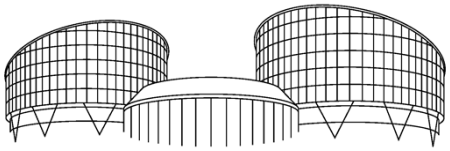

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TEMPEL v. THE CZECH REPUBLIC

(Application no. 44151/12)

JUDGMENT

Article 6 (criminal) • Fair hearing • Case repeatedly remitted to first-instance court for new examination until guilty verdict obtained on fifth occasion • High Court criticising first-instance courts' assessment of evidence and credibility of witness, an approach at odds with domestic law • High Court's failure to provide reasons for its decision not to hear the key witness directly and assess his credibility itself • High Court's approach suggesting that only a guilty verdict would be acceptable • Particular succession of events strongly indicating dysfunction in the operation of the judiciary, vitiating the overall fairness of the proceedings
Article 6 (criminal) • Reasonable time • Excessive length of proceedings

STRASBOURG

25 June 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tempel v. the Czech Republic,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 2 June 2020,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44151/12) 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") by a Czech national, Mr Robert Tempel ("the applicant"), on 11 July 2012.

2. The applicant, who had been granted legal aid, was represented by Mr J. Kříž, a lawyer practising in Prague. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm, Ministry of Justice.

3. The applicant complained, under Article 6 §§ 1 and 2 of the Convention, that criminal proceedings against him had been unfair because the appellate court in question had essentially imposed a presumption of guilt upon the first-instance court which had acquitted him four times. When the first-instance court had refused to accept that he was guilty, the appellate court had unlawfully and in breach of the principle of a tribunal established by law assigned the case to another first-instance court, which had arbitrarily assessed the evidence as the appellate court had done and had thus violated the principle of immediacy. The applicant further complained of the unreasonable length of the trial.

4. On 26 June 2015 the Government were given notice of the above complaints and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973. He is currently serving a sentence of life imprisonment in Valdice Prison for different crimes, including the conviction for murder which is the subject of the present application.

6. In 1996 the applicant was found guilty of robbery and unlawful possession of a weapon, and sentenced to five years and six months' imprisonment. On 3 May 1999 he was conditionally released and a probation period of five years was set.

A. Criminal proceedings

7. On 4 March 2002 the applicant was charged with murdering two people on 20 August 2001. On 10 January 2003 he was also charged with robbery and unlawful possession of a weapon.

8. On 28 January 2003 the applicant was indicted for the murder of two people, and on 25 April 2003 he was indicted for robbery and unlawful possession of a weapon. On 2 May 2003 the Plzeň Regional Court (*krajský soud*) joined these sets of proceedings.

1. First set of proceedings

9. On 17 September 2004 the Plzeň Regional Court found the applicant guilty of robbery and acquitted him of murder and unlawful possession of a weapon. According to the court, it had not been proved that he had murdered the two people in question. It observed that there were two accounts of the events of 20 August 2001. According to the first account, put forward by the applicant, it was the key prosecution witness L.V. who had murdered those people, in connection with a drug deal. According to the second account, put forward by L.V., it was the applicant who had committed the murders, in order to take possession of the car of one of the victims. The court found that the L.V.'s witness testimony, the only direct evidence against the applicant, was not credible, and acquitted the applicant.

10. The applicant appealed against the conviction for robbery, while the prosecution appealed against his acquittal in respect of the charges of murder and unlawful possession of a weapon.

11. On 1 December 2004 the Prague High Court (*vrchní soud*, "the High Court") quashed the impugned judgment and remitted the case to the Plzeň Regional Court. In the appellate court's view, the acquittal had been premature, because the reasoning of the judgment did not contain any assessment of the evidence, apart from an assessment of the credibility of the witness L.V., and even this was incomplete. The High Court further

explained that it did not aim to presume how the Plzeň Regional Court, as a first-instance court, should assess the evidence, as the first-instance court had exclusive jurisdiction over that matter. The errors in question were due to the lack of any assessment of the evidence.

