CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60224/00
by Werner KRÖHNERT
against the Czech Republic

The European Court of Human Rights (Third Section), sitting on 9 October 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced on 12 July 2000 and registered on 24 August 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant's representative,

Having deliberated, decides as follows:

THE FACTS

The applicant is a German national, born in 1947 and living in Altenstadt, Germany. Until 21 July 2001, he was serving a prison term in the Czech Republic. He was placed under guardianship by the Weiden District Court (*Amtsgericht*) in 1995 and his health requires permanent medical control. Before the Court, he is represented by Mr R. Giebenrath, a lawyer practising in Offenburg and Strasbourg. The respondent Government are represented by their Agent, Mr E. Slavík, from the Ministry of Justice.

Commented [Note1]: To be checked.

A. The circumstances of the case

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

On 9 February 1994 the Sokolov District Court (*okresní soud*) ("the District Court") convicted the applicant of assault on a public officer and sentenced him conditionally to a year's imprisonment. The applicant was further prohibited from driving motor vehicles for one year. The District Court established that on 2 July 1993 the applicant had driven his car at a policeman who had attempted to stop him after he had committed a road traffic offence. The policeman saved himself by jumping to one side. The Sokolov District Attorney *(okresní státní zástupce)* appealed against the judgment.

On 7 June 1995 the Plzeň Regional Court (*krajský soud*) ("the Regional Court") modified the first instance judgment in that it imposed an immediate fifteen month prison sentence on the applicant. It also prohibited the applicant from driving motor vehicles for two years. The Regional Court noted that the applicant is a foreigner without a permanent or temporary residence in the Czech Republic. It therefore considered that it would be impossible to control the applicant's behaviour during a probationary period if a conditional prison sentence were imposed.

In its judgment the Regional Court pointed out that the District Court had acted erroneously in that it had held the main hearing on 6 January 1994 in the applicant's absence without duly notifying him. It considered, however, that the evidence available permitted a decision in the case without taking into account the evidence heard at the main hearing before the District Court. The Regional Court therefore held that these shortcomings did not affect the decision on the merits of the case. It appears that the applicant did not attend the hearing before the appellate court and that he was represented by a lawyer appointed *ex officio.*

On the same day, the judgment of the Regional Court became enforceable. According to the Government, it was served on the applicant on 12 October 1995.

On 6 February 1996 the District Court ordered the applicant to reimburse the fees of the lawyer who had been appointed to represent him. On 17 August 1998 the Regional Court dismissed the applicant's complaint about that decision. On 24 July 2000 a clerk of the District Court delivered a decision rectifying the sum the applicant actually had to pay.

In the meantime, on 21 June 2000, the applicant had been arrested by the Czech police. He was placed in the Horní Slavkov prison where he started serving his prison sentence. On 13 July 2000 he was transferred to the Kynšperk nad Ohří prison.

On 2 August 2000 the applicant complained to the director of the Kynšperk nad Ohří prison that he had some problems with his glasses and that the water had not been running for an hour.

In two letters dated 2 and 23 September 2000, respectively, the applicant complained to the Constitutional Court (*Ústavní soud*) in summary terms about the criminal proceedings leading to his conviction and the enforcement of the sentence.

On 24 September 2000 the applicant sent a letter to several institutions and officials, including the Constitutional Court, the Attorney General *(Vrchní státní zástupce)* and the director of the Kynšperk prison, in which he complained that the Czech authorities had failed to react to his written submissions and that he had not been provided with adequate medical care in prison. He also made a request for a desk and a typewriter.

On 12 October 2000 the applicant complained to the prison director that he was no longer allowed to prepare his application in the prison dining room. He explained that he could not concentrate on such work in the cell where he was detained together with ten or eleven other people.

On 27 October 2000 he complained in writing to the prison director that he was not allowed to use a typewriter or make copies of documents. He also alleged that he was not provided with adequate medical care.

In January 2001 the applicant was taken to a hospital in Brno for an examination of his mental health.

On 3 January 2001 the Vice-President of the Constitutional Court warned the applicant that his petitions to the Constitutional Court did not satisfy the formal requirements for lodging a constitutional appeal. He informed the applicant that an appellant must be legally represented before the Constitutional Court, must indicate his name, specify the subject of his constitutional appeal, sign the appeal and date it. He also informed the applicant about the sixty-day time-limit for lodging a constitutional appeal.

On 16 January 2001 the Ministry of Justice *(Ministerstvo spravedlnosti)* informed the applicant that his two requests for the introduction of a complaint for a breach of law *(podnět k podání stížnosti pro porušení zákona),* on 1 July and 1 August 2000, were rejected as having no basis.

