

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

FIFTH SECTION

DECISION

Application no. 1848/12
Pavel UHL
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 25 September 2012 as a Chamber composed of:
Dean Spielmann, *President,*
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
André Potocki,
Paul Lemmens, *judges,*
and Claudia Westerdiek, *Section Registrar,*
Having regard to the above application lodged on 23 December 2011,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Pavel Uhl, is a Slovak and Czech national, who was born in 1975 and lives in Prague.

A. Background information

2. In 2008 the City of Prague started issuing a multifunctional smart card called "Opencard" for Prague residents and visitors. It can be used for numerous services offered by the City or other providers, including the Prague public transport system.

3. There were two kinds of Opencard: ordinary or anonymous. An ordinary card is free of charge and anybody can apply by completing an application form that includes personal details such as name, date of birth, place of residence, email address, telephone number and a photo. Applicants must also sign a consent form on the processing of personal details and provision of information in which they consent to the further processing of the personal data from the application form and from using the card by both the City of Prague and any provider of a service which the applicant would use in the future with the Opencard system. Withdrawal of consent by the applicant results in suspension of the card's use for services. An anonymous card without any personal identification information costs 200 Czech korunas (CZK) (8 euros (EUR)) but its use is limited to certain services.

4. From 2009 an Opencard could be used as a public transport pass. A yearly pass that could be downloaded onto the card cost CZK 4,750 (EUR 190). Those without an Opencard could not buy a yearly pass but instead could buy four three-monthly passes, which together cost CZK 5,920 (EUR 237).

5. On 16 November 2010 the Office for Personal Data Protection concluded its investigation into the Opencard system and found that the City of Prague had not adequately informed users of the future processing of their personal data and that they were therefore in violation of the Personal Data Protection Act (no. 101/2000). The Office also reiterated its previous opinion that there should be an alternative way to access the services for those not wishing to use an Opencard. It also ordered the City of Prague to offer each Opencard user the possibility of using a card without the necessity of consenting to further processing of his or her personal data.

6. As a result the City of Prague introduced in December 2011 a third type of Opencard, which is personal. Personal data are printed on the card but not stored or further processed. Adults holding this Opencard can buy long-term passes for public transport under the same conditions as holders of Opencards who gave consent to the processing of their personal details. This new type of card costs CZK 250 (EUR 10).

7. The current price (from 1 July 2011) of a yearly pass for Prague public transport is CZK 4,750 (EUR 190) for holders of both types of personal Opencard and CZK 6,100 (EUR 244) for holders of an anonymous Opencard or for those without an Opencard.

B. Proceedings brought by the applicant

8. The applicant did not want to provide his personal details to the City of Prague and consent to processing, and therefore did not apply for an Opencard.

9. On 8 December 2008 he asked the Prague Public Transport Company (a joint-stock company 100% owned by the City of Prague) whether he

could buy a yearly pass for the same price as users of the Opencard system. He explained that he did not wish to consent to the processing of his personal data. As he received no reply he bought four consecutive three-month passes.

10. On 13 October 2009 he requested the Public Transport Company to reimburse him CZK 1,170 (EUR 47), corresponding to the difference between the price of a year pass and the price he had to pay for the four three-month passes. Having received no reply, the applicant brought civil proceedings for unjust enrichment.

11. On 30 June 2010 the Prague 9 District Court rejected this claim. It held that the income from fares was further redistributed and thus the defendant was not its only receiver and was therefore not responsible for any loss suffered by the applicant. No appeal lay against that decision.

12. The applicant lodged a constitutional appeal alleging a violation of his right to privacy and fair trial. He argued that the brief judgment of the District Court was beyond any legal logic and in effect lacked any reasoning. He further maintained that there was no other remedy in the domestic law to protect him from violations of his private life and that he could only claim compensation for the financial loss he had sustained as a result of refusing to give his personal details.

13. On 16 June 2011 the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded. It held that the subject matter of the proceedings was only CZK 1,170 and, applying the *de minimis non curat praetor* rule, there could be an interference with fundamental rights only exceptionally in such instances. It did not find any special circumstances in the present case that would require it to hold otherwise. It added that it was obvious that the applicant's primary concern was not unjust enrichment but protection of his personal data; however, an action for unjust enrichment was not a means to protect those rights.

COMPLAINTS

14. Under Article 6 of the Convention the applicant disagreed with the domestic decisions and complained that the domestic courts had avoided ruling on the substance of his claim.

15. Relying on Article 8 of the Convention he further complained that his right to private life had been violated.

THE LAW

A. Article 6 of the Convention

16. The applicant complained that his right to a fair trial had been violated because the District Court's decision was not in accordance with the domestic law but based on a wholly illogical application of the law. He also complained that the court should have notified him of any deficiencies in his action had it been of the view that he had sued the wrong defendant. Thus the District Court had in effect avoided deciding on the substance of the claim. Similarly, the Constitutional Court had avoided a decision on the substance of his appeal. The applicant relied on Article 6 of the Convention, the relevant part of which reads:

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

17. The Court notes that the applicant brought an action for unjust enrichment. He had an opportunity to present his claim in fully adversarial proceedings before the District Court, which found that the defendant was not responsible for any loss suffered by the applicant. The Court does not agree with the applicant's argument that the District Court failed to rule on the substance of his claim. No issue therefore arises under the right of access to court.

