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

FIRST SECTION

DECISION

Application no. 69665/12
Albert ŽIROVNICKÝ
against the Czech Republic

The European Court of Human Rights (First Section), sitting on 7 December 2021 as a Committee composed of:

Pauliine Koskelo, *President,*
Aleš Pejchal,
Tim Eicke, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 69665/12) 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 24 October 2012 by a Czech national, Mr Albert Žirovnický, who was born in 1968 and lives in Prague ("the applicant"). He had been granted legal aid and was represented by Ms E.M. Bollecker, a lawyer practising in Strasbourg;

the decision to give notice of the application to the Czech Government ("the Government"), represented by their Agent, Mr V. A. Schorm, from the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The case concerns several aspects of a right to fair trial under Article 6 § 1 of the Convention. In particular, the applicant complained that, in two sets of proceedings:

a) he had been denied access to court by virtue of decisions to discontinue the proceedings rendered by a judicial assistant, that is, a "government-dependent organ", rather than by a judge, and the fact that one of those assistants had fined him for remarks he made;

b) that the decisions on non-exemption from court fees had been based on false and incorrect information relating to his available funds, including the fact that he had been awarded just satisfaction by the Court, which should have been exempt from seizure; and

c) that the courts unjustifiably had refused to refer a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling.

Furthermore, relying on Article 6 § 1 of the Convention in conjunction with Article 13, the applicant criticised the Constitutional Court for not having examined the merits of his constitutional complaints.

The civil proceedings

2. On 7 July 2011, the applicant instituted proceedings under the Anti-Discrimination Act (No. 198/2009) claiming 2,480,000 Czech korunas (CZK) (roughly 98,300 euros (EUR)) along with CZK 20,000 (EUR 792) monthly in respect of non-pecuniary damage. He asserted that he was discriminated against as a prisoner as regards the right to own property, as the law provides that if money is sent to a convict in prison, one half of it shall be used to pay for damage caused by the offence for which the convict is serving his sentence, as established by the judgment, and/or to cover the claims related to the criminal proceedings, as well as the court and administrative fees and damage caused to the Prison Service during the service. The applicant noted that application of this provision impaired his right to dispose of his own property and it also resulted in him being discriminated against in comparison with persons at liberty.

3. On 17 August 2011, the applicant brought a further claim under the Anti-Discrimination Act (No. 198/2009) for CZK 1,250,000 (EUR 49,600) along with CZK 10,000 (396 EUR) monthly in respect of non-pecuniary damage. The applicable court fees would have amounted to CZK 92,500 (EUR 3,670). The applicant claimed that he was discriminated against as a prisoner as regards the right to own property. Under the law, in justified cases a convict may be allowed to buy, receive, or bring and use such things that are not contrary to the purpose of the sentence, and their quantity, nature or use do not disturb order in the accommodation area and do not harm the health of or constrain other convicts. The applicant claimed that this provision was too vague and did not provide sufficient safeguards against arbitrariness by the prison administration, putting him and other persons at risk of becoming victims of corruption or blackmail.

4. The applicant lodged an application for the exemption from court fees on account of his indigence in both sets of proceedings. However, his applications were dismissed as unjustified. The applicant appealed against the relevant decisions, complaining that they had been taken by a judicial assistant and not by a judge and that they constituted a denial of access to court. He also invited the appellate court to refer a question to the CJEU for

a preliminary ruling, in particular on the interpretation of the requirement to ensure effective protection against discrimination accessible to everyone.

5. Despite having recourse to available remedies, the applicant's objections were dismissed and his requests to refer the question to the CJEU were rejected. Eventually, the proceedings were discontinued on account of the non-payment of the respective court fees. The decisions were upheld by the Constitutional Court.

THE COURT'S ASSESSMENT

A. The complaints under Article 6 § 1 of the Convention

6. The Court finds it unnecessary to examine the Government's objections relating to non-exhaustion of domestic remedies, the abuse of the right of petition or the no significant disadvantage, since the complaints under Article 6 are in any event inadmissible for the following reasons.

7. The Court has already held that the applicability of Article 6 § 1 in civil matters firstly depends on the existence of a "dispute" (in French, "contestation"). Secondly, the dispute must relate to a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Lastly, the result of the proceedings must be directly decisive for the "civil" right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Károly Nagy v. Hungary* [GC], no. 56665/09, § 60, 14 September 2017; *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, 19 September 2017; *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 106, 15 March 2018; and *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018). The Court considers that it has jurisdiction to examine of its own motion the question of the applicability of Article 6 even if the respondent Government have not raised this issue before it (see *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, § 27, 9 February 2017).

8. In this connection, the Court notes that the facts undisputed by the parties show that neither of the applicant's actions had been substantiated as he did not claim that the measures complained of had ever been applied to him. His claims, thus, had rather been directed against a hypothetical, not a specific, application of the Imprisonment Service Act, or its disputed provisions, in relation to himself. In fact, in both sets of proceedings the applicant actually brought an *actio popularis*, directed against the statutory provisions in question, even though this is an approach not allowed by the domestic law.

9. Against this background, the Court notes that the Convention does not confer any right, as demanded by the applicant, to "private revenge" or to an *actio popularis* (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). The "disputes" raised by the applicant had not, therefore, a sufficient link to a "right" to which he could claim to be entitled for Article 6 of the Convention to be applicable (compare and contrast *L'Érablière A.S.B.L. v. Belgium*, no. 49230/07, §§ 29-30, 24 February 2009). Accordingly, all the applicant's aforementioned complaints under Article 6 must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The complaint under Article 13 of the Convention

10. The applicant further complained under Article 13 that the Constitutional Court had not examined the merits of his constitutional complaints.

11. The Court observes that the applicant's complaint under Article 6 § 1 of the Convention is inadmissible within the meaning of Article 35 § 3 of the Convention. It follows that he has no "arguable claim" of a violation of his rights under Article 6 § 1 for the purposes of Article 13 of the Convention. Consequently, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 January 2022.

Liv Tigerstedt Deputy Registrar	Pauliine Koskelo President