AS TO THE ADMISSIBILITY OF

Application No. 36976/97
by Vladimír ROUČKA
against the Czech Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 June 1997 by Vladimír ROUČKA against the Czech Republic and registered on 21 July 1997 under file No. 36976/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Czech citizen born in 1950. He resides in Klatovy (Czech Republic). Before the Commission he is represented by Ms Judita Jakubčíková, a lawyer practising in Klatovy.

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

A. Particular circumstances of the case

From 1 October 1971 the applicant worked as a driver-engineer at the Klatovy Fire Brigade (Sbor požární ochrany), today called the Klatovy District Fire Brigade (Hasičský záchranný sbor okresu).

On 25 July 1994, upon coming to work, the applicant was submitted to a breathalyser test. The test revealed that the applicant was over the permitted alcohol limit. He explained that the previous night before 10 p.m. he had drunk three beers and that before the test he had chewed a Nicorette chewing gum which contains nicotine and is destined for those wishing to stop smoking. The test was repeated twenty minutes later, again with a positive result. The employer ordered the applicant to take a day off.

On 28 July 1994, the applicant received a copy of a service record which read inter alia that on 25 July 1994 he had reported for duty under the influence of alcohol and that, therefore, he had committed a serious disciplinary offence which violated the obligations set out in Section 135 para. 3(d) of the Labour Code (zákoník práce). At the same time the applicant was informed that he might be dismissed from work, pursuant to Section 46 of the Labour Code.

On 18 August 1994, pursuant to Section 46 para. 1(f), the employer served notice of dismissal upon the applicant on disciplinary grounds.

On 3 October 1994, the applicant brought an action against his employer for the invalidation of his dismissal. He submitted that he had done several breathalyser tests himself and that they were always positive in cases where he had used a Nicorette chewing gum before. He also submitted that a breathalyser test is only a provisional test and that the presence of alcohol could be proved only by blood or urine analysis. He emphasised that his employer had not proved the presence of alcohol in his blood. He submitted a memorandum from the Czech Commission of the European Medical of 10 March 1995 prepared by the Institute of Hygiene and Epidemiology of the First Medical Faculty of Charles University (Institut hygieny a epidemiologie 1. Lékařské fakulty University Karlovy v Praze) which states that breathalysers contain a substance which reacts positively in some cases, e.g. when the person tested has used a Nicorette chewing gum or certain candies. The report further stated that breathalysers are used only for the purposes of a provisional test; where such a test reveals some level of alcohol it should be followed by blood or urine analysis.

On 21 June 1995 the Klatovy District Court (okresní soud) dismissed the applicant's action, stating inter alia:

"It appears from the evidence assessed by the court that on 25 July 1994 it was established, through a breathalyser test effected ... in accordance with the instructions for use, that the plaintiff's breath contained alcohol. Consequently, the defendant concluded that [the applicant] had seriously breached the disciplinary rules laid down ... in the Fire Brigades Rules (řád požárních jednotek) which provide that an employee is required to refrain from consuming alcoholic beverages before reporting for duty for the time necessary to be able to drive a motor vehicle. Under these Rules and in accordance with the Order of the Head of the Klatovy District Office of the Fire Force (rozkaz náčelníka Okresní správy Sboru požární ochrany) ... an employee is obliged to submit to a breathalyser test."

An expert report ordered by the District Court established that even if the applicant used a Nicorette chewing gum before the breathalyser test, this chewing gum does not contain any substance which could lead to the same result as alcohol does.

In the District Court's opinion the finding of alcohol in the applicant's breath was sufficient to found the conclusion that during working hours the applicant was showing signs of having consumed alcohol and therefore he was not able to perform his working duties. Having regard to the applicant's working duties, he had committed a serious disciplinary offence within the meaning of Section 46 para. 1(f) of the Labour Code. He was aware of the methods his employer could use to test for alcohol and if he was not satisfied with the objectivity of the breathalyser test it was open to him to controvert it by submitting other evidence.

On 16 August 1995, the applicant appealed against this judgment. He maintained that the District Court had not assessed the evidence properly and that the judgment was not in accordance with the law. He emphasised that he had undergone only a breathalyser test, that no blood analysis had been carried out and therefore there had been, in fact, no evidence that he had been over the permissible level of alcohol. He challenged the finding of the District Court that it was up to him to provide blood analysis evidence. He maintained that his employer should have requested him to submit to blood analysis and that only if he had refused could it have been concluded that he had breached the obligation set out in Section 135 para. 3(f) of the Labour Code.

On 12 October 1995 the Plzeň Regional Court (krajský soud) upheld the judgment at first instance. It held that the District Court had assessed all the evidence relevant to the proper consideration of the case and had drawn correct conclusions as to the facts and law. The Regional Court found in particular that the applicant was familiar with the Order of the Head of the Klatovy District Office of the Fire Force which requires that employees submit to a breathalyser test and that in case their test is positive, the incident should be dealt with under the Labour Code. Thus, it was open to the applicant to provide evidence that he had not consumed alcoholic beverages before taking up his duties.

