



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

FIFTH SECTION

CASE OF JANÁČEK v. THE CZECH REPUBLIC

(Application no. 9634/17)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Constitutional Court's failure to communicate written observations of the general courts resulting in applicant's inability to comment on them

STRASBOURG

2 February 2023

FINAL

02/05/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Janáček v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani, *President*,

Carlo Ranzoni,

Lado Chanturia,

María Elósegui,

Mattias Guyomar,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 9634/17) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Ladislav Janáček (“the applicant”), on 31 January 2017;

the decision to give notice to the Czech Government (“the Government”) of the complaint raised under Article 6 § 1 of the Convention regarding the Constitutional Court’s failure to communicate to the applicant the written observations of the general courts involved in his case, as a result of which the applicant was unable to comment on them, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 10 January 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the failure of the Constitutional Court to communicate to the applicant the written observations of the general courts involved in his case, as a result of which the applicant was unable to comment on them. The case raises an issue under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Říčany u Prahy. The applicant was represented by Mr D. Záhumenský, a lawyer practising in Brno.

3. The Government were represented by their former Agent, Mr V.A. Schorm, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. On 17 December 2013 the Zlín District Court (*okresní soud*) ruled on the division of the matrimonial property (*vypořádání společného jmění manželů*) of the applicant and his former wife. The court also ordered the applicant to pay to his former wife, in settlement of the matrimonial property,

300,000 Czech korunas (CZK) (10,882 euros (EUR) at the relevant time), within three days and CZK 1,759,627 (EUR 63,825) within one year, from the date on which the judgment came into force.

6. The District Court made use of different expert opinions to assess the value of the matrimonial property.

7. The expert opinion drawn up by company O. did not, according to the court, unequivocally assess the value of the applicant's business assets. The court therefore appointed expert V. to evaluate this matter. However, having been informed that she would only be able to start her evaluation after eight months, the court appointed expert S., who submitted his expert opinion on 15 November 2012.

8. The court also received, on 3 December 2013, an opinion written by expert M. which was provided on the applicant's initiative. By an email of 5 December 2013, the presiding judge of the chamber to which the applicant's case had been assigned requested expert S. to submit comments on that expert opinion. S. did so on 16 December 2013. The District Court then concluded that expert S. had given convincing reasons for the findings in his expert report, and outlined the reasons for which the opinion of expert M. could not be used.

9. On 14 January 2014 the District Court invited the applicant to pay court expenses amounting to CZK 66,856.35 (EUR 2,439).

10. The applicant appealed, and on 24 March 2015 the Brno Regional Court (*krajský soud*) partially altered the first-instance judgment, ordering the applicant, *inter alia*, to pay to his former wife, in settlement of the matrimonial property, a total of CZK 2,134,878 (EUR 77,792), of which CZK 1,000,000 (EUR 36,438) was to be paid within six months from the date on which the judgment on appeal came into force, and CZK 1,134,878 (EUR 41,353) within one year from the same date.

11. The court admitted in evidence a statement by expert S. in reply to the parties' comments regarding the expert opinion he had drawn up on 10 November 2014. It also heard expert S. and two other experts. The court described in detail the evaluation method used by this expert and the evaluation procedure followed by him. It stated, *inter alia*, as follows:

"Expert [S.] made his [choice of] evaluation method of [the parties'] assets logically and ... justified it convincingly, rebutting [, at the same time,] the parties' objections to the expert opinions ... convincingly, logically, and with due expertise, and the appellate court [consequently] does not have any doubt about the correctness of the expert opinions prepared by expert [S.]. Accordingly, the appellate court based its decision on the expert opinions drawn up [by him]."

The court further ordered the applicant to pay court expenses in respect of the proceedings before the first and second-instance courts in an amount of CZK 73,328.35 (EUR 2,672), and court fees of CZK 14,500 (EUR 528), within thirty days from the date on which the judgment on appeal entered into force.

12. On 18 November 2015 a bailiff started execution proceedings in respect of the amount of CZK 1,000,000 (see paragraph 10 above).

13. On 17 December 2015 the applicant was officially informed of an execution order to recover the amount of CZK 1,000,000.

14. On 12 January 2016 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on points of law by the applicant as manifestly ill-founded.

