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

FIFTH SECTION

DECISION

Application no. 68198/10
Marek NESPALA
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 24 September 2013 as a Committee composed of:

Angelika Nußberger, *President,*
Ganna Yudkivska,
André Potocki, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 November 2010,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Marek Nespala, is a Czech national, who was born in 1971 and lives in Čelákovice. He is attorney-at-law. He was represented before the Court by Mrs J. Bendová Marušková, a lawyer practising in Čelákovice.

A. The circumstances of the case

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

The applicant represented three different clients in three different civil cases. Given the financial situation of his clients, the applicant agreed with them that his fees would correspond to the amount of costs of representation awarded by the courts, should the cases be decided in the clients' favour.

In the first case, the Prague Municipal Court rejected on 2 July 2008 the action for payment filed against the applicant's client, but decided not to award him the costs of the first instance proceedings (including costs of legal representation). Relying on Article 150 of the Code of Civil

Procedure, it stated that there were particular reasons, namely the established unlawful conduct of the applicant's client, for not awarding costs. The applicant appealed on behalf of his client, claiming that the court had applied Article 150 contrary to the law and to the principles of justice, and asked for an order for a specific amount of costs. On 13 November 2009, the Prague High Court upheld the judgment, after having examined the decision on the costs of the first instance proceedings, and ordered the plaintiff to pay the applicant's client the costs of the appeal proceedings (including CZK 155,300 on account of the costs of legal representation). The applicant's client's constitutional appeal, in which he claimed that the decision on the costs of the first instance proceedings had infringed his right to a fair trial, was rejected on 3 August 2010 as manifestly ill-founded, the complaints lacking a constitutional dimension.

In the second case, the Prague-East District Court granted the applicant's client's unjust enrichment action based on a a purchase contract which had been declared null and void, and ordered the defendant to pay the costs of proceedings incurred by the applicant's client. On 4 February 2010, the Prague Municipal Court upheld the judgment but decided not to award the applicant's client any costs, putting forward particular reasons, namely the good faith of the defendant who was not responsible for the nullity of the contract in question, for the costs decision. The applicant's client's constitutional appeal, in which he challenged under the right to a fair trial the reasons for the application of Article 150 of the Code of Civil procedure was rejected on 14 February 2013 as manifestly ill-founded.

In the last case, the plaintiff had withdrawn her suit against the applicant's client. The Prague 2 District Court decided on 18 October 2009 not to award the applicant's client any costs. It stated that they had not been incurred reasonably because the defendant, a lawyer himself, had hired the applicant only after having been notified of the withdrawal, in an attempt to incur the costs formally. The appellate court confirmed this decision on 4 June 2010. No constitutional appeal was filed.

B. Relevant domestic law

The relevant domestic law and practice are set out in *Čepek v. the Czech Republic* (no. 9815/10, 5 September 2013, §§ 15-22).

COMPLAINTS

The applicant complained under Article 4 § 2 of the Convention that he was required to perform forced and compulsory labour for free.

Relying on Article 6 § 1 of the Convention the applicant complained that his fair trial rights were violated by arbitrary decisions on the costs.

Relying on Article 1 of Protocol no. 1 the applicant asserted that he and his clients had legitimate expectation to be awarded the costs of legal representation.

THE LAW

The applicant complained under Article 4 § 2 of the Convention that the courts' decisions not to award his clients any costs of legal representation prevented him from being remunerated and, as a result, he was required to perform forced and compulsory labour for free. The relevant provision reads as follows:

> "No one shall be required to perform forced or compulsory labour."

Relying on Article 6 § 1 of the Convention the applicant asserted that the domestic decisions on costs of the proceedings were arbitrary. The relevant provision reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Relying on Article 1 of Protocol No. 1 the applicant complained that the domestic courts did not protect his and his clients' legitimate expectation to be awarded the costs of legal representation. The relevant provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

As to Article 4 of the Convention, the Court notes that the position of which the applicant complains was brought about as a direct result of the contractual arrangements he entered into with his respective clients. The work he carried out cannot therefore be equated to "forced or compulsory labour" within the meaning of Article 4 (see, for example, *Van der Mussele v. Belgium*, 23 November 1983, §§ 35-36, Series A no. 70, in which the applicant was required to offer services as part of a professional obligation, rather than pursuant to a contract).

As to Article 6 of the Convention, the Court notes that an applicant cannot lodge a complaint about a violation which took place in the proceedings to which he was not a party, despite the fact that he acted as a representative of one of the parties to such proceedings (see, *mutatis mutandis*, *Hambálek v. the Czech Republic* (dec.), no. 38132/03, 9 May 2006). In any event, there is no appearance of a violation of Article 6

in the present case as the impugned court decisions on costs do not seem manifestly arbitrary, irregular or otherwise wrong (see, *mutatis mutandis*, *Pyrobatys a.s. v reštrukturalizácii v. Slovakia* (dec.), no. 40050/06, 3 November 2011).

As to Article 1 of Protocol No. 1, the Court again notes that the matters complained of were the direct result of the contract concluded between the applicant and his respective clients. There is therefore no indication of an interference with the peaceful enjoyment of his possessions for which the State could be made responsible.

It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President