According to the Government, on 4 April 2001, after a discussion between the applicant and the prison director, the latter held that the

applicant would be provided with necessary aid for his correspondence and, in particular, that his correspondence would be sent without delay and given to him immediately upon its arrival at the prison.

By letter of 25 April 2001, the Czech Bar Association *(Česká advokátní komora)* acknowledged receipt of the applicant's letter of 23 March 2001 which, however, they had found to be unclear. He was therefore invited to specify his claims. A list of German speaking lawyers was joined to the letter.

By letter of 8 June 2001 the applicant urged the Constitutional Court *inter alia* to decide on his constitutional appeals.

B. Relevant domestic law

Constitution of the Czech Republic

Article 10 provides that the ratified and promulgated international treaties on human rights and fundamental freedoms, by which the Czech Republic is bound, shall be applicable as directly binding regulations having priority over the law.

Charter of Fundamental Rights and Freedoms, (Constitutional Act no. 2/1993)

According to Article 3 § 1, fundamental human rights and freedoms are guaranteed to everybody irrespective of sex, race, colour of skin, language, faith, religion, political or other conviction, ethnic or social origin, membership of a national or ethnic minority, property, birth, or other status.

According to Article 8 §§ 1 and 2, personal liberty is guaranteed. Nobody shall be persecuted or deprived of their liberty save for reasons and in a manner prescribed by law.

Article 10 §§ 1 and 2 provides *inter alia* that everybody is entitled to protection of his/her human dignity or personal integrity, and against unauthorised interference with private or family life.

According to Article 13, nobody may violate the confidentiality of correspondence or other papers and records, whether privately kept or sent by post or in another manner, except in cases and in a manner specified by law.

Article 31 guarantees *inter alia* to everybody the right to the protection of his /her health.

Article 36 provides that everybody can claim his/her rights in a prescribed manner before an independent and impartial tribunal or, in certain cases, before another organ.

According to Article 38, everybody is entitled to a fair and public hearing within a reasonable time, in his/her presence, and to comment upon all the evidence submitted.

Constitutional Court Act (Act no. 182/1993, as amended)

Section 72(1)(a) provides that a constitutional appeal may be introduced by any natural person who claims to be the victim of a breach of the fundamental rights or freedoms recognised in a constitutional law or an international treaty (Article 10 of the Constitution) by a legitimate decision taken in proceedings to which he/she was a party, and being a measure or interference by 'a public authority'. According to paragraph 2, a constitutional appeal shall be submitted within a period of sixty days. If the law affords a remedy for the protection of rights, this period starts to run on the day when the final effective decision becomes enforceable or, if no such remedy exists, on the day on which the impugned events occurred.

According to section 75(1), a constitutional appeal is inadmissible if the applicant failed to exhaust all the procedural remedies available in law for the protection of his/her rights.

Section 30(1) provides that the applicant must be represented by an attorney, a commercial lawyer or a notary to the extent provided for in the relevant special law.

Section 34(1) provides that a constitutional appeal shall be submitted in writing to the Constitutional Court. The appeal shall include the following information: the person who is making the appeal, the matter to which it relates, and its object. The appeal must be signed and dated. Furthermore, it shall include a true description of the crucial facts, indicate the evidence which the applicant will introduce, and specify the claim. The appeal shall contain the other elements required by this Act. According to paragraph 2, the appeal shall be submitted in a sufficient number of copies so that the Constitutional Court as well as each party to the appeal may have a copy.

According to section 82, in its judgment the Constitutional Court shall hold that it allows the constitutional appeal in its entirety, dismisses it in its entirety, or partially allows and partially dismisses it. If the court allows the constitutional appeal, it shall *inter alia* declare in its judgment which of the constitutionally guaranteed rights or freedoms or which provision of a constitutional act or an international treaty were violated, and what act by a public authority perpetrated the violation. If it allows the constitutional appeal of a natural person, the court shall annul the contested decision of the public authority, or, if a constitutionally guaranteed fundamental right or freedom has been violated as a result of an action by a public authority other than a decision, the court shall order the authority to discontinue the violation and order it, to the extent possible, to restore the situation to that which existed prior to the violation.

Criminal Code (Act no. 140/1961, as amended)

According to section 68(1)(c) and (d), a punishment becomes time-barred after the expiration of a period of ten years if it was a prison sentence exceeding five years, and after a five year period in respect of other sanctions.

Section 68(2) provides *inter alia* that the period of prescription begins on the date on which the judgment becomes enforceable. This period does not include any time when the sentenced person was abroad or was serving another prison sentence.