15. On 6 September 2016 the bailiff ordered that the applicant's immovable property be sold.

16. On 14 April 2016 the applicant lodged a constitutional complaint in which he complained, *inter alia*, that (i) the District Court and Regional Court had based their respective decisions solely on the expert report drawn up by expert S. and without relevant justification, in which regard the email communication was mentioned (see paragraph 8 above); (ii) the Regional Court had dismissed the applicant's request to order an alternative expert report; and (iii) owing to the courts' formalistic approach, the matrimonial property had not been correctly divided and this was to the applicant's detriment. The applicant invoked, in this respect, Article 11 (protection of property) and Article 36 § 1 (fair trial) of the Czech Charter of Fundamental Rights and Freedoms, Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

17. On an unspecified date, the Constitutional Court invited the District Court, Regional Court and Supreme Court to submit comments on the applicant's constitutional complaint.

18. On 11 May 2016 the presiding judge of the chamber of the Supreme Court which had examined the applicant's appeal on points of law submitted comments in respect of the applicant's constitutional complaint, stating that the applicant's appeal on points of law had been rejected as inadmissible without a decision on the merits. He further explained the general principles of admissibility of an appeal on points of law, their application to the present case and the reasons for the shortened reasoning of the Supreme Court's decision. The presiding judge lastly stated as follows:

"Accordingly, I suggest rejecting the constitutional complaint, which lacks any specific arguments against the conclusion on the inadmissibility of the appeal on points of law. I agree to waive an oral hearing and, should such a hearing be ordered, I kindly ask to be excused."

19. The judge who had presided over the relevant chamber of the District Court (see also paragraph 7 above) replied on 17 May 2016, referring largely to the reasoning of the decisions adopted by the Regional Court and Supreme Court. He stated, *inter alia*, the following:

"As regards expert S. and 'my non-standard relationship with him', I can merely say that I approached expert S. only after other experts had told me that they could prepare an expert opinion only after a considerable time Until then, I did not know expert S. at all The only reason I asked him by email to give his opinion was to speed up the process and avoid burdening it with a formal procedure ..."

20. A member of the chamber which examined the applicant's case at the appellate level submitted his two-page comments on 25 May 2016, which were focused on the way in which expert S. had been appointed, his evaluation of the matrimonial property and the reasons why the Regional Court had drawn on his expert opinion when deciding the case (see also paragraph 8 above).

21. On 19 July 2016, following a written procedure, the Constitutional Court dismissed the applicant's constitutional complaint, finding, *inter alia*:

“To assess the case, the Constitutional Court requested observations from the general courts. Having familiarised itself with their contents ... the Constitutional Court has come to the conclusion that the constitutional complaint is manifestly ill-founded.”

22. On 18 August 2016, after having received the Constitutional Court's decision on 3 August 2016, the applicant's legal representative consulted his client's case file concerning his constitutional complaint.

23. In a letter of 19 September 2016 the applicant requested an explanation from the Constitutional Court as to why he had not been given an opportunity to familiarise himself with the written observations of the Zlín District Court, the Brno Regional Court and the Supreme Court in order to have an opportunity to express his views.

24. In its reply of 29 September 2016, the Constitutional Court stated that as the observations had not been sent to the applicant, the judge rapporteur had probably considered that they contained no new information or legal arguments.

25. On 12 March 2017 the bailiff published details about an electronic auction to sell the applicant's immovable property. The results of the electronical auction remain unclear.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LAW ON THE CONSTITUTIONAL COURT NO. 183/1992 (THE CONSTITUTIONAL COURT ACT)

26. Under section 28(1) and (2) of the Constitutional Court Act, the parties to proceedings are the appellant and those specified by the Act. Persons to whom the Act grants the status of joined parties may waive that status. They have the same rights and duties as other parties to the proceedings. Lower courts involved in a particular case have the status of joined parties.

27. Section 32 provides that parties and joined parties are entitled to give their views on the constitutional appeal, make submissions to the Constitutional Court, examine the case file (with the exception of voting records), take excerpts from and copies of it, take part in any oral hearing in the matter, put forward evidence, and be present during any taking of evidence carried out outside an oral hearing.

28. Under section 40(2), if the request concerns a matter within the jurisdiction of a chamber, it is assigned to a judge rapporteur and to a chamber designated by the timetable.

