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

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The Court declares complaints inadmissible for lack of "significant disadvantage" (for the 1st time with regard to the Czech Republic) although they concern the conduct of national courts at final instance

In its decisions in the cases of Holub v. the Czech Republic (application no. 24880/05) and Bratři Zátkové, a.s. v. the Czech Republic (application no. 20862/06) the European Court of Human Rights has unanimously declared the applications inadmissible. The decisions are final.

These cases concerned the dismissal of constitutional appeals lodged by the applicants (complaining of violations of the principle of a fair hearing). In those appeals, they complained that they had not been informed of the observations submitted to the Constitutional Court by the lower courts and by the Supreme Court.

In its decisions in these cases, the Court **clarifies the application of the new admissibility criterion ("significant disadvantage")** introduced by Protocol No. 14, which entered into force on 1 June 2010. The introduction of this new criterion was considered necessary in view of the Court's constantly increasing workload, and is intended to enable it to focus on cases that justify an examination on the merits. It enables the Court to dismiss cases that are held to be "of minor importance", that is, those which do not require examination on the merits.

Principal facts

The applicant in the first case, Ladislav Holub, is a Czech national who was born in 1925 and lives in Celakovice. His application concerned the civil proceedings which he brought in 2001 with regard to a promissory note, following the conclusion of a contract of sale. His case was dismissed at first and second instance and the Supreme Court held that his appeal on points of law was inadmissible, finding that it concerned points of fact rather than law and was thus not of crucial legal importance within the meaning of the Code of Civil Procedure. Mr Holub lodged a constitutional appeal, alleging a violation of his right to a fair hearing. In this context, the courts involved – the district court, regional court and Supreme Court – submitted their observations to the Constitutional Court, but these were not communicated to the applicant. In 2005 Mr Holub's constitutional appeal was dismissed as manifestly ill-founded: the Constitutional Court, summarising the observations of the courts involved, concluded that the applicant had not been deprived of or limited in his right to request judicial protection of his interests and that no violation of the principles of a fair hearing was to be noted.

The applicant company is the second case, Bratři Zátkové, a.s., is a public limited company incorporated under Czech law, whose registered office is in Boršov nad Vltavou. Proceedings for payment were brought against this company in 2000, and the regional court found in favour of the claimant. The applicant company's appeal against that decision was dismissed by the Prague High Court; the applicant company lodged a constitutional appeal against that judgment, referring to the right to a fair hearing. The Prague High Court submitted its observations to the Constitutional Court, but they were not communicated to the applicant company. The High Court referred to its judgment

and to the Supreme Court's decision to dismiss the claimant's appeal on points of law. In 2005 the Constitutional Court dismissed the applicant company's appeal as manifestly unfounded, considering that it raised no issue of constitutionality that would require its intervention.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 1 July 2005 (Mr Holub) and 17 May 2006 (Bratři Zátkové, a.s.) respectively.

Relying on Article 6 § 1 (right to a fair trial), the applicants complained that there had been several violations of the principle of a fair hearing.

The decisions were given by a Chamber of seven, composed as follows:

In the Holub case

Peer **Lorenzen** (Denmark), *President*,
Karel **Jungwiert** (the Czech Republic),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Ganna **Yudkivska** (Ukraine)*, Judges*,

and also Claudia **Westerdiek**, *Section Registrar.*

In the Bratři Zátkové, a.s. case

Dean **Spielmann** (Luxembourg), *President*,
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland),
Angelika **Nussberger** (Germany)*, Judges*,

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

In the *Holub* case, the Court rejected as manifestly ill-founded the applicant's complaints concerning the conduct of the lower courts and the Supreme Court. In this respect, it reiterated that it was not its task to substitute its own assessment of the facts and the evidence for that of the national courts, but to establish whether the evidence had been presented in such a way as to guarantee a fair hearing. In addition, the Supreme Court's inadmissibility decision in this case could not be described as arbitrary, in that it had ruled in accordance with its established practice.

