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

FIFTH SECTION

DECISION

Application no. 54022/18
Libor NĚMEČEK
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 12 January 2023 as a Committee composed of:

Carlo Ranzoni*, President*,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 54022/18) 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 8 November 2018 by a Czech national, Mr Libor Němeček, who was born in 1964 and lives in Kvasice ("the applicant"), and was represented by Ms N. Navrátilová, residing in Chropyně;

the decision to give notice of the complaint, concerning the alleged failure of the Constitutional Court to address one of the objections of bias raised by the applicant, to the Czech Government ("the Government"), represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present application concerns an alleged violation of the right to a fair hearing on account of the alleged failure of the Constitutional Court to address one of the objections of bias raised by the applicant with respect to two different judges of the Constitutional Court sitting in the chamber to which his case was assigned (Article 6 § 1 of the Convention).

2. The applicant filed a criminal complaint against a third person for impoundment of the applicant's car as a result of his refusal to pay a higher price than the price agreed for the work performed on the vehicle, which was set aside first by the Přerov District Prosecutor and then by the Ostrava Regional Prosecutor.

3. On 12 February 2018 the applicant lodged a constitutional complaint challenging the above-mentioned decisions, which he claimed had suffered from certain defects.

4. In an amendment to the constitutional complaint, notified to the Constitutional Court on 27 February 2018, the applicant raised an objection of bias against Judges J.Z. and P.R., two of the three judges of the third chamber to which his constitutional complaint had been assigned (III. ÚS 573/18). In respect of Judge J.Z., the applicant referred, *inter alia*, to the latter's "criminal acts" and a "suspicion of corruption"; he also described the activity of the Constitutional Court judges as the work of a "*de facto* judicial murderer", comparing it to "acts of fascists" or "the burning of people alive by the Islamic State". In respect of Judge P.R., the applicant alleged, *inter alia*, that he had repeatedly interfered, through his criminal acts, with the decision-making of the Constitutional Court's various chambers and had helped to cover up corruption and even the existence of organised crime in the judiciary.

5. In the relevant period, the applicant also lodged an objection of bias against Judge J.Z. in separate proceedings before the third chamber of the Constitutional Court (III. ÚS 379/18), for "criminal conduct" and "suspicion of corruption".

6. On 5 March 2018 the fourth chamber of the Constitutional Court (IV. ÚS) decided that Judge P.R. was not to be excluded from the examination of the applicant's case (III. ÚS 573/18). On the same day, the same chamber decided that Judge J.Z. was not to be excluded from the examination of the applicant's other case (III. ÚS 379/18). The applicant's lawyer was notified of this decision on 7 March 2018. In both decisions, the fourth chamber relied on section 36(1) and (2) of the Constitutional Court Act (Law no. 182/1993) under which judges are disqualified from hearing and deciding a case where, with regard to their relationship to the case, the parties, and the third parties or representatives thereof, there may be doubts about their impartiality; or if they had been active in the same case while performing an office or function other than that of a Constitutional Court judge.

7. On 15 May 2018 the third chamber of the Constitutional Court (III. ÚS 573/18) declared the applicant's constitutional complaint to be manifestly ill-founded. In respect of his objections regarding the alleged bias, the court noted the following:

> "In its decision of 5 March 2018, no. III. ÚS 379/18-19, the Constitutional Court decided that Judge P.R. was not disqualified from hearing and deciding the case conducted under no. III. ÚS 573/18."

THE COURT'S ASSESSMENT

8. The Government raised three objections regarding the admissibility of the application, arguing that the applicant *(i)* had not exhausted all domestic remedies at his disposal, *(ii)* had not suffered a substantial disadvantage, and *(iii)* had abused the right of individual application.

9. The applicant disagreed and maintained his complaint.

10. Inspired by the principle *de minimis non curat praetor*, the admissibility criterion contained in Article 35 § 3 (b) of the Convention hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of the alleged violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Ağcakaya v. Türkiye*, no. 39365/18, 13 September 2022).

11. In the present case, the Court observes that the objections of bias against Judges P.R. and J.Z. were duly examined by the Constitutional Court (see paragraph 6 above). It is true that the fourth chamber did not examine them jointly, as they had been submitted by the applicant (see paragraph 4 above), but in two different proceedings. Furthermore, the third chamber erred when mentioning in its decision of 15 May 2018 only the name of Judge P.R. (see paragraph 7 above), on whose bias had been decided in a separate decision, whereas it referred to the decision in which the Constitutional Court had dealt with the objection of bias raised against Judge J.Z. (see paragraph 6 above). However, the Court accepts the Government's argument that this formal error did not have any effect on the outcome of the proceedings: even if it had been corrected, nothing would have changed in the conclusion that the applicant's constitutional complaint was manifestly ill-founded. The Court also notes that this error did not cause any pecuniary or non-pecuniary damage to the applicant.

12. Furthermore, having regard to its responsibilities under Article 19 of the Convention and to the character of the matter examined by the domestic authorities, namely the applicant's criminal complaint, the Court does not see any compelling reason of public order (*ordre public*) to warrant its examination on the merits, since there is no essential question of law at issue.

13. Lastly, the Court observes that the applicant's case was duly considered by the domestic authorities and courts (see paragraphs 2 and 7

above), in particular the Constitutional Court, within the meaning of Article 35 § 3 (b) of the Convention.

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

15. In view of this conclusion, the Court does not find it necessary to examine the Government's preliminary objections relating to the non-exhaustion of domestic remedies and the abuse of the right of individual application.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 February 2023.

Martina Keller Deputy Registrar	Carlo Ranzoni President