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

FIFTH SECTION

DECISION

Application no. 25775/15
Michal KONEČNÝ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 1 June 2023 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 25775/15) 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 26 May 2015 by a Czech national, Mr Michal Konečný, born in 1990 and living in Kroměříž ("the applicant") who was represented by Mr D. Zahumenský, a lawyer practising in Brno;

the decision to give notice of the complaints concerning the right to adversarial proceedings before the Supreme Court and the principle of equality of arms to the Czech Government ("the Government"), and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant complained under Article 6 § 1 of the Convention of a violation of his right to adversarial proceedings before the Supreme Court on account of its failure to forward him the observations of the prosecutor. He further alleged a violation of the equality of arms principle due to the trial court's refusal to admit evidence in support of the defence position.

2. On 15 May 2013 the Brno Municipal Court (*městský soud*) convicted the applicant of breach of the peace and attempted damage to health under

Article 358 §§ 1 and 2(a) of the Criminal Code and sections 21(1), 146(1) of Law no. 40/2009. The conviction was essentially based on the results of an identification parade and the testimonies of the victim and two eyewitnesses. The trial court rejected the argument that the applicant had allegedly been at a family gathering at the time of the event. The argument was rejected on the grounds that neither the records and photographs submitted by the defence nor the four witnesses (the applicant's friends and the driver who allegedly drove him with his parents from the celebration) they summoned could reliably establish his presence at the family gathering at the time of the events but only before they happened.

3. On 21 July 2013 the Brno Regional Court (*krajský soud*) dismissed the applicant's appeal.

4. On 21 January 2014 the Supreme Court (*Nejvyšší soud*) dismissed, after having invited the Prosecutor General Office (*Nejvyšší státní zastupitelství*) to submit its observations, the applicant's appeal on points of law. These observations were not served on the applicant; they were mentioned in the text of the decision.

5. On 4 December 2014 the Constitutional Court (*Ústavní soud*) dismissed the applicant's constitutional complaint. As regards the complaint regarding the Supreme Court's failure to communicate to the defence the public prosecutor's observations, it noted that the latter "did not reveal any new fact which could have had a radical impact on the opinion of the court dealing with the appeal on points of law, while in some points they had even supported the appellant's arguments". The Constitutional Court added that the applicant had not explained in what way his defence would have been modified had he become acquainted with the content of the observations before the Supreme Court's decision. In the Constitutional Court's view, the courts' evidence assessment had not been arbitrary or grossly unfair and, therefore, the latter court was not entitled to interfere with those independent judicial decisions.

THE COURT'S ASSESSMENT

A. Alleged breach of the right to adversarial proceedings

6. The Government submitted that the applicant had not suffered any significant disadvantage due to the Supreme Court's failure to communicate to the defence the public prosecutor's observations since they did not contain any new facts of which the applicant was unaware, and which would have been capable of influencing that court in its decision to reject his appeal on points of law. The applicant disagreed.

7. The Court notes that complaints similar to that in the present case have been examined and declared inadmissible in the past under Article 35 § 3 (b) of the Convention (see, for example, *Holub v. the Czech Republic* (dec.),

no. 24880/05, 14 December 2010; *Hanzl and Špadrna v. the Czech Republic* (dec.), no. 30073/06, 15 January 2013; *Kiliç and Others v. Turkey* (dec.), no. 33162/10, 3 December 2013 and, recently, *Pfurtscheller v. Switzerland* (dec.) [Committee], nos. 13568/17 and 13583/17, 18 September 2018).

8. In the present case, the fact that the observations of the Prosecutor General Office on the applicant's appeal on points of law had not been transmitted to the latter was not disputed between the parties.

9. The Court notes at the outset that, prior to the examination by the Supreme Court of the applicant's appeal on points of law, his case had already been examined on the merits by courts at two levels of jurisdiction, that throughout the proceedings he had been represented by a lawyer, and that there is no indication that he had in any way been restricted in the possibilities of asserting his rights in full compliance with Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Valchev and Others v. Bulgaria* (dec.), no. 47450/11 and 2 others, § 78, 21 January 2014).