2. Second set of proceedings

12. On 1 February 2005 the Plzeň Regional Court found the applicant guilty of robbery and sentenced him to thirteen years and six months' imprisonment. At the same time, it acquitted him of murder and unlawful possession of a weapon. The court remained convinced that the key prosecution witness L.V. lacked credibility.

13. The applicant appealed against the conviction, while the prosecution appealed against the acquittal.

14. On 27 April 2005 the High Court upheld the conviction for robbery and the acquittal in respect of the charge of unlawful possession of a weapon, but quashed the judgment as regards the applicant's acquittal in respect of the charge of murder, and remitted the case to a different chamber of the Plzeň Regional Court, relying on Article 262 of the Code of Criminal Procedure (hereinafter "the CCP"). The appellate court repeated its criticism and held that while the first-instance court had elaborated on the assessment of the credibility of the witness L.V., the judgment barely contained any assessment of the evidence, and paid insufficient attention to the applicant's version of events and his credibility.

15. As regards the assignment of the case to a different chamber of the Plzeň Regional Court, the appellate court held that the current composition of the chamber had not rectified the mistakes which had been criticised, and had adopted a one-sided position favouring the applicant. The appellate court expressed doubts about that chamber's ability to objectively decide the case.

16. As the applicant had not appealed against his conviction for robbery, it became final. Consequently, he started serving his sentence.

17. The applicant lodged a constitutional complaint (*ústavní stížnost*) against the High Court's decision to assign the case to a different chamber of the Plzeň Regional Court, claiming that his right to a lawful judge had been violated.

18. On 15 September 2005 the Constitutional Court (*Ústavní soud*) (III. ÚS 389/05) dismissed the applicant's constitutional complaint as manifestly ill-founded. The court concluded that the conditions for applying Article 262 of the CCP had been fulfilled.

3. Third set of proceedings

19. On 18 May 2006 a different chamber of the Plzeň Regional Court acquitted the applicant of murder. The court did not find L.V.'s testimony

credible, because it was full of contradictions. According to the court, the circumstantial evidence did not unambiguously point to the applicant's guilt and there were other possible explanations for the events. It had not been proved beyond reasonable doubt that the crime had been committed by the applicant.

20. On 4 October 2006 the High Court again quashed the first-instance court's judgment and remitted the case to the same chamber of the Plzeň Regional Court. It noted that the judgment which had been appealed against was sufficiently reasoned and that great attention had been paid to the assessment of the evidence. However, the way in which the evidence had been assessed had violated Article 2 § 6 of the CCP and the principles of formal logic. The first-instance court was unable to disengage from its one-sided position whereby it unequivocally assessed the evidence in the applicant's favour. In the appellate court's view, the principle of *in dubio pro reo* had its limits, and did not mean that all doubts as regards the assessment of evidence had to be interpreted strictly in the accused's favour.

21. While stressing that the assessment of evidence was, in principle, the exclusive right of the first-instance court, the appellate court considered that L.V.'s credibility had again been assessed in a "destructive way". The appellate court pointed out that the first-instance court had failed to clarify certain discrepancies that were decisive for the conclusion concerning the witness's credibility. Without hearing L.V., the court went on to draw alternative conclusions from the evidence which the first-instance court examined. The High Court also observed that the first-instance court had relied on L.V.'s testimonies from the hearings conducted before the previous chamber, which had been obtained through examinations which had been conducted in a tendentious manner. The court concluded:

> "The regional court again assessed the evidence in a one-sided manner, as it did not attach proper importance to a number of pieces of evidence, in particular those which were to the accused's disadvantage, [and] downplayed them or did not deal with them in the appropriate way, whereas it overrated and attached undue importance to the evidence which, in its opinion, cast doubts on L.V.'s credibility."

22. As for the applicant, the High Court stated that the first-instance court had failed to take into account a number of circumstances decisive for the assessment of his credibility, such as a psychological expert opinion describing him as a dominant, confident person with aggressive tendencies. The appellate court further criticised the first-instance court for disregarding contradictions in the applicant's statements and attaching excessive importance to his motive. Moreover, the conduct of the first-instance court – which had examined whether the prosecution's claims had been proved, rather than whether the accused's defence had been disproved – had directly contradicted Article 2 § 6 of the CCP.

