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

FIFTH SECTION

DECISION

Application no. 15759/10
Vladimir SEILER
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 10 September 2013 as a Committee composed of:

Angelika Nußberger, *President,*
André Potocki,
Aleš Pejchal, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 March 2010,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimír Seiler, is a Czech national, who was born in 1953 and lives in Praha. He is attorney-at-law.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows. On 9 September 1997 the applicant bought a fax machine from a company for CZK 19,215 (approximately EUR 740). On 20 April 1998 he sent to the company notification of his withdrawal from the contract because he had found out that the fax machine was an unsafe counterfeit.

After a representative of the vendor company was charged with the crime of consumer detriment, the applicant joined the criminal proceedings on 30 November 1998 as a civil party. On 13 March, he was informed about discontinuation of the proceedings.

On 10 January 2000 another person within the company was charged with the same crime. The applicant joined the proceedings as a civil party

on 24 April 2001, claiming damages corresponding to the purchase price and default interest.

After various procedural developments, the Prague Municipal Court handed down a verdict of guilty on 25 April 2006. On 10 October 2006, the Prague High Court quashed the judgment and sent the case back to the Prague Municipal Court. Further hearings were held in December 2006, January and February 2007. By a judgment of 2 February 2007, the Prague Municipal court acquitted the accused and referred the applicant with his claim of default interest amounting to CZK 42,212 (approx. EUR 1,639) (the purchase price having been reimbursed to him in the meantime) to the civil courts. The applicant filed an appeal, which was rejected by the Prague High Court on 5 June 2007 as having been filed by an unauthorized person.

On 27 June 2007, the applicant claimed compensation of CZK 42,212 arising from the excessive length of the proceedings with the Ministry of Justice under Act No. 82/1998 as amended by Act no. 160/2006. Having received no reply from the Ministry, he brought a civil action for damages against the Ministry on 5 December 2007.

On 20 February 2009, the Prague 2 District Court dismissed the action as the criminal proceedings involving the applicant as a civil party from April 2001 until February 2007 had not been lengthy. On 30 September 2009, the Prague Municipal Court upheld the appealed judgment, underlining the complexity of the case as regards evidence as well as law. Furthermore, it pointed out that the applicant could have filed a civil suit against the company.

On 23 December 2009 the Constitutional Court received a constitutional appeal from the applicant. The court sent the applicant a formal notice informing him of procedural shortcomings of the constitutional appeal and giving him 15 days to rectify them.

Having received no reply from the applicant, on 3 February 2010 the Constitutional Court rejected the applicant's constitutional appeal for lack of legal representation, referring to its case law (Pl. ÚS-st. 1/96) pursuant to which the requirement of legal representation before the Constitutional Court applies also to attorneys-at-law.

B. Relevant domestic law and practice

1. Constitutional Court Act (Act no. 182/1993)

Pursuant to Section 30, an individual or a legal person who is a party or an intervening party to the proceedings before the Constitutional Court must be represented by an attorney-at-law.

2. Constitutional Court's practice

By its decision of 29 November 1994 (I. ÚS 89/94), a chamber of the Constitutional Court accepted a constitutional appeal of an attorney-at-law who was not represented, stating:

> "The role of the procedural requirement of the compulsory representation is to prevent the Constitutional Court as a specialized court from being excessively burdened by unqualified motions and attitude of the parties to a case. In the situation when the applicant is an attorney-at-law, it is obvious that his profession guarantees that he will be able to meet the aim of compulsory representation before the Constitutional Court. In this particular case it is appropriate to accept that it is not necessary for an attorney-at-law such as the applicant to be represented by another attorney-at-law, because he is [already] represented in the way prescribed by law."

However, another chamber of the Constitutional Court in another case was of a different legal opinion and submitted the question to the plenary of the Constitutional Court. In its opinion of 21 May 1996 (Pl. ÚS-st. 1/96), the plenary came to the conclusion that the requirement of legal representation does apply to attorneys-at-law, holding:

> "The role and aim of [Section 30 of Act no. 182/1993] is to establish a general requirement to be professionally legally represented without differentiation as to the type of the proceedings before the Constitutional Court as well as to the type of the preceding proceedings and at the same time without differentiating – as regards to the requirement of legal representation - between the parties and intervening parties on the basis of their legal expertise level. (...) The sense and aim of the general requirement to be legally represented lies particularly in the extraordinary importance of the proceedings before the Constitutional Court and therewith related effort not only to ensure – through the obligation of legal representation – a legally qualified exercise of rights before the Constitutional Court, but also to guarantee a higher level of objectivity of the parties when considering their position."