Code of Criminal Procedure (Act no. 141/1961, as amended)

Section 202(2) allows a trial to be held in the absence of the accused if the court considers that the case can be decided and the purpose of the criminal proceedings achieved in the accused's absence, provided that the formal indictment was duly served, the accused was properly summoned to attend the trial and was heard as to the facts constituting the subject of the indictment by a competent authority, was officially informed of the charges (section 160) and of the possibility to study the criminal file and make any suggestions regarding the completion of the investigation (section 166(1)).

According to section 248(1), an appeal shall be lodged with an appellate court within eight days of the accused receiving the judgment against which appeal is made.

Execution of Prison Sentences Act (Act no. 169/1999 as amended)

According to section 15, all prisoners have the same rights in the same circumstances within the scope of this Act.

Section 16(5) provides that a prisoner has the right to medical care in accordance with a special law on the subject, subject to the limitations associated with the aim of the punishment.

Section 26(1) provides that a prisoner has a right to file complaints and requests to the competent authorities in order to enforce those rights and interests protected by law. Such complaints and requests must be made without delay.

According to section 79, the medical expenses of an uninsured prisoner are to be met by the prison service.

Rules on the Execution of Prison Sentences (Decree of the Ministry of Justice no. 345/1999)

According to section 3(1), a prisoner serves his/her prison sentence on the basis of a legitimate and enforceable court decision and pursuant to an order for the enforcement of that sentence.

Section 34(1) provides that a prisoner has a right to submit complaints and requests to national authorities or such international authorities and organisations which are considered, on the European and world level, to be part of the process of gathering and examining information concerning violations of human rights.

Legal Profession Act (Act no. 85/1996)

Section 18(2) provides that everyone has the right to legal representation. Those who cannot find legal representation may ask the Bar Association to appoint an attorney.

Rules on Legal Fees (Decree no. 177/1996, as amended)

According to section 12, the Czech Bar Association may decide that the remuneration of the lawyer's fees shall be reduced or waived if it assigns a lawyer to a person who could not find legal services and his/her social and financial situation justifies such a decision.

COMPLAINTS

The applicant complains under Article 6 of the Convention that his right to a fair hearing was violated in the criminal proceedings brought against him. He alleges, in particular, that he was convicted in his absence and that the Regional Court's decision to impose an immediate prison sentence on him was arbitrary.

He also contests the lawfulness of the enforcement of his prison sentence. He invokes, in substance, Article 5 of the Convention.

He further complains that he has not been provided with adequate medical care in prison.

The applicant claims that he has not been provided with facilities permitting him to submit his case to the Court in an appropriate manner. He alleges, in particular, that he was not allowed to work in a room where he could concentrate on this work and that he could not use a typewriter and make copies of documents.

He finally complains, without providing further details, that the prison authorities have charged him extra fees on the ground that he is a foreigner.

THE LAW

The applicant complains that his right to a fair hearing was violated in the criminal proceedings against him, that he was convicted in his absence, that he had only three days to lodge an appeal, and that the appellate court's decision to impose an immediate prison sentence on him was arbitrary. He also challenges the lawfulness of his deprivation of liberty and the conditions of his detention. He essentially invokes Articles 5 and 6 of the Convention which provide, so far as relevant, as follows:

Article 5 § 1

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

the lawful detention of a person after conviction by a competent court; ..."

Article 6 § 1

"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 Government argue that the application is inadmissible for non-exhaustion of domestic remedies. They maintain that the applicant's letters of 2 and 23 September 2000 addressed to the Constitutional Court did not satisfy the formal requirements for lodging a constitutional appeal. The Constitutional Court informed the applicant on 3 January 2001 that an appellant must indicate his name, specify the subject of his constitutional appeal, sign the appeal and date it. The applicant was also informed of the obligation to be legally represented before the Constitutional Court.

The Government add that the applicant's requests concerning a breach of law did not constitute effective domestic remedies. Moreover, these complaints did not contain any allegation of a violation of the applicant's rights guaranteed by Article 5 § 1 of the Convention.

The Government further argue, as regards the applicant's complaints concerning the criminal proceedings, that the applicant did not introduce his application within the six-month time-limit prescribed by Article 35 § 1 of the Convention: The final decision of the Regional Court was taken on 7 June 1995, and served on the applicant on 12 October 1995. However, the applicant did not lodge the application with the Court until 12 July 2000.

