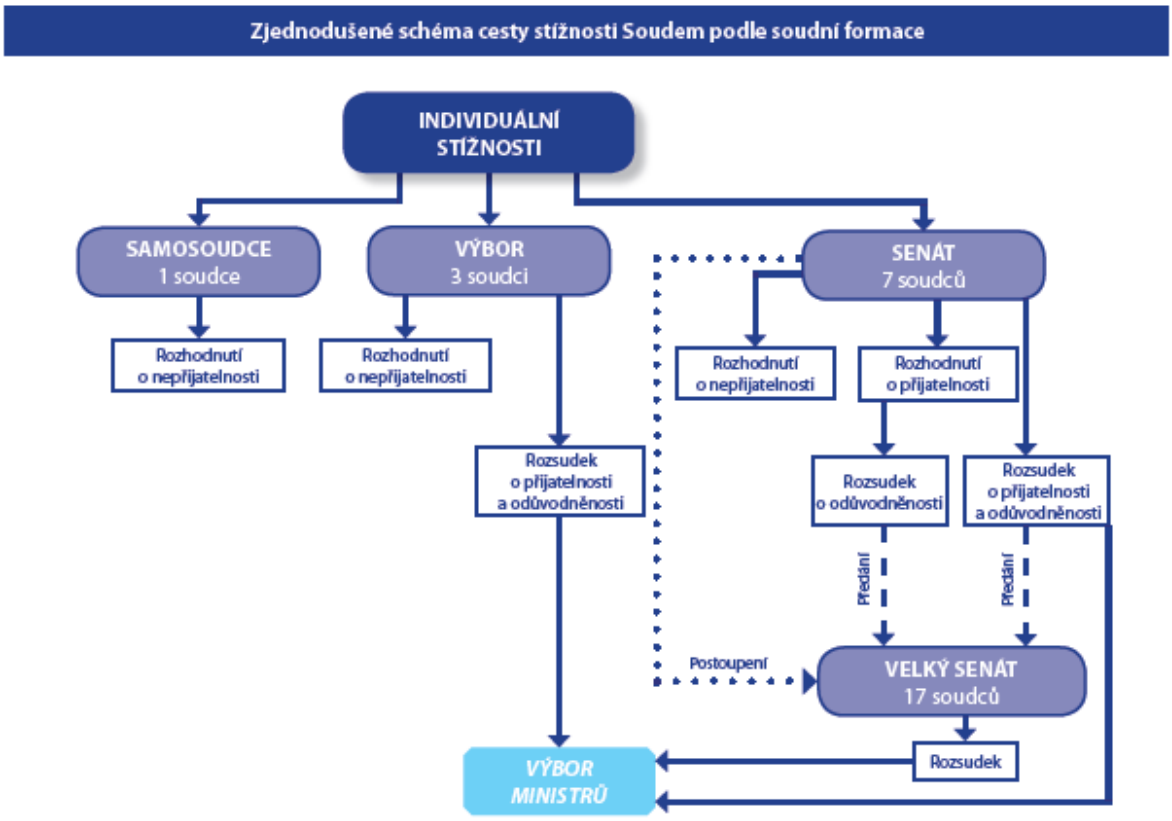
Seznam příloh

Příloha č. 1



Dostupné z: http://www.echr.coe.int/Documents/Case_processing_Court_CES.pdf

Příloha č. 2

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

FIFTH SECTION

DECISION

Application no. 25442/12
Ludvík KOHOUTEK
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 27 August 2013 as a Committee composed of:
Angelika Nußberger, *President*,
André Potocki,
Aleš Pejchal, *judges*,
and Stephen Phillips, *Deputy Section Registrar*,
Having regard to the above application lodged on 16 April 2012,
Having regard to the declaration submitted by the respondent Government on 30 April 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,
Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Ludvík Kohoutek, is a Czech national, who was born in 1956 and lives in Hodějice. He was represented before the Court by Mr Z. Pokorný, a lawyer practising in Brno.

The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

The applicant complained under Article 6 of the Convention about the length of the proceedings to which he was a party.

THE LAW

The applicant complained about the length of proceedings. He relied on Article 6 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 30 April 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government hereby acknowledge that in case no. 25442/12, there has been a violation of Article 6 § 1 of the Convention on account of an excessive length of judicial proceedings to which the applicant was a party at national level.
>
> The Government offer to pay the applicant a sum of EUR 1,580 (one thousand five hundred eighty euros). The Government note in this context that according to Section 3(4)(d) of Act no. 586/1992, on income tax, payment of just satisfaction awarded by the Court or stemming from a friendly settlement of the case before the Court is not subject to personal income tax.
>
> This sum will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points."

