CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 3682/02
by Jiri BEDNÁŘ
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 14 September 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 14 December 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jiri Bednář, is a Czech national, who was born in 1969 and lives in Prague. He is represented before the Court by Mr Š. Roman, a lawyer practising in Prague 1.

A. The circumstances of the case

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

On 31 October 1997 the applicant, together with accomplices, allegedly stole 28,000,000 Czech crowns from the Prague 6 District Post Office, using two cars.

On 17 December 1997 the applicant was detained and, on 18 December 1997, was charged with robbery committed in complicity with others. On 19 December 1997 a judge at the Prague 6 District Court *(obvodní soud)* remanded him in custody. The applicant stated that the accusation was based on the results of a scent test.

On 3 April 1998 the Prague Municipal Court *(městský soud)* dismissed the applicant's complaint about his remand in custody.

In its expert opinion of 7 May 1998 the Prague Criminology Institute *(kriminalistický ústav)* concluded that samples of the applicant's hair did not have the same characteristics as the hair found in one of the cars used for the robbery.

On 17 June 1998 the District Court judge, upon the Prague Municipal Prosecutor's *(městský státní zástupce)* request of 2 June 1998, extended the duration of the applicant's custody to 17 August 1998.

On 29 June and 5 October 2000 the applicant refused to have his blood taken for DNA analysis, considering it unnecessary, and, given the prospect of a fine in the event of his continued refusal, it constituted unlawful coercion to provide evidence which could be used against him.

In the meantime, on 19 July 2000 the Criminology Institute had informed the Prague Police Investigation Office *(úřad vyšetřování)* that a sample of the applicant's blood or saliva was necessary for the DNA analysis because the samples of his hair had not been used for this purpose and had not been kept. On 16 August 2000 the applicant refused to provide further samples.

On 12 October 2000 the Prague Police Investigator fined the applicant 50,000 CZK, being the maximum amount allowed by the Code of Criminal Procedure, for such a refusal. On 27 November 2000 the Municipal Prosecutor dismissed the applicant's appeal *(stížnost)* against this decision as being unsubstantiated.

On 12 June 2001 the Constitutional Court dismissed the applicant's constitutional appeal *(ústavní stížnost)* as being manifestly ill-founded, stating that the Investigator and Municipal Prosecutor had acted in accordance with Sections 66 and 114 (2)(4) of the Code of Criminal Procedure. It dismissed the complaints which the applicant had made about the scent and blood tests, and the hair samples for DNA analysis, without determining the merits, considering them premature as the proceedings had not finished.

On 18 April 2002 the Municipal Court acquitted the applicant as his guilt had not been incontestably established, against which the Municipal Prosecutor appealed. The proceedings are apparently still pending.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the fairness of the criminal proceedings against him.

He submits that the length of these proceedings has been excessive.

He further submits that he was coerced by the threat and imposition of a heavy fine to have his blood taken, which he considers constitutes undue pressure to provide self-incriminating evidence.

Finally, he submits that the blood test was redundant in view of the fact that he had already provided samples of his hair and saliva, that the samples of his hair were not used for the DNA analysis and were not kept, which could have prejudicial effects for him at the outcome of the proceedings, and that the scent test used in the proceedings is an experiment which cannot be verified by human beings.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the length of the criminal proceedings. This provision reads as follows, insofar as relevant:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

2. The applicant next complains under Article 6 § 1 of the Convention about being coerced into providing blood samples for DNA analysis, considering it to be a violation of his right not to incriminate himself.

The Court recalls that "the right not to incriminate oneself is primarily concerned, however, with respecting the will of the accused to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, *inter alia*, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing" (see the *Saunders v. the United Kingdom* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp.2064-2065, §§ 68-69).

In the light of these considerations, the present applicant's complaint must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. Finally, the applicant complains under Article 6 § 1 of the Convention about the redundancy of the obligatory blood test, the failure to use the previously obtained samples of his hair, and the use of a scent test in the proceedings.

The Court notes that the Constitutional Court dismissed that part of the applicant's constitutional appeal relating to these issues as being premature, and did not determine their merits. Thus, the applicant has not yet exhausted domestic remedies, as required by Article 35 § 1 of the Convention.

It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the criminal proceedings;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President