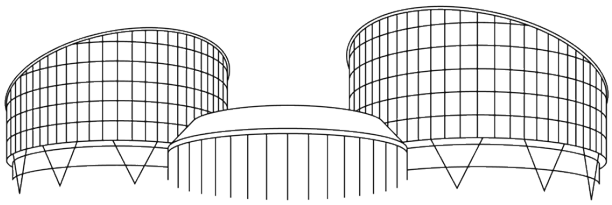

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 17696/07
by Jan ČAVAJDA
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 29 March 2011 as a Chamber composed of:

Dean Spielmann, *President,*
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ganna Yudkivska,
Angelika Nußberger, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 18 April 2007,

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 Jan Čavajda, is a Czech national who was born in 1962 and is serving his sentence in Valdice prison. He was represented before the Court by Mr O. Moravec, a lawyer practising in Hradec Králové. The respondent 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 a judgment of 10 February 2005 the Hradec Králové Regional Court (*krajský soud*) found the applicant guilty of an attempted murder. On 21 April 2005 the Prague High Court (*vrchní soud*) quashed the judgment holding that the guilt of the applicant had not been yet proven beyond reasonable doubt and instructed the Regional Court to gather additional evidence.

After examining additional evidence, some of it suggested by the applicant, and having held a public hearing the Regional Court found again the applicant guilty of an attempted murder on 11 January 2006. The court found it established that the applicant had beaten his roommate with a stick and subsequently had made him to swallow a deadly amount of medicaments. The victim had not died only because of timely medical intervention. The applicant was sentenced to thirteen years' imprisonment. The court based its decision on the testimony of several witnesses including the victim, on an expert medical report describing the injuries which the victim suffered and on a psychological and toxicological report of the victim and also a police report describing the crime scene. At the trial, the victim only referred to his testimony from the pre-trial proceedings, which was read out at the trial, but he answered all the questions given to him.

The applicant appealed arguing primarily that his guilt had not been proven beyond reasonable doubt.

On 7 March 2006 the Prague High Court (*vrchní soud*) at a public hearing upheld the first-instance judgment.

On 21 June 2006 the Supreme Court (*Nejvyšší soud*) rejected the applicant's appeal on points of law as manifestly ill-founded.

The applicant lodged a constitutional appeal (*ústavní stížnost*) claiming a violation of his right to a fair trial and the right to liberty. He alleged that his conviction was based solely on the testimony of the victim and he disagreed with the assessment of evidence carried out by the courts. The Constitutional Court (*Ústavní soud*) requested observations from the ordinary courts and prosecutor's offices which had previously been involved in the case. The Supreme Court, the High Court and the Regional Court only referred to their decisions and stated that they had not violated the applicant's constitutional rights. The Supreme Prosecutor's Office and the High Prosecutor's Office waived their right to be parties to the proceedings. The Regional Prosecutor's Office in its one-paragraph submission considered the constitutional appeal ill-founded without any elaboration and referred to the decisions of the ordinary courts. None of these observations were communicated to the applicant.

On 14 February 2007 the Constitutional Court rejected the constitutional appeal as manifestly ill-founded holding that it was not a court of third

instance. It added that the decisions of ordinary courts were logical and there was no appearance of arbitrariness. It further noted that it did not take the above observations into account as they did not bring anything new.

B. Relevant domestic law

The relevant domestic law and practice concerning the procedure before the Constitutional Court are set out in the Court's judgment in the case of *Milatová and Others v. the Czech Republic* (no. 61811/00, ECHR 2005-V).

COMPLAINTS

The applicant complained under Article 6 § 1 that his trial was not fair in that the victim did not testify at the trial but only referred to its previous statement, that the decisions of domestic courts were not sufficiently reasoned and that the courts assessed the evidence only to his disfavour.

He further complained under Article 6 § 1 and 2 that his presumption of innocence was compromised by the courts because they assessed the evidence only to his disfavour and violated the principle *in dubio pro reo*.