By a letter of 23 May 2013, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Suhwitska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against the Czech Republic, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Wende and*

Kukówka v. Poland, no. 56026/00, 10 May 2007; *Golha v. the Czech Republic*, no. 7051/06, 26 May 2011).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President

Příloha č. 3

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 27/08/2015

DH-DD(2015)848

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action plan (31/07/2015)

Communication from the Czech Republic concerning the case of Delta Pekárny a.s. against Czech Republic (Application No. 97/11).

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Plan d'action

Communication de la République tchèque concernant l'affaire Delta Pekárny a.s. contre République tchèque (Requête n° 97/11) (***anglais uniquement***)

Execution of the judgment of the European Court of Human Rights
in case no. 97/11 – *Delta Pekárny a.s. v. the Czech Republic*
Action Plan submitted by the Czech Government on 31 July 2015

In its judgment of 2 October 2014, which, in accordance with Article 44 § 2 b) of the Convention, became final on 2 January 2015, the European Court of Human Rights held that there had been a violation of Article 8 of the Convention on account of the fact that the on-site inspection in the premises of the applicant company, carried out by the Czech Office for the Protection of Competition ("the OPC") in 2003, was not accompanied by sufficient procedural safeguards against arbitrariness. The present report is intended to inform the Committee of Ministers of individual and general measures of execution of the judgment.

I. INDIVIDUAL MEASURES

Just satisfaction awarded by the Court in the amount of EUR 5,000 under the head of costs and expenses was paid to the applicant company on 17 March 2015.[1]

Furthermore, Article 119 of the Constitutional Court Act offers the possibility to request reopening of the proceedings before the Constitutional Court. The applicant company indeed availed itself of this possibility on 29 January 2015. As for the moment, its request remains pending.

In view of the aforementioned, the Government are convinced that no other individual measures need to be adopted in this case.

II. GENERAL MEASURES

In its judgment, the Court found in particular that the applicant company had at its disposal no effective remedy to challenge the due conduct of the inspection, since the assessment of adequacy, duration and scope of the inspection had not been subject to judicial review. Following measures have been adopted.

First, according to usual practice, soon after the delivery of the Court's judgment, the Ministry of Justice published its translation on its website. Besides that, the translated judgment and its summary were sent to all State authorities involved in the case at hand, including courts and the OPC.

Second, in reaction to the judgment, the OPC announced a temporary suspension of all on-site inspections. Subsequently, the Government Agent held consultations among the State

[1] Details could be requested from the Office of the Czech Government Agent.

authorities involved in order to assess the various possibilities of general measures to execute the Court's judgement. The prevailing consensus emerged that the existing judicial interpretation of Article 82 of the Code of Administrative Justice be changed.

The abovementioned provision sets out the conditions for submitting an action against administrative body's illegal interference. The Court itself in its judgment remarked that this action appeared to be the most adequate mechanism of protection in situations like that of the applicant company. However, the Court also pointed out that in the circumstances of the case, this action was clearly not destined to succeed, first because according to the wording of Article 82 as in force in the relevant period, this action had to be directed against interference in course or susceptible of repetition, and second because in the light of the existing case law of the Supreme Administrative Court, this action had a subsidiary character in respect to the action against administrative body's decision under Article 65 of the Code of Administrative Justice (see § 89 of the Court's judgment).

Nevertheless, the first of these impediments was removed in the meantime as a result of a legislative amendment: as of 1 January 2012, the action under Article 82 may be filed also against interference which has already been terminated, and the administrative court may declare such interference as having been carried out contrary to law (the Court took note of this development in § 43 of its judgment).

As for the second obstacle outlined above, in their response to the Government Agent, the State authorities concerned have agreed with the abovementioned remark contained in the Court's judgment, namely that the action under Article 82 of the Code of Administrative Justice appears to represent the most appropriate procedural tool in the given context. Furthermore, they have acknowledged that the question of relationship between the actions under Articles 82 and 65 of the Code of Administrative Justice is a matter of judicial interpretation and as such, it can be subject to change via that interpretation. Lastly, they specified that with the view of implementing the Court's judgment, the required change would mean to start admitting the actions raised under Article 82 against on-site inspections effectuated by administrative bodies even in situations where these inspections can eventually, i.e. at the end of the respective administrative proceedings, be challenged also by the action against administrative body's decision under Article 65 of the Code of Administrative Justice.