23. On 24 October 2006 L.V. was indicted for being complicit in the same murders of which the applicant had been accused, but he was later

acquitted by the Plzeň Regional Court, and on appeal the decision was confirmed by the High Court.

4. Fourth set of proceedings

24. On 6 March 2007 the Plzeň Regional Court acquitted the applicant of murder for the fourth time. It noted at the outset that the reasoning of the High Court gave the impression that the appellate court would assess the evidence differently and reach a different conclusion on the applicant's guilt because the Plzeň Regional Court had not followed the guidance which the High Court had given. If the Regional Court followed those indications and decided the case in accordance with the appellate court's view, it would violate Article 2 § 6 of the CCP, in accordance with which the authorities in criminal proceedings assessed evidence based on their own conviction. The court responded to the appellate court's criticism and assessed some more evidence. However, it remained unconvinced that the applicant's guilt had been proved to the required level of certainty, as it still considered that L.V.'s testimonies were not credible.

25. On 29 May 2007 the High Court quashed the first-instance judgment on the applicant's acquittal in respect of the charge of murder for the fourth time, remitted the case, and assigned it to another first-instance court within its jurisdiction, the Prague Regional Court, relying on Article 262 of the CCP. While noting that its powers to interfere with a first-instance court's assessment of evidence were substantially restricted, it held that the Plzeň Regional Court's factual conclusions were not substantiated by the evidence.

The High Court confirmed that the proceedings before the Plzeň Regional Court had been carried out in compliance with the CCP, and had not showed any defects which would have curtailed the applicant's right of defence or right to a proper examination of the case. However, it stated that the manner in which the evidence had been assessed, as detailed by the Plzeň Regional Court in its judgment, had not complied with the requirements of Article 2 § 6 of the CCP. The High Court found that the Regional Court was not able to disengage itself from its one-sided assessment of the evidence and L.V.'s testimony. The High Court stated that the first-instance court's assessment of L.V.'s credibility had been tendentious and conducted in a destructive way, leading to findings contrary to the conclusions reached by the appellate court in its previous judgments quashing the acquittals. In the appellate court's view, the first-instance court had not taken the higher court's objections into account, and had no intention of accepting them. It held, *inter alia*, that:

> "... [the Plzeň Regional Court] is apparently unable to forsake its biased assessment of the evidence, and therefore the High Court doubts whether the regional court is able to decide on the present case objectively and fairly. Such a conclusion is supported by the fact that the Plzeň Regional Court has once again

> acquitted the accused, despite its judgments being repeatedly quashed. First, one chamber issued two acquittal decisions, and after the High Court ordered, under Article 262 of the CCP, that a chamber in different composition should try and decide the case, the new chamber again issued two acquittal decisions without accepting the reservations of the High Court, essentially refusing them. In this regard, it can be presumed that the Plzeň Regional Court is not willing and able to objectively decide the case."

26. On 24 July 2007 the applicant lodged a constitutional complaint against the appellate court's decision to assign the case to a different first-instance court, claiming, *inter alia*, that his right to a lawful judge had been violated, as the conditions for the application of Article 262 of the CCP had not been fulfilled. The applicant alleged that the appellate court had been pushing through its own assessment of the evidence.

27. On 13 December 2007 the Constitutional Court (III. ÚS 1913/07) dismissed the applicant's constitutional complaint. It held that the decisions of the High Court were sufficiently reasoned, and that the appellate court had not criticised the first-instance court for its assessment of the evidence, but for the lack of logic in its decisions, and for not taking into account all the circumstances of the case. It confirmed that the conditions required to assign the case to the Prague Regional Court had been fulfilled, and that the appellate court's reasoning had not been arbitrary. It held in particular:

