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

FIFTH SECTION

DECISION

Application no. 32671/13
Zdeněk SLÁDEK
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 23 March 2023 as a Committee composed of:

Mārtiņš Mits*, President*,
María Elósegui,
Kateřina Šimáčková*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 32671/13) 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 16 May 2013 by a Czech national, Mr Zdeněk Sládek ("the applicant"), who was born in 1972 and lives in Prague and who was represented by Mrs E. Vraná, a lawyer practising in Prague;

the decision to give notice of the complaints concerning the applicant's inability to question the main prosecution witnesses against him in a criminal trial, one of whom was heard at the investigation stage in the absence of the defence and remained silent at trial and another of whom was heard anonymously, to the Czech Government ("the Government"), represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's inability to question the main prosecution witnesses, one of whom was heard at the investigation stage in the absence of the defence and remained silent at trial and another of whom was heard anonymously. The applicant relied on Article 6 §§ 1 and 3 (d) of the Convention.

2. In September 2010, criminal proceedings were instituted against the applicant for, among other things, an armed robbery committed in České Budějovice in December 2005. On 16 September 2010 at noon, the police questioned P.S., who had accompanied the applicant and another person to České Budějovice at the time of the offence; he had been escorted from Prague to České Budějovice. The applicant's Prague-based lawyer was informed of the questioning by phone at 10.10 a.m. and asked, according to the applicant, for it to be postponed and conducted in Prague. The police refused, suggesting that a substitute lawyer could attend the questioning. According to the police record, the applicant's lawyer stated that she would not attend the questioning but would try to get a colleague to replace her, and she asked the police office to contact her colleague as well, which they did at 10.20 a.m. As none of the lawyers contacted attended the questioning, it took place without the applicant being represented.

3. On 25 May 2011 the České Budějovice District Court (*okresní soud*) found the applicant guilty and sentenced him to five years and six months' imprisonment. It relied on the statements of the applicant and his co-accused, on the analysis of the telecommunications records, which were considered the key evidence, and on other documentary evidence. The court also relied on the testimony of numerous witnesses, including the victim, who confirmed that the perpetrators had made phone calls of which they had heard the content, and the victim's partner, who confirmed how many perpetrators there had been. The witness statement given by P.S. at the investigation stage was read out, P.S. having refused to testify in court for fear of incriminating himself. Another witness was heard anonymously, both at the investigation stage and before the court.

4. As to the defence's objection concerning the absence of a lawyer during the examination of P.S., the court inferred from the police official record that the applicant's lawyer had stated that she would not attend and would try to send a substitute, who, as things turned out, was unable to attend the questioning. The court was therefore satisfied that the requirement of adversarial proceedings under Article 211 § 4 of the Code of Criminal Procedure (hereinafter "the CCP") had been met and that P.S.'s statement was admissible.

5. The court also considered that the use of an anonymous witness was in conformity with Article 55 § 2 of the CCP since the offence had been committed with the intention of causing serious harm and the perpetrators had not hesitated to use physical violence against the victim and had threatened him with a weapon. Moreover, some of the perpetrators had not been identified. There was therefore a significant risk that a witness who gave evidence incriminating one of the perpetrators might feel unsafe and that, if his identity were known, he would be exposed to a real risk of harm to his health or life. Moreover, the statements of P.S. and the anonymous witness were consistent with other evidence; the anonymous witness's statements were supported by information from the prison confirming that he had been

detained there at the same time as the applicant's co-defendant. The court therefore concluded that there was no reason to exclude, or cast doubt on the credibility of, their factual statements.

6. On 12 September 2011 the České Budějovice Regional Court (*krajský soud*) dismissed an appeal by the applicant. The applicant complained that, among other things, his lawyer had been unable to participate in the questioning of P.S. for an objective reason and that there had been no grounds for hearing an anonymous witness. In this connection, the Regional Court accepted the findings of the District Court, noting in particular that the lawyer could have asked the police to postpone the start of the questioning, which had taken place in the presence of the applicant's co-accused's lawyer. The Regional Court further observed that the anonymous witness had given essential testimony on a serious offence committed by armed persons, of whom some had still not been apprehended.

7. On 27 June 2012 the Supreme Court (*Nejvyšší soud*), considering an appeal on points of law by the applicant, agreed with the lower courts' assessment, pointing out, in particular, that they had based his conviction mainly on P.S.'s witness testimony, the admissibility of which had been considered in depth, and on the telecommunications records.

8. On 9 November 2012 the applicant lodged a constitutional complaint, which the Constitutional Court (*Ústavní soud*) dismissed as manifestly ill-founded on 14 January 2013 (I. ÚS 4309/12), holding, among other things, that the applicant's objections to the admission of the evidence by the lower courts had been inconsistent with the actual reasoning of the courts, which had in fact compared the content of the statements with the other evidence and had examined their credibility.