29. Under section 42(4), the judge rapporteur must, without delay, send the constitutional complaint to the other parties and, where appropriate, to the joined parties as well, with a request to submit their written observations on the complaint within time-limits fixed by him or her, or as provided by the Act.

30. Section 43(2)(a) provides that, without holding an oral hearing and without the parties being present, the chamber may dismiss the appeal if it is manifestly ill-founded.

31. Section 49(1) provides that any means which may serve to establish the facts of the case may be used in evidence, in particular the testimony of witnesses, expert opinions, reports and statements of State authorities and legal persons, documents, results of inquiries and the testimony of parties.

II. EVOLVING PRACTICE OF THE CONSTITUTIONAL COURT IN THE MATTER

32. The Constitutional Court has progressively developed its practice regarding the handling of observations submitted by other parties on individual constitutional complaints, in reaction to the evolving case-law of the Court in cases brought against the Czech Republic.

33. Following the *Milatová* judgment (*Milatová and Others v. the Czech Republic*, no. 61811/00, ECHR 2005-V), the Constitutional Court was invited to review its practice concerning the right of applicants to a fair trial. The issue was discussed by a plenary session of the court which adopted a recommendation on 25 October 2005. According to that recommendation, where parties have been asked to submit observations reporting judges are invited to communicate them to applicants for possible comments when they contain, or might contain, new facts, allegations or lines of arguments (see Resolution ResDH(2006)71 of 20 December 2006, point II. General measures, ad 1)).

34. On 23 July 2007 a plenary session of the Constitutional Court adopted an internal recommendation to judge rapporteurs, recommending that they send the observations of other parties to applicants for their information, giving them a reasonable time in which to reply where the observations contain any new facts, claims or arguments, including where there are doubts as to whether or not they actually contain such facts, claims or arguments (see the relevant domestic law and practice cited in *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained that the written observations of the general courts involved in the examination of his case, on which the Constitutional Court based its decision, had not been communicated to him and he could not comment on them. He relied on Article 6 § 1 of the Convention which, so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ...”

A. Admissibility

1. *The parties’ observations*

36. The Government maintained that in the applicant’s case any violation had been merely formal, as the observations of the other parties to the proceedings on the constitutional complaint did not contain any new or relevant arguments (see *Holub*, cited above). Moreover, the Constitutional Court had not relied on them.

37. Relying on the decision adopted by the Court in the case of *Korolev v. Russia* ((dec.), no. 25551/05, ECHR 2010), the Government observed that the District Court had merely referred to the reasoning of the Regional Court and Supreme Court. Moreover, the court’s remarks concerning its informal email contact with expert S. could not be considered a new or relevant fact. The comments by the Regional Court might seem more extensive, but in substance they only reiterated the arguments already contained in the reasoning of the court’s original decision and did not contain any new facts or arguments. Finally, the observations of the Supreme Court had not indicated any new or relevant information either.

38. The Government therefore concluded that the applicant had not suffered any significant disadvantage through not having been able to respond to the domestic courts’ comments.

39. The applicant argued that the proceedings at hand had concerned the division and settlement of matrimonial property, including the business assets of both former spouses, which could not be considered a matter of trivial value. His case thus differed from that of *Korolev*, referred to by the Government, in which the subject matter had been an amount of EUR 22.50.

2. *The Court’s assessment*

40. The Court notes that the Government’s preliminary objection is closely linked to the merits of the present application and should therefore be joined to the merits.

41. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

42. The applicant maintained that as the Constitutional Court had failed to offer him an opportunity to react to the arguments submitted by the other parties to the proceedings before it, that court had violated the principle of adversarial trial. According to him, the other parties' observations had been important for the examination of his case and there were no extraordinary circumstances which would justify that failure.

43. The applicant added that the Court had previously ruled on the obligation of the Constitutional Court to inform parties to proceedings before it of any observations or other documents submitted by the other parties (he referred to *Mareš v. the Czech Republic*, no. 1414/03, § 30, 26 October 2006, and *Milatová and Others*, cited above, § 65). The circumstances of the instant case were similar to those of the cases just cited.