18. In essence the applicant disagrees with the legal assessment made by the District Court. The Court, however, reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

19. Furthermore, the Court does not consider that any issue under the Convention arises when the Constitutional Court applied the *de minimis non curat praetor* rule, especially given that it is a flexible rule that allows for any justified exceptions. The Court notes that the Convention contains a similar admissibility criterion in Article 35 § 3 (b).

20. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 8 of the Convention

21. The applicant complained that he had suffered a financial loss, having not been willing to consent to the processing and use of his personal data, which he had considered excessive and unnecessary. He complained

that the State had failed to protect him from such interference with his private life by the City of Prague. He admitted that the financial loss was not significant (about EUR 50 annually). However, a substantial number of persons were in the same position: forced by economic means to give very broad consent to use their personal data. He also maintained that it was virtually impossible to live and work in Prague without using the public transport system.

22. The Court considers it appropriate in the circumstances of the present case to examine first whether the complaint should be rejected under Article 35 § 3 (b) that reads as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
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> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

1. Whether the applicant has suffered a significant disadvantage

23. The Court notes that the applicant did not provide his personal data to the City of Prague and as a consequence had to pay EUR 47 more than if he had done so and consented to their storing and further processing. The sole disadvantage for the applicant was thus of a financial nature and consisted of the above amount. The Court, referring to its well-established case-law (see *Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2010; *Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011; and *Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011), concludes that the loss of such an amount does not constitute a significant disadvantage.

2. Whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits

24. The Court reiterates that the second element contained in the new criterion is intended as a safeguard clause compelling the Court to continue examination of the application, even in the absence of any significant damage caused to the applicant, if respect for human rights as defined in the Convention and the Protocols thereto so requires. That is so, for example, where there is a need to clarify the States' obligations under the Convention or to induce the respondent State to resolve a structural deficiency affecting other persons in the same position as the applicant (see *Korolev v. Russia* (dec.), 25551/05, 1 July 2010). The Court also takes into account whether

the issue raised has already been dealt with in its case-law, as in that case no need for further examination arises (see *Burov v. Moldova*, cited above).

25. Turning to the present case, the Court notes that it has not yet dealt with an issue similar to that raised in the present complaint, which moreover concerns thousands of people living in Prague and using its public transport system.

26. On the other hand, the Court cannot lose sight of the fact that the issue that the applicant is complaining about has already been resolved. After an intervention by the Office for Personal Data Protection, the City of Prague introduced a personal Opencard without the requirement to consent to the further storing and processing of personal data. An adult in possession of this card can now have access to the public transport services under the same conditions as holders of the ordinary Opencard who gave their consent for data processing. Although this rule applies only to adults, the Court must limit its review to the issue affecting the applicant, who is an adult (see *Marckx v. Belgium*, 13 June 1979, § 27, Series A no. 31).

27. Consequently, and having regard to its subsidiary role to national systems in safeguarding human rights (see *McFarlane v. Ireland* [GC], no. 31333/06, § 112, 10 September 2010), the Court considers that respect for human rights no longer requires an examination of the present complaint (see *Ionescu v. Romania*, cited above, § 39).

3. Whether the case was duly considered by a domestic tribunal

28. The Court reiterates that the purpose of this second safeguard clause is to ensure that every case receives a judicial examination, whether at national or European level, in other words, to avoid a denial of justice (see *Korolev v. Russia*, cited above).

29. The Court has usually interpreted the term "case" in Article 35 § 3 (b) of the Convention as meaning the subject matter of the domestic proceedings and not the Convention complaint (see *Holub v. the Czech Republic* (dec.), 24880/05, 14 December 2010, and *Ionescu v Romania*, cited above, § 40). In other cases the Court has accepted an interpretation suggesting that "case" means the complaint brought before the Court (see *Finger v. Bulgaria* (no. 37346/05, § 76, 10 May 2011). It has also held that this safeguard clause cannot be applied if the alleged violation has resulted from a decision of a final national authority, otherwise this admissibility requirement would never be applicable to complaints against decisions of the final domestic authority (see *Korolev v Russia*, cited above, and *Holub v. the Czech Republic*, cited above).

30. As can be seen from the above case-law, the Court has always applied this second safeguard clause with flexibility, taking into account the particular circumstances of each case.

31. Turning to the present case, the Court notes that the applicant brought an action for unjust enrichment, which was eventually rejected by

the District Court. It is not the Court's function to deal with errors of fact or law allegedly committed by national courts. Moreover, this safeguard clause is not concerned with the outcome of the proceedings but requires only that the case be duly considered. In this sense the Court does not see any deficiency in the domestic proceedings. Neither has it found any violation of the applicant's right to a fair trial (see, conversely, *Fomin v. Moldova*, no. 36755/06, § 34, 11 October 2011).

32. The Court further notes the applicant's concern that no domestic tribunal reviewed his claim under the right to respect for private life. However, this was due to the nature of the claim brought by the applicant.

33. Accordingly, the case – that is the question of unjust enrichment - was duly considered by a domestic tribunal and this situation does not constitute a denial of justice imputable to the respondent Government that would warrant examination of the case because of the second safeguard clause.

4. Conclusion

34. The Court does not consider it necessary to examine whether the complaint complies with the other criteria for individual applications under Articles 34 and 35 of the Convention, as it is, in any case, inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Dean Spielmann
President