THE COURT'S ASSESSMENT

9. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicant complained that the criminal proceedings against him had been unfair because his conviction had been based on the statements of P.S. and of the anonymous witness.

10. The general principles with regard to the right to obtain the attendance and examination of witnesses can be found in the Grand Chamber judgments in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, ECHR 2011) and *Schatschaschwili v. Germany* ([GC], no. 9154/10, § 100, ECHR 2015), in which the Court once again reiterated that its primary concern was to evaluate the overall fairness of criminal proceedings. In this context, the Court is mindful that the Czech criminal procedural legislation sets out a specific framework for questioning an anonymous witness that contains safeguards aimed at compensating for handicaps the defence may face in such situations (see *Bátěk and Others v. the Czech Republic*, no. 54146/09, § 55, 12 January 2017, and compare with *Zadumov v. Russia*, no. 2257/12, § 63, 12 December 2017).

11. In the present case, the Court finds that the applicant failed to demonstrate that his defence rights were restricted to such an extent as to prejudice the overall fairness of the criminal proceedings against him. It observes in this connection that the District Court accepted the depositions of P.S. and the anonymous witness in evidence, and that this approach was later endorsed by the Regional Court, the Supreme Court and the Constitutional Court. The testimony given by P.S. at the investigation stage was read out at the trial owing to his refusal to testify because of his fear of self-incrimination (see paragraph 3 above). The Court notes the applicant's point that his lawyer unsuccessfully requested the postponement of the questioning of this witness (see paragraph 2 above). However, the police report did not mention such a request (see paragraph 4 above), and the applicant failed to submit any evidence that it had been made (see also *Kopecký v. the Czech Republic* (dec.), no. 32456/04, 30 March 2010).

12. Admittedly, the two hours' notice given to the lawyer was very short and national law gives the lawyer the right to be informed in time. However, it is not the Court's role to evaluate every procedural aspect unless the overall fairness of the criminal proceedings is called into question. The District and Regional Courts examined in depth whether the statutory conditions laid down in Article 211 § 4 CCP had been met, including the requirement for the accused or his lawyer to be given an opportunity to be present at the questioning. The Court therefore accepts the findings of the national courts that the lawyer was given a proper opportunity to attend the questioning of witness P.S. and that she did not ask for it to be postponed (see paragraphs 4 and 6 above).

13. As for the anonymous witness, the Court notes that in its evaluation of whether to conceal his identity, the District Court considered the gravity of the crime, the use of the violence against the victim and the fact that the identities of some of the perpetrators were unknown. It then concluded that there was a real risk of harm for the health or life of the witness. The Court sees no reason to substitute its own conclusion and accepts that in the circumstances of the case the witness could have had legitimate fears for his health or life (see paragraph 5 above).

14. The Court further notes that the telecommunications records were the key evidence on which the applicant was found guilty and that the testimony of the anonymous witness carried only minor weight, whereas P.S.'s testimony played a significant role in the applicant's conviction, being corroborated by other incriminating evidence. Hence, on the one hand, neither the testimony of the witness P.S. nor that of the anonymous witness were the sole evidence on which the applicant was convicted. On the other hand, while it is unable to conclude with certainty that P.S.'s testimony should be regarded as decisive, the Court considers that it carried significant weight in convicting the applicant and that its admission may have hampered the defence.

15. In view of this conclusion, the question arises whether there were counterbalancing factors rendering the criminal proceedings fair overall.

With regard to the trial court's approach in admitting both statements and the procedural safeguards, it is apparent that the District Court thoroughly assessed the admissibility of the evidence and gave proper reasons for admitting the evidence. As to the statement of P. S., the court pointed to the requirements laid down in Article 211 § 4 of the CCP, finding that the principle of adversarial proceedings was complied with. Its conclusions were then upheld by the Regional Court and by the Supreme Court (see paragraphs 6 and 7 above). The Court is therefore of the opinion that the national courts analysed the admissibility of both testimonies with sufficient caution and properly justified their conclusions. In addition, the Court refers to its previous findings to the effect that the Czech criminal procedural legislation sets out a specific framework for questioning an anonymous witness. This procedural legislation contains safeguards aimed at compensating for handicaps the defence may face in such situations (see *Bátěk and Others*, cited above, § 55).

16. As to the availability and the strength of other evidence, the Court observes that the key evidence, the telecommunications records, confirmed the exact location of the applicant at the relevant time. Besides the testimony of P.S. and the anonymous witness, the District Court also heard the statements of other witnesses, including the victim and his partner, and admitted documentary evidence (see paragraph 3 above). The Court considers that the other incriminating evidence carried adequate weight *vis-à-vis* the evidence obtained from the statements of P.S. and the anonymous witness and that, therefore, there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured.

17. In view of the above, the Court concludes in the circumstances of the present case that the proceedings as a whole were fair. The applicant's complaints must therefore be dismissed as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 April 2023.

Martina Keller Deputy Registrar	Mārtiņš Mits President