As to the applicants' complaints concerning the failure to communicate to them the observations submitted to the Constitutional Court by the courts in question, the Court

considered that these were not ill-founded[1], but that it was appropriate to examine whether it should apply the new admissibility criterion ("significant disadvantage") within the meaning of Article 35 § 3 (b) of the Convention as amended by Protocol No. 14, which entered into force on 1 June 2010[2]. Accordingly, the Court examined in turn the three aspects of this new criterion: did the applicants sustain significant disadvantage?; did respect for human rights require an examination of the applications on the merits?; and were the applications duly considered by a domestic tribunal?

"Significant disadvantage"

In their observations to the Constitutional Court, the courts in question did not provide any additional reasoning in comparison with the judgments they had already delivered. The applicants were thus familiar with the points raised. In addition, it did not appear that the Constitutional Court had relied on those submissions in its decisions. Everything suggested that the applicants' constitutional appeals would have been dismissed in any event, with or without the observations in question. In addition, the applicants, who complained that they had been unable to respond to the observations in questions, did not specify what new arguments they would have wished to raise in addition to those submitted in the constitutional appeals. In those circumstances, the Court considered that the applicants had not suffered "significant disadvantage" in the exercise of their right to participate properly in the proceedings before the Constitutional Court. With regard to the *Holub* case, the Court specified that the "disadvantage" referred to this latter point, and not to the financial sum at stake in the civil proceedings.

Examination of the applications on the merits

The Court noted that, following its judgment in *Milatová and Others v. the Czech Republic*, the Constitutional Court had reviewed its practice. Thus, it had been recommended to judge Rapporteurs that they send the parties' observations to the applicants, with a time-limit for their response, if those observations contained new facts, allegations or arguments, even where a doubt existed on the latter point. Furthermore, the Committee of Ministers had held[3] that the Czech Republic had discharged its obligation to take the necessary measures for execution of the *Milatová and Others* judgment. Thus, the applicants in the present cases did not raise serious questions concerning the application or interpretation of the Convention, or important issues concerning the domestic law. Respect for human rights did not therefore require examination of the applicants' complaints.

Due examination by a domestic tribunal

The applicants' cases had been examined on the merits at first instance and on appeal. They had therefore been able to claim the protection of at least two national courts. The fact that, once their cases had been judged at final instance, it had been impossible for them to have examined certain complaints concerning the actions of the final national courts did not represent an obstacle to application of the new inadmissibility criterion[4]. To assert otherwise would prevent the Court from dismissing any complaint, however insignificant, concerning a violation imputable to the final national instance, which would

[1] In Milatová and Others v. the Czech Republic (no. 61811/00), Mareš v. the Czech Republic (no. 1414/03) and Vokoun v. the Czech Republic (no. 20728/05), the Court held that there had been a violation of Article 6 § 1, on the ground that the applicants should have had the opportunity to submit pleadings in reply.

[2] See page 95 of the Practical Guide on admissibility criteria and the press release concerning the application of this new criterion for the first time, in the case of Adrian Mihai Ionescu v. Romania (June 2010).

[3] Final resolution ResDH(2006)71 adopted by the Committee of Ministers of the Council of Europe on 20 December 2006 in the case of Milatová and Others (see also resolutions CM/ResDH(2010)13 and CM/ResDH(2010)15, adopted by the Committee of Ministers in March 2010 in the cases of Mareš and Vokoun). The Committee of Ministers supervises the execution of judgments of the European Court of Human Rights.

[4] See the Court's decision in the case of Korolev v. Russia (July 2010).

be contrary to the aim pursued by the admissibility criterion; the latter was intended to enable the Court to rule more rapidly on cases which did not merit examination on the merits. Indeed, this would confer on the Court a general jurisdiction of extraordinary review, which it was not convinced that it ought to have. The Court considered that the applicants' cases had been duly examined by the Czech courts. In this respect, it noted that the concept of a *duly examined* case was not to be construed as strictly as the concept of a case that had *received a fair hearing*.

As the three conditions for the new inadmissibility criterion were present in the applications in question, the Court concluded that they were inadmissible.

The decisions are available only in French.

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