> "The key issue in the present dispute is ... the interpretation and application of ... [Article 262 of the CCP] by the Prague High Court. In this connection, the applicant refers in particular to judgment no. III. ÚS 90/95 of the Constitutional Court of 7 December 1995, ... which also addresses the second sentence of Article 262 of [the CCP] [and which] clearly [indicates] guidance for the constitutionally compliant interpretation providing for ... the necessity [to apply] a considerably restrictive approach when interpreting [this] provision [and] carefully weighing up the specific circumstances of the case.
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> ...
>
> [A]s far as the applicant disagrees ... with the opinions and further procedure of the appellate court, it is important to realise that the Constitutional Court is not and cannot be in the position of [a body] which should address possible conflicts between the [courts of first and second instance] or assess the accuracy of [their] opinions. ... [I]f, in this phase of the procedure, the Constitutional Court deals with the applicant's complaints which touch on the material correctness of the considerations of the appellate court (albeit indirectly), it could, in principle, prejudge the decisions on the merits issued by courts of general jurisdiction, contrary to Article 90 of the Constitution ... and the principle whereby the Constitutional Court minimises its interference with the activity of the courts of general jurisdiction. A very prudent approach by the Constitutional Court is therefore necessary.
>
> For this reason, the role of the Constitutional Court is to 'merely' examine whether the decision-making of the appellate court does not bear signs of arbitrariness. The Constitutional Court therefore examined the question of the soundness – more precisely, the justification for or rationale – of the immediate need to refer the case to another court, so [the issue of] whether the court of first instance had repeatedly disrespected the legal opinions of the appellate court. [The appellate court] blames the lower court for ... violating Article 2 paragraph 6 of the [CCP] and for incorrectly

using the principle of *in dubio pro reo*. From the very comprehensive and detailed reasoning of the contested decision of the High Court in connection with its previous decision dated 4 October 2006 ..., it is clear which specific errors had been identified, ...; the subject of the [High Court's] objections was the incorrectness of the logic in the assessment process [of the court of first instance] and [its] failure to take into account all substantial circumstances, which would also have been linked to the incorrect approach to the above-mentioned principle. While the applicant highlights certain 'inconsistencies' in the contested decision, it is significant that the interpretation of the decision's reasoning as to what constituted the reason for the High Court's approach ... does not cause any major difficulties. It was also pointed out that the court of first instance had not only committed the same errors, but its decisions showed that it had attempted to contradict the previous opinions of the appellate court or misinterpret them, so there are elements suggesting that the court of first instance would not respect the opinion of the appellate court in the future. As to the constitutional requirements concerning the reasoning of the contested judicial decision, where non-compliance [with such requirements] would justify interference by the Constitutional Court in the context of cassation proceedings, ..., the Constitutional Court does not find any error on the part of the High Court."

5. Fifth set of proceedings

28. On 26 November 2008 the Prague Regional Court found the applicant guilty of murder and sentenced him to life imprisonment. It found that L.V.'s testimonies contained only minor contradictions and were credible as to the key facts. L.V.'s account of the events was more precise and convincing than that of the applicant, and was corroborated by other evidence.

29. Following an appeal by the applicant, on 9 December 2009 the High Court upheld the conviction. The appellate court agreed with the factual findings of the first-instance court and its assessment of the credibility of L.V. and the applicant. It concluded that the evidence unequivocally showed that the applicant was guilty, and that no other conclusion could be drawn from that evidence.

30. On 28 July 2011 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on points of law (*dovolání*) by the applicant as manifestly ill-founded. It found that the assessment of the evidence by the Prague Regional Court and the High Court had been logical and showed no signs of arbitrariness. As for the complaints against the assignment of the case to a different court, the Supreme Court referred to the decision of the Constitutional Court of 13 December 2007 (see paragraph 27 above), which the Supreme Court considered to be binding.

31. The applicant lodged a constitutional complaint, relying on Articles 6 and 7 of the Convention. He claimed, *inter alia*: that the courts had intentionally misinterpreted the evidence; that the courts were biased; that his right to a lawful judge and right to the presumption of innocence had been violated; and that his conviction had been based exclusively on the testimony of an untrustworthy witness.

