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

FIFTH SECTION

DECISION

Application no. 50707/21
Tomáš KADLEC
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 21 November 2024 as a Committee composed of:

Armen Harutyunyan*, President*,
Stéphanie Mourou-Vikström,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 50707/21) 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") on 11 October 2021 by a Czech national, Mr Tomáš Kadlec, who was born in 1962 and lives in Prague ("the applicant") and was represented by Ms M. Novotná, a lawyer practising in Prague;

the withdrawal of Ms K. Šimáčková, the judge elected in respect of the Czech Republic, from sitting in the case (Rule 28 § 3 of the Rules of Court);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case mainly concerns the alleged unfairness of criminal proceedings against the applicant on account of his inability to examine some of the witnesses whose statements were used by the trial court to convict him of tax evasion. The applicant invokes Article 6 §§ 1, 2 and 3 (d) and Article 7 of the Convention.

2. In criminal proceedings which were closely followed by the Czech media, as they were related to another high-profile case, the Prague Municipal Court adopted on 8 March 2018 a judgment by which it found the applicant guilty of tax evasion and sentenced him to five and a half years' imprisonment. The court found that the applicant had withheld information

from the Czech tax authorities about income of over EUR 1,550,000 which he had received on his account at a Swiss bank.

3. Following the applicant's appeal relying on new evidence, in which the applicant submitted that the relevant sum was not income but rather a loan which he had later repaid, the Prague High Court quashed the above judgment and remitted the case for the new evidence to be assessed.

4. After having examined the new evidence, the Municipal Court concluded that it had been falsified and that the applicant's new version of events could not be considered credible. It pointed out, *inter alia*, that the applicant had not produced the original loan documents and that he had used the money for various transactions, although the loan was supposed to finance his business plan. The court also referred to obvious errors in the loan documentation and the hardly plausible sequence of events. In the court's view, the applicant's new line of defence was further refuted by the statement of a new key witness, heard in the presence of the applicant and his defence counsel: while the applicant asserted that the witness had signed the loan contract, the latter denied it and declared that he did not know the applicant.

5. When trying to summon a potential witness, B.J.H., whom the applicant alleged had taken over the loan repayment from him, the Municipal Court found out that he had moved to the USA. Since his new address was not available to the court, it contacted him via Facebook and email and used those conversations, in which B.J.H. denied the applicant's allegations, as documentary (and supporting) evidence. It appears from the file that the court did not attempt to summon B.J.H. via international legal assistance, assuming that this would be futile as he had refused to cooperate further unless financially compensated. It also considered that, in the light of other evidence available, it was not necessary to hear B.J.H.

6. The Municipal Court attempted to hear two more witnesses, namely the statutory representative of the companies which had allegedly granted the loan to the applicant and her colleague. However, it appeared that the first had died in the course of the proceedings. The latter responded to the court's email that he did not know the applicant and refused to testify. It follows from the file that the applicant agreed that it was not necessary to summon that witness.

7. By its judgment of 15 May 2019 the Municipal Court found the applicant guilty and sentenced him to seven years' imprisonment and a financial penalty of approximately EUR 19,500.

8. On 22 June 2020 the High Court dismissed the applicant's appeal and upheld the Municipal Court's judgment. It stated with respect to the Facebook/email conversations with B.J.H. that they were not considered as evidence, and even less as a witness statement.

9. The Supreme Court dismissed the applicant's appeal on points of law, considering that the courts had proceeded in line with procedural rules and exhaustively assessed the evidence, and that email communication could be

taken as documentary evidence. It held that the courts had addressed all the applicant's arguments, that their decisions were duly reasoned and the sentence proportionate.

10. On 28 June 2021 the Constitutional Court (no. II. ÚS 1670/21) dismissed a constitutional appeal by the applicant as manifestly ill-founded, stating that the applicant merely disagreed with the courts' findings, which were duly reasoned.

THE COURT'S ASSESSMENT

A. The applicant's complaint under Article 6 § 3 (d) of the Convention

11. The applicant complained that the courts had used Facebook and email conversations with a potential witness without having verified his identity and without having summoned him.