On 4 January 1996 the applicant lodged a constitutional appeal (ústavní stížnost) claiming that the judgment of the Regional Court was based on incomplete evidence in that there was no evidence of the presence of alcohol in his blood as there had not been any blood or urine analysis. He maintained that the breath test was not sufficient to establish a breach of Section 135 para. 3(d) of the Labour Code. He further submitted that he had not been requested by his employer to submit to a blood or urine test and that according to the memorandum of the Czech Commission of the European Medical of 10 March 1995, a breathalyser test is to be regarded as a provisional test. He alleged a violation of Article 10 para. 1 of the Charter of Fundamental Rights and Freedoms (Listina základních práv a svobod) in that the Regional Court had found that he should have proved that he had not consumed alcoholic beverages before taking up his duties.

On 19 March 1997 the Constitutional Court (Ústavní soud) rejected the applicant's constitutional appeal finding that there was no violation of the rights invoked by him. The Court held in particular:

"The Constitutional Court, having examined the case file of the Klatovy District Court, the judgment of this court of 21 June 1995 and the judgment of the Plzeň Regional Court taken on 12 October 1995, ... finds that the [applicant's] procedural rights have been respected by the courts, all the available evidence relevant for the consideration of the case has been assessed and [the applicant] has not been deprived of the opportunity to discuss it.

However, the [applicant's] main complaint is that there has been no blood or urine analysis to prove the presence of alcohol in his blood in order to suggest a breach of the obligation set out in Section 135 para. 3(d) of the Labour Code. He regards the breathalyser test as a provisional test because its result may be affected by certain factors.

The expert's report excluded that the result of the breathalyser test had been influenced by substances other than alcohol vapours ... Besides the generally binding provisions applicable to drivers of motor vehicles there are two other internal provisions relevant to the [applicant's] case. The first one, Section 13.3.5 of the Fire Brigades Rules, provides that a driver-engineer must refrain from consuming alcoholic beverages before taking up his duties ... in order to be able to drive a motor vehicle. The second one, Article 14 of the Collective Agreement for 1994 (kolektivní smlouva na rok 1994), provides that it is a breach of work discipline within the meaning of Section 73(c) of the Labour Code for an employee to be unable to perform his work due to consumption of alcoholic beverages for which the employee is not ... allowed to work. [The applicant] could not be allowed to carry out his duties as a driver due to the repeatedly positive breathalyser test results. He was therefore provided with one day's holiday during which he had the opportunity ... to have his blood analysis done. He did not do so since he supposed that the disciplinary offence he had committed would be treated in a moderate manner. The record of the hearing at the Klatovy District Court states that the applicant declared that the night before reporting for duty he had drunk three beers.

The reference in the Fire Brigades Rules to the relevant legal provisions concerns in particular Section 5 para. 2(b) of Decree No. 99/1989 which prohibits a person from driving a motor vehicle after consuming alcoholic beverages or at the time when he/she could still be under the influence of alcohol. With regard to the above-mentioned internal provisions and to Decree No. 99/1989, a breathalyser test is sufficient to establish the gravity of a breach of work discipline. In case of a positive result the employee must necessarily be excluded from work."

B. Relevant domestic laws

Section 46 para. 1(f) of the Labour Code provides that the employer may serve notice of dismissal upon an employee if there exist grounds upon which the employer might immediately cancel the employment contract or due to serious breaches of work discipline.

According to Section 73 para. 1(c) of the Labour Code, employees are obliged to observe statutory provisions relating to the work they are performing and other provisions and regulations relating to such work, if they have been duly acquainted therewith.

According to Section 135 para. 3(d) of the Labour Code, employees, to the extent they are able to, are obliged to look after their own safety and health and the safety of others who are directly affected by their actions or omissions. In particular, they are required to submit to tests which are carried out by the employer or another competent administrative authority in order to ascertain whether employees are under the influence of alcohol or other addictive substances. The employer shall state, in working or internal regulations, which authorities and which employees are authorised to order other employees to submit to such tests.

Section 6 para. 1 of the Protection from Alcoholism and other Addictions Act No. 37/1989 provides that a person who performs such activities which could endanger the lives or health of others or damage property must not consume alcoholic beverages or use other addictive substances while or before performing these activities if he or she could still be under their influence. According to paragraph 2, a person, as stated in paragraph 1, is required, when asked, to submit to an examination for alcohol or other addictive substances. An examination for alcohol is done by a breath test, and where its result is positive the test is followed by a medical examination, namely blood analysis.

Article 10 para. 1 of the Charter of Fundamental Rights and Freedoms provides that everybody is entitled to protection for his or her human dignity, personal integrity, good reputation, and his or her name.

COMPLAINTS

The applicant complains that he has not received a fair trial in accordance with Article 6 para. 1 of the Convention in the following respects:

1. The Klatovy District Court held that the positive result of the breathalyser test was sufficient to found the conclusion that while at work the applicant had been under the influence of alcohol and therefore not able to perform his duties, whereby he had seriously breached work discipline which resulted in his dismissal. The Court failed to take into account Section 6 para. 2 of Act No. 37/1989, according to which he should have been required to submit to a test for alcohol only upon a request from his employer, and stated that the applicant should have, during the holiday he was ordered to take, obtained proof that he had not come to work under the influence of alcohol.