10. The Court further observes that, unlike in other previous cases where it rejected a similar inadmissibility plea (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 135, 24 February 2011; *3A.CZ s.r.o. v. the Czech Republic*, no. 21835/06, § 34, 10 February 2011; and *Janyr v. the Czech Republic*, no. 42937/08, §§ 49-53, 31 October 2013), the defect here at issue took place before the Supreme Court, which was not the last instance dealing with the applicant's grievances at domestic level. He could thus complain about this defect to the Constitutional Court, whose practice on that particular issue was already changing in line with the Convention (see Resolution ResDH(2006)71 of 20 December 2006 closing the supervision of the *Milatová and Others v. the Czech Republic*, no. 61811/00, ECHR 2005-V). It was thus open to the applicant to substantiate his complaint of unfairness of the proceedings with references to the content of those observations, which by that time should have already been made available to him. However, the Constitutional Court established that the observations in question did not contain any new fact of which the applicant was unaware, and which would have been capable of influencing the Supreme Court in its decision to reject his appeal on points of law. In this connection, the Court cannot but note that both in domestic proceedings and before this Court the applicant confined himself to stating that his right to a fair hearing had been violated because he had not been served with the disputed observations. His complaint remained purely abstract since he did not specify what additional arguments he could have put forward, in reply to these observations, if he had received them. He thus failed to demonstrate that he would have brought new and relevant elements of fact or law for the examination of his case or that the outcome of the proceedings would have been different had the observations at issue been forwarded to him (see *Roić Erceg v. Croatia* (dec.) [Committee], no. 26327/16, § 20, 3 May 2022, with numerous further references).

11. In these circumstances, even assuming that the non-communication to the applicant of the observations lodged before the Supreme Court by the General Prosecutor Office raises an issue of fairness of the proceedings under Article 6 § 1 of the Convention, it may not be seen as having caused him any significant disadvantage in terms of Article 35 § 3 (b) of the Convention.

12. The Court further observes that in a case raising a similar issue as the present one it held that respect for human rights as defined in the Convention and its Protocols did not require an examination of the application on the merits (see *Bazelyuk v. Ukraine*, (dec.), no. 49275/08, 27 March 2012). The Court sees no reasons to depart from this case-law in the present case.

13. In view of the above, the Court finds that the present complaint is inadmissible under Article 35 § 3 (b) of the Convention because the applicant has not suffered a significant disadvantage, and that it must therefore be rejected pursuant to Article 35 § 4.

B. Alleged breach of the principle of equality of arms

14. Referring to the same Article of the Convention, the applicant further complained about the trial court's refusal to summon and hear additional witnesses who could allegedly corroborate his alibi at the relevant time.

15. The Government considered that this complaint should be rejected for non-exhaustion as the applicant failed to reiterate his offer for additional evidence at trial and later appeal. The applicant disagreed on the ground that his initial proposal for witness examination made at the beginning of the proceedings had never been properly rejected. The Court considers that there is no need to address the non-exhaustion plea raised by the Government because the complaint is in any event inadmissible for the following reasons.

16. The general principles concerning the examination of defence witnesses have been set out in *Murtazaliyeva v. Russia* ([GC], no. 36658/05, §§ 139-68, 18 December 2018).

17. The Court notes that the applicant may be understood as complaining that the domestic courts gave more weight to the testimonies of the victim and of the eyewitnesses than to those proposed by the defense. It is not appropriate for the Court to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts (see *Murtazaliyeva,* cited above, § 149). Moreover, the Court cannot but agree with the Government that the defence did not explain with sufficient clarity why the examination of other witnesses, such as notably his parents and aunt or of other unidentified persons, was crucial and how it could strengthen its position or have a decisive impact on the outcome of the case.

18. Having regard to those principles and the absence of any arbitrariness in the way in which the witness evidence was assessed by the domestic courts,

the Court declares this complaint inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

19. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 June 2023.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President