moreover, the applicant made only that stage a new complaint submitting that the compensatory proceedings had been excessively long and that there had been a violation of Article 13 of the Convention. The Government maintained that in respect of the length complaint, the applicant had not exhausted all domestic remedies and her Article 13 complaint was outside the six-month time-limit provided for in Article 35 § 1 of the Convention.

B. The Court's assessment

21. First, in respect of the length complaint regarding the main proceedings, the Court reiterates that a decision or measure favorable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, § 36; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Fešar v. the Czech Republic*, no. 76576/01, § 62, 13 November 2008).

22. In the present case, the Court observes that the Prague 2 District Court expressly stated in its judgment of 30 January 2014 that the applicant's right to have her case heard and decided within a reasonable

time had been violated in the proceedings before the Brno Municipal Court (see paragraph 10 above). Moreover, on 2 December 2015 the parties concluded a friendly settlement, subsequently approved by the court, and the applicant was paid amount of CZK 102,938 (EUR 3,808), the default interest amounting in total to CZK 21,908.17 (EUR 810) plus the reimbursement of the costs of proceedings corresponding to CZK 30,637.20 (EUR 1,133) (see paragraph 13 above), since the compensation was paid to the applicant on 23 December 2015, the Court considers that it was effected promptly (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 99, ECHR 2009).

23. Thus, in view of the above, the Court notes that in the decisions regarding the main proceedings a violation of the applicant's right to trial within a "reasonable time" guaranteed by Article 6 of the Convention was explicitly recognised by the national courts and that the applicant was awarded appropriate and sufficient redress as a result of later friendly settlement negotiations.

24. The Court thus accepts the Government's argument concerning the loss of the applicant's victim status, and, accordingly, the application must be rejected pursuant to Article 35, §§ 3 and 4.

25. Second, the Court observes that the applicant failed to raise before the national authorities her complaint that the length of the compensatory proceedings had been excessive and that, therefore, the compensatory remedy could not be considered an efficient remedy under Article 13 of the Convention. Accordingly, this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

26. In the light of these considerations, the Court does not deem it necessary to consider under this head other objections and arguments of the parties.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2017.

Renata Degener
Deputy Registrar

Krzysztof Wojtyczek
President