2. The Plzeň Regional Court required the applicant to provide proof that he had not consumed alcoholic beverages before taking up his duties. Moreover, its judgment reads that he was ordered to leave his workplace whereas, in fact, he was ordered to take one day's holiday. He is now regarded as an alcoholic which seriously damages his reputation and human dignity.

3. The Constitutional Court did not hear evidence from a witness who could have given expert information about the effects the Nicorette chewing gum has in relation with a breathalyser test and took into account neither the conclusion of the expert report nor the memorandum of the Czech Commission of the European Medical. The Court did not take into consideration the applicant's further submissions.

The applicant concludes that his case was not heard fairly by Czech courts which considered only two internal provisions without having any proof of their breach by the applicant who was thus discriminated against. The courts did not take into account that the behaviour for which the applicant was allegedly responsible should have been proved by his employer in accordance with Section 46 para. 1(f) of the Labour Code in connection with Section 6 para. 2 of Act No. 39/1989.

THE LAW

The applicant makes several complaints under Article 6 para. 1 of the Convention in its first sentence:

"In the determination of his civil rights and obligations or 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 Commission recalls that disputes relating to the recruitment, careers and termination of service of public servants are, as a general rule, outside the scope of Article 6 para. 1 of the Convention (see Eur. Court HR, Massa v. Italy judgment of 24 August 1993, Series A no. 265-B, p. 20, para. 26 and Neigel v. France judgment of 17 March 1997, Reports of Judgments and Decisions 1997-II, No. 32, para. 12).

In the present case it can be left open whether Article 6 para. 1 of the Convention is applicable, since the applicant's complaints are in any event inadmissible for the following reasons.

The Commission notes that the applicant's complaints centre upon the legal assessment of his action by the courts. It recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with complaints alleging that errors of fact or law have been committed by domestic courts, save where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see No. 25062/94, Dec. 18.10.95, D.R. 83, p. 77).

The Commission further recalls that it is not its task to interfere with the legal assessment of a particular claim made by the competent courts under the domestic law. The application and interpretation of the domestic law is in principle a matter reserved to the jurisdiction of the national courts. In this respect they are free to qualify a claim according to the criteria which they consider as legally relevant. They cannot be bound by the legal argumentation of a particular party.

Moreover, the Commission notes that a court's failure to discuss every detail of a party's pleadings is not in itself contrary to the requirements of a fair hearing. It is, however, essential that the party's right to be heard is not disregarded and that its pleadings are considered by the court even if this is not reflected in explicit terms in the eventual decision (see No. 10153/82, Dec. 13.10.86, D.R. 49, pp. 67, 74).

On this basis, the Commission finds no indication that the applicant, who was represented by his lawyer throughout the proceedings, could not sufficiently put forward his point of view, that the various legal arguments presented by him were not duly examined by the domestic courts, that the other party had been put in a better position or that the proceedings were otherwise unfairly conducted. Furthermore, the judgments were based on the analysis of evidence derived from the relevant documents and its assessment in the light of the submissions of the parties. The Commission notes in this respect that the expert report ordered by the court of first instance established that even if the applicant used a Nicorette chewing gum before the breathalyser test, it does not contain any substance which could lead to the same result as alcohol does. The applicant put forward his arguments on this report. The Commission considers that the fact that the domestic courts based their findings principally on the result of the expert report does not, in itself, constitute a violation of Article 6 para. 1 of the Convention.

The applicant also alleges that the manner in which the evidence was dealt with was unfair in that the courts stated that he should have provided evidence that he had not consumed alcoholic beverages before taking up his duties. However, the Commission does not consider that the courts' approach in this respect can be regarded as unfair. It notes that labour-law relations are governed by the Labour Code. According to Section 135 paras. 3(d) and (f) of the Labour Code, the employee is required to refrain from the use of alcoholic beverages and other addictive substances while at or outside the

workplace, to avoid taking up working duties under their influence, and to submit to a test for alcohol or other addictive substances which may be ordered by the employer or another competent administrative authority. This provision leaves the employer autonomous to choose the method of effecting such a test; it only requires that companies working rules or internal regulations specify the persons or bodies authorised to order the test.

In the present case, the obligation of the applicant to submit to a breathalyser test is set out in the Order of the Head of the Klatovy District Office of the Fire Force which further states that in case of a positive result the incident shall be treated under the Labour Code. The Commission notes that the applicant does not complain that he was not familiar with this order or that the authority which effected the breathalyser test in his case was not competent to do so. In these circumstances, the Commission considers that it was not unfair that the courts accepted the result of the breathalyser test as sufficient to establish that the applicant had been over the permitted alcohol limit, stating that if he was not satisfied with the objectiveness of the test he could have controverted it by submitting other evidence. The Commission considers that this did not in itself amount to an unfair reversal of the burden of proof.

As a result, in the light of the above considerations, the Commission does not find that the applicant was deprived of a fair trial within the meaning of Article 6 para. 1 of the Convention.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber