



Repeated remittal of murder case before conviction in a fifth set of proceedings violated the Convention

In today's Chamber judgment¹ in the case of [Tempel v. the Czech Republic](#) (application no. 44151/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights owing to a lack of fairness of the applicant's conviction for murder, and

a violation of Article 6 § 1 owing to the length of the proceedings.

The case concerned repeated first-instance and appeal proceedings over a period of 10 years on a charge of murder.

The Court found in particular that the actions of the High Court, which had repeatedly remitted the case to first-instance jurisdictions, had essentially gone against the rules of criminal procedure and Constitutional Court case-law. It had also ultimately imposed its own view on the lower courts of the correct interpretation of the evidence and the applicant's being guilty of murder.

The High Court's actions had had the effect of persuading the first-instance court in the fifth set of proceedings that it had to find the applicant guilty.

Principal facts

The applicant, Robert Tempel, is a Czech national who was born in 1973. He is currently serving a sentence of life imprisonment in Valdice Prison (Czech Republic).

Between September 2004 and March 2007 the applicant was acquitted four times of charges of murder by two different chambers of the Plzeň Regional Court at first instance. The appeal court, Prague High Court, remitted the case each time, finding fault with the first-instance courts' assessment of the evidence, in particular the way they had questioned the testimony of the main prosecution witness, which was the main evidence against the applicant.

In May 2007 the High Court quashed the fourth first-instance judgment in the applicant's favour and remitted the case to another first-instance court within its jurisdiction, the Prague Regional Court. That court in November 2008 found the applicant guilty of murder and sentenced him to life imprisonment.

It found that the witness's testimony had only minor contradictions and was credible as to the key facts. It was also corroborated by other evidence. The High Court upheld the conviction in December 2009. In July 2011 the Supreme Court dismissed an appeal on points of law by the applicant.

During the proceedings the Constitutional Court rejected three constitutional complaints by the applicant: over remitting the case to a different chamber of the same first-instance court; over remitting the case to another first-instance court; and of breaches of Article 6 (right to a fair trial) of the Convention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The applicant began proceedings for compensation over the length of the criminal proceedings, which had lasted from March 2002 to April 2012. In 2013 the Prague 2 District Court found a violation of his right to a trial within a reasonable time, but dismissed his claim for compensation. That decision was upheld on appeal and by the superior courts, including the Constitutional Court in April 2016.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant complained about his case being assigned to a different first-instance court and about the conduct of the appellate court. He also raised a complaint under the same provision about the length of the proceedings.

The application was lodged with the European Court of Human Rights on 11 July 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 § 1

Fairness of the proceedings

The Court reiterated that it was primarily for national courts to interpret domestic law and that it could not question their view unless there had been a flagrant violation of such provisions.

It noted that the High Court had twice applied Article 262 of the Code of Criminal Procedure to remit the applicant's case, once to a different chamber of Plzeň Regional Court and once to a different first-instance court, Prague Regional Court, which had ultimately convicted him. However, according to Constitutional Court case-law, a decision under Article 262 should be "entirely exceptional".

Furthermore, when quashing the first-instance judgments, the High Court had mainly criticised the lower court for its assessment of the evidence and of the credibility of the key witness. That approach seemed to be at odds with Article 263 § 7 of the Code of Criminal Procedure, as interpreted by the Constitutional Court, which stated that an appellate court was bound by the assessment of the evidence carried out by the court of first instance, unless it concerned evidence which the appellate court had dealt with itself at a public hearing.

Indeed, when the High Court had remitted the case to a different chamber of Plzeň Regional Court for a second time it had drawn alternative conclusions from the evidence than the first-instance court, without hearing the key witness. Subsequently, when it had transferred the case to a different court of first-instance, the High Court judgment had contained formulations that could be interpreted as suggesting that the first-instance court should reach different conclusions about the credibility of the witness and that the appellate court would only accept a conviction.

The Court observed that such conclusions sat uneasily with the Constitutional Court's long-standing case-law that an appellate court could not assess the credibility of a specific witness unless it had

heard the witness. Nor, according to that case-law, should it quash a judgment on acquittal unless the first-instance court's doubts about an accused's guilt were without any merit or under any circumstances, instruct a first-instance court on whether or not it should find an accused guilty.

The High Court had provided no reason to justify its decision not to hear the key witness directly and assess his credibility itself, although it would have been appropriate to give such reasons as the disagreement between the first-instance and appeal courts had turned on that person's credibility.

Furthermore, the High Court should not have based doubts about the independence and impartiality of the judges of the first-instance court and its conclusion that that court had failed to comply with its binding instructions solely on the fact that the court had made factual findings and conclusions about the applicant's guilt which were different from its own view.

The Court considered that the High Court's procedural approach could have led the Prague Regional Court to conclude that the only decision which the High Court would accept and which would bring the proceedings to an end was a guilty verdict. The succession of events strongly indicated a dysfunction in the operation of the judiciary, vitiating the overall fairness of the proceedings in the applicant's case. Accordingly, there had been a violation of Article 6 § 1 of the Convention.

Length of the proceedings

The Court first found that the applicant had not received adequate and sufficient reparation at domestic level for the damage caused to him by the protracted criminal proceedings, rejecting a Government objection and declaring this complaint admissible.

It noted that the length of the proceedings – more than 10 years – was attributable mainly to the case being repeatedly remitted to the court of first instance. The applicant had in no way contributed to the delays, it had mostly been the public prosecutor who had lodged the appeals.

The Court thus could not regard the period of time that had elapsed as reasonable, finding a further breach of Article 6 § 1.

Other articles

The Court found that no separate issue arose in respect of the applicant's remaining complaints under Article 6 §§ 1 and 2 of the Convention.

Just satisfaction (Article 41)

The Court held that the Czech Republic was to pay the applicant 12,500 euros (EUR) in respect of non-pecuniary damage and EUR 219 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.