The applicant finally complained under Articles 6 § 1 and 13 of the Convention that he was not given the opportunity to reply to the observations of other parties before the Constitutional Court. He further complained that the Constitutional Court did not consider all his arguments, that its decision was arbitrary and that the proceedings were not public.

THE LAW

1. The applicant complained that the proceedings before the Constitutional Court had not been adversarial, because the court had failed to communicate him the submissions of the other parties. He relied on Article 6 § 1 of the Convention which, so far as relevant, provides as follows:

> "In the determination of ... any criminal charge against him ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal."

The Government maintained that the complaint should be struck out pursuant to Article 37 § 1 (c) of the Convention or alternatively declared inadmissible under Article 35 § 3 (b). They stressed that the courts' observations had not brought anything new and the Constitutional Court had not relied on or referred to them in its reasoning.

The applicant disagreed holding that it should be up to him to decide whether observations of other parties called for his comments and maintained that they had not been irrelevant to the decision of the Constitutional Court.

The Court observes that in *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010, it declared a similar complaint inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. It based its decision on the fact that the non-communicated observations had not contained anything new or relevant to the case and the decision of the Constitutional Court had not been based on them.

Turning to the present case, the Court observes that none of the observations of the other parties before the Constitutional Court contained any new information or arguments leading to dismiss the constitutional appeal. The ordinary courts and the Regional Prosecutor's Office merely referred to the decisions and reasoning of the courts. The Constitutional Court expressly stated that it did not take these observations into account and there is nothing in its reasoning to suggest that it would base its decision on them. In any case, given that there were no new facts or arguments in the submissions, the Court does not see how they could have influenced the decision of the Constitutional Court or be anyhow important for it at all (*a contrario BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 142, 24 February 2011, not final, subject to Article 44 § 2 of the Convention). The Court thus concludes that in this aspect the present case is similar to *Holub v. the Czech Republic*, cited above, and the applicant has not suffered a significant disadvantage when the Constitutional Court failed to communicate him the submissions of the other parties to the proceedings.

The Court adds that the present case has been duly considered by domestic tribunals and that respect for human rights does not require an examination of the application on the merits (see *Holub v. the Czech Republic*, cited above). It follows that this complaint must be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14.

2. Relying on Article 6 of the Convention, the applicant further complained that the decision of the Constitutional Court had been arbitrary, insufficiently reasoned and that there had been no public hearing.

The Court observes that the Constitutional Court is the highest tribunal in the Czech Republic and the applicant's case had been considered by courts in three instances before it reached the Constitutional Court. It reiterates that the Convention does not require detailed reasoning by the highest tribunals (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 41, ECHR 2009-...). The Court has also held on a number of occasions that, provided that there has been a public hearing at first instance, there is no need for a public

hearing at second or third instances if the proceedings involve only questions of law (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII). Furthermore it is an established case-law of the Court that it is not a court of fourth instance and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the present case the Court observes that the Constitutional Court had to decide only the legal question of whether the applicant's constitutional rights had been violated and an oral hearing was held by both the Regional Court and the High Court. Furthermore, the decision of the Constitutional Court is sufficiently reasoned and there is no appearance of arbitrariness.

Consequently, these complaints must be dismissed as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

3. Lastly, the applicant complained that the victim had not testified in court and only referred to his previous testimony, that the judgments of the ordinary courts had not been sufficiently reasoned and that the courts had taken into account only evidence weighing against him. He relied on Article 6 § 1, cited above, and Article 6 § 2 of the Convention that reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court observes that the victim was present at a hearing and the applicant was able to put questions to him regarding his testimony, which was read out, and that he answered the questions. Consequently the proceedings were in this respect adversarial and the applicant was able to cross-examine this witness against him as required by Article 6 § 3 (d) of the Convention.

Having examined also the other complaints submitted by the applicant the Court, having regard to all the material in its possession, and in so far as these complaints fall within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President