Third, after this outcome of consultations among the State authorities involved, in March 2015 the OPC published a press release on its website, announcing that it will resume its on-site inspections. The OPC underlined that in the light of the Court's judgment in the case at hand, the national courts were obliged to interpret the relevant domestic legislation accordingly, which meant that they should alter the previous judicial interpretation of Article 82 of the Code of Administrative Justice in a way suggested above. The OPC explicitly declared that when an on-site inspection has been carried out, it is subject to an immediate

judicial control through the action for the protection against illegal interference which the competitors may lodge.[2]

The Government would note that due to the relatively short lapse of time since the Court's judgment, the respective change of the case law has not yet taken place. However, given that the domestic courts have been specifically alerted to this issue and its implications relating to the Convention, they are likely to adopt the position outlined above once they are given the opportunity to do so within the context of a particular litigation.

Fourth, in addition, an amendment to the Code of Administrative Justice in order to explicitly enshrine that the action under Article 82 may be filed against all on-site inspections carried out by administrative bodies has been considered, but no final decision in this regard has been taken. In the opinion of the Government, should there the case law of administrative courts change, as explained above, a legislative amendment would become superfluous for the purposes of the implementation of the Court's judgment.

III. CONCLUSION

The Government of the Czech Republic conclude that the judgment does not require any specific individual measures to be taken. As for general measures, the Government will provide the Committee of Ministers with an update on any advancement in the area described under *third*, as well as on the measures mentioned under *fourth* should these prove to be necessary, by 30 June 2016.

* * *

[2] The complete text of the press release in Czech is available at http://www.uohs.cz/cs/informacni-centrum/tiskove-zpravy/hospodarska-soutez/1945-mistni-setreni-u-soutezitelu-pokracuji-nasledna-soudni-ochrana-je-dostatecna.html.

Příloha č. 4

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)225 on the judgments of the Court of Human Rights in 78 cases against the Slovak Republic concerning excessive length of civil proceedings

(See Appendix for the list of cases in the Jakub group)
(adopted by the Committee of Ministers on 2 December 2010,
at the 1100th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"),

Considering the number of judgments of the European Court of Human Rights (hereinafter "the Court") finding violations by the Slovak Republic of Article 6, paragraph 1, of the Convention, due to excessive length of civil proceedings (see Appendix for the list of cases in the Jakub group);

Considering that in some of these judgments the Court moreover found a violation of Article 13 of the Convention due to the lack of an effective domestic remedy against excessive length of proceedings (Dobál, Dudičová, Komanický No. 2, Múčková, Preložník, Šidlová);

Recalling that delays in the administration of justice constitute a grave danger to the respect for the rule of law and access to justice;

Recalling furthermore Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies;

Having examined the information regularly supplied by the Slovak authorities concerning the measures taken or envisaged in response to these judgments (see Appendix);

Individual measures

Having noted the individual measures taken by the authorities to afford the applicants redress of the violations found (restitutio in integrum), in particular the due payment of the amounts which the Court awarded by way of just satisfaction and all possible steps to expedite the proceedings that were still pending after the Court's finding of violations;

Welcoming the conclusion of the domestic proceedings at issue in 63 of the 78 cases concerned;
Noting with concern, however, that 15 cases are still pending before the national courts (Hrobová, Lubina, Orel, Rišková, Softel No. 1, Softel No. 2, Dudičová, Komanický No. 2, Rapoš, Španír, Chrapková, Keszeli, Kučera, Majeríková, Sika No. 6);

General measures

Measures to remedy the problem of excessive length of court proceedings

Welcoming the many organisational reforms adopted between 2007 and 2010 by the authorities to remedy these problems, and in particular:

increase in the number of judges,

creation of new courts,
development of the data processing system and of court management;

Noting with interest the additional measures envisaged by the authorities, such as the Bill assigning judicial groundwork to auxiliary judges and registrars, enabling the judges to concentrate exclusively on court decisions, and encouraging the authorities to implement these schemes;

Also welcoming the two reforms to the Code of Civil Procedure ("little" and "big" amendment of the Code) and of the law on court costs, which came into force in 2007 and 2008, with the following results in particular:
simplification of procedures for service of documents,
reduction of court costs,
introduction, in proceedings brought against the administrative authorities, of the possibility for the public prosecutor to lodge with the court an application to compel the administration concerned to act,
harmonisation of the procedure for challenging judges,
extension of the possibility for courts to determine a case without a hearing, simplification of the inheritance procedure,
introduction of a simplified procedure for settlement of minor litigation,
broadening of the scope of the legal rules governing court orders,
introduction of the possibility for courts to appoint joint counsel for several parties to the one set of proceedings,
limitation of the possibility for courts of appeal and cassation to challenge or quash rulings delivered by a lower court and to refer them back for review;

Noting that, having undergone constant increase, particularly between 2002 and 2004, the average length of civil proceedings now appears to be decreasing regularly, having dropped from 17.56 months in 2004 to 13 months in 2009;