12. The general principles concerning the right to examine witnesses, in the context of the use of statements made by witnesses for the prosecution who are absent at trial, have been summarised in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011) and *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015), in which the Court laid down a tripartite test while reiterating its primary concern, namely to assess the overall fairness of criminal proceedings.

13. In the present case, summoning B.J.H. as a potential witness was complicated by the fact that he lived overseas and was reluctant to testify without financial compensation. The Municipal Court therefore considered that it was unlikely that he could be made to appear at the trial and that there was sufficient evidence to decide the case without hearing him in court (see paragraph 5 above). Consequently, the court did not make use of formal mechanisms for summoning witnesses, nor did it question him by way of international legal assistance. It is thus questionable whether all reasonable efforts were made to secure the attendance of the witness (*Al-Khawaja and Tahery*, cited above, §§ 119-20; *Schatschaschwili*, cited above, §§ 121-22). However, while the absence of a good reason for the non-attendance of a witness is a very important factor to be weighed in the balance when assessing the overall fairness, it cannot in itself be conclusive of the unfairness of the trial. Indeed, the overall fairness must be assessed taking into account the role which the evidence played and the counterbalancing factors employed. The extent of the counterbalancing factors necessary in order for a trial to be considered fair depends on the weight of the evidence of the absent witness. The more important that evidence, the more weight the counterbalancing factors would have to carry in order for the proceedings as a whole to be considered fair (*Manucharyan v. Armenia*, no. 35688/11, § 48, 24 November 2016).

14. In this respect, the Court points out that the domestic courts relied on extensive evidence which, even without the transcripts of the conversations between the court and B.J.H., they considered sufficient to refute the applicant's new version of events. They thoroughly examined the applicant's statements and the documentary evidence submitted by him, assessing them in the light of other available evidence, including the testimony of the key witness. Concluding that the amount the applicant had received on his bank account was not a loan, they found that his line of defence was not credible. Consequently, the transcripts of Facebook and email conversations between the court and B.J.H. appeared to have limited impact and did not carry significant weight, being rather one of many pieces of corroborating evidence (see, *mutatis mutandis*, *Sitnevskiy and Chaykovskiy v. Ukraine*, nos. 48016/06 and 7817/07, § 125, 10 November 2016). Moreover, the courts were aware of the diminished probative value of such evidence since the first-instance court considered it to be only documentary and supporting evidence and the appellate court did not consider it to be evidence at all (see paragraphs 5 and 8 above).

15. In any event, even assuming that the use of such evidence might have handicapped the defence, the Court is of the view that there were various counterbalancing factors in the proceedings. Indeed, the courts had at their disposal strong corroborative evidence, mainly the key witness statements, supporting the untested declarations of B.J.H. The applicant had the opportunity to challenge the evidence in question, to put forward his defence arguments and to participate effectively in the proceedings.

16. The above considerations are sufficient to enable the Court to conclude that, regard being had to the proceedings as a whole, the overall fairness of the criminal proceedings against the applicant was ensured.

17. In view of the foregoing, this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. The remainder of the application

18. Relying on Article 6 §§ 1, 2 and 3 (d) and Article 7 of the Convention, the applicant further complained of the domestic courts' assessment of the evidence, of the failure to hear two witnesses whom he had asked to be summoned and of a breach of the presumption of innocence. He also asserted that his intention to commit the offence had not been proved, that the sentence imposed was not proportionate and that a punishment within tax proceedings would have sufficed.

19. The Court observes that the domestic criminal courts relied on a very comprehensive assessment of extensive evidence and that they had duly addressed the applicant's arguments and convincingly reasoned their conclusions, including that concerning the sentence. Concerning the witnesses, it appears from the file that the courts' attempt to summon one of

them was unsuccessful because that witness had died, and that the applicant agreed that the testimony of the second witness was not necessary (see paragraph 6 above).

20. Thus, in the light of all the material in its possession, and in so far as the matters complained of are within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto.

21. It follows that this part of the application is also manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 December 2024.

Martina Keller Deputy Section Registrar	Armen Harutyunyan President