The applicant contends that he could not lodge a constitutional appeal properly, or in time, as he did not have access to adequate writing facilities. Moreover, he had no reason to petition the Court until he had started to serve his prison sentence on 21 June 2000. He recalls that the Court's case-law provides for certain exceptions concerning compliance with the rule of exhaustion of domestic remedies. He refers in this regard to the decision in the case of Kiiskinen v. Finland (no. 26323/95, 1 June 1999, unpublished). The applicant claims that a constitutional appeal would have been ineffective in his case.

The Court first recalls that, pursuant to Article 35 § 1 of the Convention, it is only competent to consider complaints after all effective domestic remedies have been exhausted, according to the generally recognised rules of international law, and when the application has been introduced within six months of the final domestic decision.

a) The Court observes that in the present case the criminal proceedings against the applicant ended with the judgment of the Plzeň Regional Court on 7 June 1995, which became enforceable on the same date. The judgment was served on the applicant on 12 October 1995.

In such circumstances, even assuming that the six-month time-limit ran from this notification date, the introduction of the application on 12 July 2000 took place more than six months later. The applicant's complaints relating to the criminal proceedings must, accordingly, be rejected as having been introduced out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

b) The Court next recalls its constant case-law according to which the purpose of Article 35 § 1 of the Convention is to afford Contracting States an opportunity to prevent or rectify the alleged violation before it is submitted to the Convention institutions. Consequently, States do not have to answer for their acts before an international body until they have had an opportunity to put matters right through their own legal systems. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has a close affinity - that an effective remedy is available in the domestic system. In this respect the Convention's protection machinery is subsidiary to the safeguarding of human rights within the national systems. Thus the complaint made to the Court must first have been put – at least in substance – to the appropriate domestic body, in compliance with such formal requirements as the time-limits prescribed in the domestic law (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, [28.7.99]).

The Court notes that the Convention forms an integral part of the Czech legal system, where it takes precedence over domestic law, pursuant to Article 10 of the Constitution. It further notes that Articles 5 and 6 of the Convention are directly applicable. The applicant could therefore have relied on those provisions before the Czech authorities, including the

Constitutional Court, and complained of their violation in his case. However, at no time did the applicant do so, either in form or in substance, for example by reference to the relevant provisions of the Charter of Fundamental Rights and Freedoms (see the relevant domestic law above).

As to the question of the effectiveness of a constitutional appeal, the Court is satisfied that, in the light of section 82 of the Constitutional Court Act, this remedy could have afforded redress for the applicant's complaints. It cannot therefore be deemed ineffective.

The Court observes that the applicant addressed himself twice to the Constitutional Court on 2 and 23 September 2000. However, his petitions clearly did not satisfy the formal requirements for such an appeal and he was advised accordingly by the Vice-President of that court in a letter dated 3 January 2001. The applicant filed his petitions to the Constitutional Court without the necessary legal assistance, the mandate of the *ex officio* lawyer who had been assigned to him earlier being limited to the criminal proceedings before the ordinary courts. Moreover, the applicant claimed that he had had inadequate facilities in the prison to make a proper appeal. The question arises therefore whether, in the particular circumstances, the applicant was absolved from the obligation to exhaust this domestic remedy.

However, whilst the Court acknowledges that the applicant's prison conditions may have not been ideal for drafting a constitutional appeal, it notes that such appeals must be drafted and lodged by a lawyer (section 30(1) of the Constitutional Court Act) and that the applicant could have asked the Czech Bar Association to appoint one for him (section 18(2) of the Legal Profession Act) if he could not instruct a lawyer directly himself, a matter of which he does not complain.

The Court observes that this requirement of legal representation is intended to limit frivolous applications to the Constitutional Court, the supreme judicial organ in the Czech judicial system. The Court considers that it pursues the legitimate aim of ensuring the proper administration of justice (see, for example, Jiří Slezák v. the Czech Republic, application no. 32487/96, Commission decision of 14 January 1998, unpublished; Miroslav Špadrna v. the Czech Republic, application no. 26345/95, Commission decision of 29 November 1995, unpublished).

Furthermore, since July 2000, when he submitted his application to the Court, the applicant has been represented by Mr R. Giebenrath, a lawyer practising in Offenburg and Strasbourg. There is nothing to suggest that the latter could not have contacted Czech lawyers, following the letter sent to the applicant by the Vice-President of the Constitutional Court on 3 January 2001, for the purposes of lodging a constitutional appeal on behalf of his client. However, he did not do so.

The Court thus finds that there were no specific reasons absolving the applicant from exhausting this domestic remedy.

It follows that the applicant has not, as required by Article 35 § 1 of the Convention, exhausted the domestic remedies in respect of this part of the application, which must therefore be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President