Considering nonetheless that the impact of the reforms adopted and envisaged concerning the length of civil proceedings and their real capacity to prevent similar violations will be fully ascertainable only on the basis of statistical data gathered over a longer period;
Measures to provide an effective remedy

Noting that a reform to the Constitution which came into force in 2002 introduced a constitutional petition for complaints of violations of human rights protected by international treaties and that the Court has already found, in particular in the decision on admissibility in the case of Andrášik and others of 22/10/2002, that the new procedure represented an effective remedy within the meaning of Article 13 of the Convention;

Recalling that in several cases the Court has nevertheless observed certain difficulties with the application of this remedy:

a) difficulties linked with dismissal of the petition when a case is no longer pending before the court responsible for alleged delays

Noting with satisfaction in this matter that examples of Constitutional Court judgments in 2003 and 2005 were supplied by the authorities, bearing witness to that court's new practice, in accordance with European Court case-law (Jakubíčka and Magyaricsová), of taking into account the length of the proceedings before several degrees of instance when it entertains petitions against the length of proceedings;

b) difficulties linked with the amounts awarded in compensation by the Constitutional Court

Recalling also that the Court noted in several cases (in particular Magura, Rišková, Šidlová) the manifest inadequacy of the compensation awarded by the Slovak Constitutional Court for excessive length of civil proceedings, amounting to sums from under 5 % to 25% of what the Court itself would have awarded under Article 41 of the Convention in respect of these delays;

Noting with interest in this context that in twelve decisions on petitions against the length of civil proceedings, delivered in 2009, the Constitutional Court awarded compensation ranging from 25% to more than 100 % of the amounts that could be awarded by the Court for these delays;

c) difficulties linked with the ineffectiveness of the Constitutional Court's injunctions to expedite proceedings

Recalling furthermore that in some cases (Vičanová, Komanický No. 2) the Court criticised the ineffectiveness of the Constitutional Court's injunction to expedite proceedings;

Noting with interest in this connection that a system to follow up Constitutional Court decisions finding the length of proceedings excessive and ordering that they be expedited was introduced in 2010, but noting that confirmation of the expeditive effect of the Constitutional Court's injunctions is still awaited;

d) difficulties linked with the criteria applied by the Constitutional Court to determine the length of proceedings, including that of suspended proceedings

Recalling, finally, that in its judgments the Court held that the applicants did not have an effective remedy because of the Constitutional Court's practice of dismissing petitions concerning cases where the length of the proceedings had not been considered great enough to justify the complaint (Dudičová) or cases where the domestic proceedings were suspended (Dobál);

Noting in this connection that examples of decisions testifying to the Constitutional Court's present practice are still awaited;

INVITES the Slovak authorities to do their utmost to expedite the proceedings still pending before the Slovak courts, so that they may be concluded rapidly, and to keep the Committee informed of their progress;

ENCOURAGES the Slovak authorities to persevere in their efforts to solve the general problem of excessive length of civil proceedings and to consolidate the promising downward trend currently observed in the average length of proceedings;

INVITES the authorities to continue keeping the Committee informed of developments in the matter, especially as regards the impact of the measures and the trend in the average length of proceedings;

INVITES the authorities furthermore to provide the Committee with additional information enabling it to satisfy itself that the domestic remedy against length of proceedings functions in accordance with the criteria laid down by the Court;

DECIDES to resume consideration of these cases at its 1108th DH meeting (March 2011).

Příloha č. 5

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

CONSEIL DE L'EUROPE

MINISTERS' DEPUTIES Resolutions **CM/ResDH(2017)25** 1 February 2017

Resolution
Execution of the decision of the European Court of Human Rights Adolf and Elke Burgstaller against Austria

(Adopted by the Committee of Ministers on 1 February 2017 at the 1276th meeting of the Ministers' Deputies)

Application No.	Case	Date of the decision
58461/13	Adolf and Elke BURGSTALLER	31/05/2016

The Committee of Ministers, under the terms of Article 39, paragraph 4, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of friendly settlements as they appear in the decisions of the European Court of Human Rights (hereinafter "the Convention" and "the Court"),

Considering that in this case the Court, having taken formal note of the friendly settlement reached by the government of the respondent State and the applicant, and having been satisfied that the settlement was based on respect for human rights as defined in the Convention or its Protocols, decided to strike this case from its list;

Having satisfied itself that the terms of the friendly settlement were executed by the government of the respondent State,

DECLARES that it has exercised its functions under Article 39, paragraph 4, of the Convention and

DECIDES to close its examination.

Website: www.coe.int/cm