COMPLAINT

1. The applicant mainly complained of a violation of his right of access to a court, within the meaning of Article 6 § 1 of the Convention, due to the fact that the Constitutional Court had not examined his constitutional appeal because of the lack of legal representation. He argued that he is an attorney-at-law and a member of the Czech Bar Association and that he therefore meets the procedural requirements set by the Constitutional Court Act.

2. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the applicant further alleged that the criminal proceedings which he had joined as a civil party had been too lengthy and that his legitimate expectations had been infringed since he had not received the claimed compensation for delays.

THE LAW

1. The applicant submitted that the decision to reject his constitutional appeal due to the lack of legal representation, despite the fact that he is himself a lawyer and attorney-at-law, had breached his right of access to a court. He relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

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

The Court reiterates that the right to a court, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Furthermore, they will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among many other authorities, *Khalfaoui v. France*, nº 34791/97, §§ 35-36, CEDH 1999-IX; *Bulena v. the Czech Republic*, no. 57567/00, § 29, 20 April 2004).

As regards the requirement of legal representation before the Constitutional Court of the Czech Republic, laid down in Section 30 of the Constitutional Court Act, the Commission has already observed that the purpose of the limitation is to prevent unqualified appeals to be introduced by applicants before the Constitutional Court, which undoubtedly pursues the legitimate aim of ensuring a proper administration of justice (*Špadrna v. the Czech Republic* (decision of the Commission), no. 26345/95, 29 November 1995). In the case of *Slezák v. the Czech Republic* (decision of the Commission, no. 32487/96, 14 January 1996), where the applicant was an attorney-in-law arrested and charged with fraud, the Commission considered that a requirement of representation by a lawyer did not infringe the principles of the Convention even if the defendant was himself a lawyer.

The Court notes that shortly after the adoption of these decisions by the Commission, the plenary of the Czech Constitutional Court held in its opinion of 21 May 1996 that, given the extraordinary importance of the proceedings before the Constitutional Court, Section 30 of Act no. 182/1993 sets a general requirement to be professionally legally represented in these proceedings, which aims not only to ensure a legally qualified exercise of rights but also to guarantee a higher level of objectivity of the parties when considering their position. According to that opinion, the requirement of legal representation applies also to legally educated persons, including

attorneys. The Court considers that such an interpretation does not contradict the wording or intention of the relevant legislation and cannot be considered arbitrary.

The Court has also consistently held that a legal requirement of representation by counsel in certain types of proceedings does not as such violate Article 6 of the Convention. It is noteworthy that the Constitutional Court is the highest judicial organ in the Czech judicial system, whose competence is limited to the examination of questions of constitutionality (*Malhous v. the Czech Republic* [GC], no. 33071/96, § 62, 12 July 2001). Thus, the interests of justice may require legal representation of the applicant in such proceedings even if he is an experienced lawyer, in particular because he may not always be able to act in his own best interests. In this regard, the Court agrees with the plenary of the Constitutional Court that the requirement of legal representation aims to guarantee a more objective approach to the case.

In the present case, it must have been plain to the applicant that, since 1996, the Constitutional Court required attorneys to be represented by a counsel; moreover, the applicant was given additional time to fulfil this requirement. However, he explained neither to the Constitutional Court nor to the Court what had prevented him from seeking representation by a colleague, nor did he assert that this would impose an excessive burden on him.

Thus, having regard to the above considerations, the Court concludes that the fair balance which should be struck in the matter between the general interest of ensuring a proper administration of justice and the requirements of the protection of the individual's fundamental rights was not upset.

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

2. The applicant further alleged that the criminal proceedings against a third person had been too lengthy and that his legitimate expectations protected by Article 1 of the Protocol No. 1 to the Convention had been infringed since he had not received the claimed compensation for delays.

The Court observes that the applicant was involved in the impugned proceedings as a civil party from April 2001 until February 2007, i.e. nearly six years. However, the criminal case seemed quite complex, which was underlined also by the Prague Municipal Court in its judgment of 30 September 2009. Indeed, after having been, at two occasions, sent back to the prosecution, the case was dealt with by two levels of jurisdiction having each decided twice. Furthermore, the proceedings had no particular importance for the applicant.

In these circumstances, the complaints concerning length of proceedings and absence of compensation appear as 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