44. The Government considered that the issue of the validity of the applicant's complaint concerning the fairness of the proceedings before the Constitutional Court was closely linked to the admissibility of that complaint. Referring to their arguments regarding the admissibility of the present application (see paragraphs 36-38 above), the Government submitted that the documents in question that had not been sent to the applicant for comment were insignificant from the perspective of the outcome of the proceedings before the Constitutional Court, because they had not in fact influenced the Constitutional Court's position.

45. Should the Court accept the applicant's complaint raised under Article 6 § 1 of the Convention, the Government suggested that it declare that the issue in question amounted to a minor violation of the right to adversarial proceedings which did not jeopardise the overall fairness of the proceedings. They concluded that there had been no violation of Article 6 § 1 of the Convention.

2. The Court's assessment

46. The Court reiterates that the right to adversarial proceedings entails parties' right to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision. Parties to any dispute may legitimately expect to be consulted about whether a specific document calls for their comments. What is particularly at stake is applicants' confidence in the workings of justice, which is based on, *inter alia*, the assumption that they are afforded the opportunity to express their views on

every document in the case file. This requirement applies equally to non-binding advisory opinions intended to assist the court, as well as to information and opinions obtained by the court on its own initiative in order to reach an informed decision. Moreover, parties have a legitimate interest in receiving copies of written observations containing reasoned opinions on the merits, and it is only for them to judge whether or not a particular document calls for their comments. The Court does not need to determine whether the omission to communicate a document caused the applicants prejudice, as the existence of a violation is conceivable even in the absence of prejudice (see *Vorotnikova v. Latvia*, no. 68188/13, §§ 21-22, 4 February 2021, with further references).

47. The Court has already dealt with a number of cases brought against the Czech Republic raising the issue of non-communication of various documents submitted by different parties to proceedings before the Constitutional Court (see *Milatová and Others*, cited above – written observations of a land office and a lower court; *Mareš*, cited above – written observations of a lower court and the Supreme Court; *Vokoun v. the Czech Republic*, no. 20728/05, 3 July 2008 – written observations of the Supreme Court; *Palšovič v. the Czech Republic*, no. 39278/04, 3 February 2011; *Hubka v. the Czech Republic*, no. 500/06, § 36, 3 February 2011 – written observations of the Ministry of Defence and those of the Supreme Administrative Court; *BENet Praha, spol. s.r.o. v. the Czech Republic*, nos. 33908/04 and 4 others, 24 February 2011 – submissions of the Prosecutor General; *3A.CZ s.r.o. v. the Czech Republic*, no. 21835/06, 10 February 2011; *Kysilková and Kysilka v. the Czech Republic*, no. 17273/03, 10 February 2011 – written observations of a lower court; and *Janyr v. the Czech Republic*, no. 42937/08, 31 October 2013 – written observations of a municipal prosecutor, lower courts and of the Supreme Court).

48. The Court also reiterates that the right to adversarial proceedings is not absolute, and its scope may vary depending on the specific features of the proceedings in question. In a few cases with very specific circumstances the Court held that the non-communication of a document submitted in the proceedings and the consequent lack of opportunity for the applicant to comment on it had not undermined the fairness of the proceedings, in so far as it judged that such an opportunity would not have had any impact on the outcome of the case, in which the legal finding had never been in doubt (see *Vokoun*, cited above, § 26, with further references).

49. In the instant case, the Court acknowledges that the Constitutional Court, while it mentioned the fact that it had solicited observations from the general courts involved in the applicant's case and that it had studied those observations in order to reach its conclusions, did not refer expressly to concrete statements or other elements contained in the observations at issue. The Court notes, however, that those observations related directly to the

grounds of the complaint, namely the assessment of evidence, including the allegedly unjustified choice of the District Court and Regional Court to base their decisions on the expert report drawn up by expert S. and their allegedly formalistic approach, which led to the division of the matrimonial property to the applicant's detriment (see also paragraph 16 above). The role of the Constitutional Court was to assess whether these allegations constituted a violation of the applicant's rights under Article 11 and Article 36 § 1 of the Czech Charter of Fundamental Rights and Freedoms. The consequences of the failure to communicate the observations submitted by the general courts cannot, therefore, be underestimated (see, *mutatis mutandis*, 3A.CZ s.r.o., cited above, § 34).

50. The Court further notes that the Constitutional Court has established internal regulations regarding the handling of observations submitted by other parties in relation to individual constitutional complaints (see paragraphs 32-34 above). Indeed, since May 2011, such observations should always be sent to appellants except in cases where they merely refer to the other parties' own decisions challenged by the constitutional complaint.

51. The Court notes that in some cases it rejected complaints concerning failure by the Constitutional Court to communicate observations to one of the parties to the proceedings on the basis that the applicant had suffered no significant disadvantage within the meaning of Article 35 § 3(b), as in force prior to the entry into force of Protocol no. 15 to the Convention (see, among others, *Holub*, cited above; *Čavajda v. the Czech Republic* (dec.), no. 17696/07, 29 March 2011 and *Matoušek v. the Czech Republic* (dec.), no. 9965/08, 29 March 2011). It took into account two factors: that the observations in question were limited to a mere reference to the respective party's own decisions adopted in the case and that the Constitutional Court did not base its decision on the non-communicated observations. The Court considered that in such cases it would be redundant, from the point of view of the proper administration of justice in the spirit of procedural economy, for the Constitutional Court to submit their comments to the applicant for possible reply (*ibid*).

52. The Court observes that in the present case, despite the fact that the general courts' written comments were not limited to a mere reference to their respective decisions adopted in the case but went beyond the reasons adduced in those decisions (see paragraphs 18, 19 and 20 above), they were not communicated to the applicant, who certainly had a legitimate interest in reacting to them. Moreover, the Constitutional Court formulated its conclusions in a manner indicating that it had actually based its decision on those comments.

53. The Court considers that the above distinguishes clearly the present case from the above-mentioned cases (see paragraph 51 above). Furthermore, the Court is of the view that the principles underlying its case-law on equality of arms and fairness of proceedings must be seen as requiring the

Constitutional Court, in all cases in which it decides that there is no need to communicate one party's observations to the other parties in proceedings before it, to state clearly in its decision the reasons for reaching such a conclusion. Having regard to the Court's case-law according to which it is only for the party concerned to judge whether or not a particular document calls for their comments (see *Vorotnikova*, cited above, §§ 21-22), very weighty reasons must be given for omitting to communicate observations that have been accepted and included in the file for consideration of the deciding court. Indeed, a decision not to communicate must be duly motivated and can only be based on the fact that the other parties in their observations did strictly nothing more than referring to their own publicly available decisions, without raising any arguments beyond those that had already been explicitly expressed in those decisions, and on the Constitutional Court's clear intention not to use those observations in reaching its decision on the dispute before it.

54. The Court does not need to determine whether the failure to communicate the observations at issue in the present case caused the applicant a prejudice; the existence of a violation is conceivable even in the absence of injury (see *Adolf v. Austria*, 26 March 1982, § 37, Series A no. 49; *Milatová and Others*, cited above, § 65). The extent to which those submissions influenced the Constitutional Court's assessment is not decisive from the point of view of the applicant's right to a fair hearing (see *Kuopila v. Finland*, no. 27752/95, § 35, 27 April 2000).

55. In view of the foregoing considerations, the Court dismisses the Government's preliminary objection and finds that, in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1, required that the applicant be given the opportunity to familiarise himself with and comment on the other parties' written submissions.

56. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

58. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

59. The Government considered the amount claimed by the applicant in respect of non-pecuniary damage excessive. They further noted that the

applicant could avail himself of the opportunity to lodge a request for the reopening of the proceedings under national law, and therefore invited the Court to hold that the finding of a violation constituted sufficient just satisfaction under this head.

60. Given the nature of the applicant's complaint, the reasons for which it has found a violation of Article 6 § 1 of the Convention and the fact that the applicant is free to lodge an application for the reopening of the proceedings before the Constitutional Court (sections 119-119(b) of the Constitutional Court Act (Law no. 182/1993)), the Court considers that the finding of a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

61. The applicant also claimed CZK 425,556 (EUR 17,480) in respect of costs and expenses, including CZK 58,010 (EUR 2,383) in respect of legal advice in the proceedings before the Constitutional Court and the Court in Strasbourg, and CZK 87,828 (EUR 3,608) for the court fees.

62. The Government contested the claim.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 1,389 for the costs incurred in the proceedings before it and before the Constitutional Court, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
 - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,389 (one thousand three hundred and eighty-nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Georges Ravarani
President