32. On 19 April 2012 the Constitutional Court (II. ÚS 3555/11) dismissed the applicant's constitutional complaint as manifestly ill-founded. Relying on its decisions of 15 September 2005 (see paragraph 18 above) and 13 December 2007 (see paragraph 27 above) respectively, it held that the High Court had had legitimate reasons to assign the case to another chamber and then to a different court. Furthermore, the impugned decisions were thoroughly reasoned and disclosed no signs of arbitrariness. In particular, the court held:

> "... [The] Constitutional Court does not intend to change anything as regards its conclusions that the appellate court had a legitimate reason to replace the chamber of the Plzeň Regional Court, which had originally decided the case, with another chamber of this court (decision III. ÚS 389/05 of 15 September 2005), or to replace [the Plzeň Regional Court] with the Prague Regional Court as the court of first instance (decision no. III. ÚS 1913/07 of 13 December 2007). The fact that the [latter], along with the courts of general jurisdiction of second and third instance, had a different view from the applicant on how the evidence had been assessed ... cannot be considered a clear fact establishing [that they] were biased, or that the [outcome of the] matter under consideration thus depended on which judges decided [the case] (causa sua), as the applicant complains."

B. Compensation proceedings

33. On 2 January 2012 the applicant filed with the Ministry of Justice a claim for compensation for non-pecuniary damage caused by the unreasonable length of the criminal proceedings described above, which had started on 4 March 2002 and ended on 19 April 2012.

34. On 29 June 2012 the Ministry of Justice dismissed his claim, as it did not find that the proceedings had been unreasonably long.

35. On 19 September 2012 the applicant lodged an action for compensation with the Prague 2 District Court (*obvodní soud*), claiming the sum of EUR 10,317 in respect of non-pecuniary damage allegedly sustained as a result of unreasonably long criminal proceedings.

36. On 29 November 2013 the Prague 2 District Court found a violation of the applicant's right to a trial within a reasonable time, but dismissed his claim for compensation. It observed that the proceedings had lasted ten years and one month, and considered that the length of those proceedings had been unreasonable. The court noted that it could not be excluded that, even as the perpetrator of a serious crime, the applicant had suffered non-pecuniary damage arising from the state of uncertainty as to the outcome of the proceedings, especially given the four acquittals that had preceded his conviction. However, the court held that from the perspective of the common notion of justice, the finding of a violation was sufficient redress. Referring to the jurisprudence of the Supreme Court, it noted that the fact that the applicant had been convicted meant that his detriment had not been as great.

37. On 29 May 2014 the Prague Municipal Court (*městský soud*) upheld the judgment. It stated that it would contradict the common notion of justice and ethics to award financial compensation to the applicant, who had been sentenced to life imprisonment for an extraordinarily serious crime committed for particularly contemptible reasons in a malicious and brutal manner.

38. An appeal on points of law lodged by the applicant was dismissed by the Supreme Court on 20 May 2015.

39. On 5 April 2016 the Constitutional Court dismissed a constitutional complaint by the applicant as manifestly ill-founded. It noted in particular that the general courts had properly considered the value of justice in society and had taken into account the circumstances surrounding the interference with the applicant's right and the severity of that interference. The courts' legal opinion had been properly reasoned, and was fully in compliance with the Constitution.

II. RELEVANT DOMESTIC LAW AND PRACTICE

40. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are set out in the Court's decision in the case of *Vokurka v. the Czech Republic* ((dec.), no. 40552/02, §§ 11–24, 16 October 2007).

A. The Code of Criminal Procedure

41. Under Article 2 § 5, the authorities in criminal proceedings must proceed so as to properly establish the facts of a case about which there are no reasonable doubts.

42. Under Article 2 § 6, the authorities in criminal proceedings must assess the evidence according to their own conviction, based on a diligent evaluation of all the circumstances of the case, individually and in the context of other evidence.

43. Under Article 258 § 1 (b), an appellate court quashes a judgment which has been appealed against if the factual findings in that judgment are unclear or incomplete, or if the first-instance court has not taken into account all the relevant circumstances.

44. Under Article 258 § 1 (c), an appellate court quashes a judgment which has been appealed against if there are doubts about the correctness of the factual findings in that judgment, or if it is necessary to obtain further evidence.

45. Pursuant to Article 259 § 5 (a), where a judgment is in dispute, an appellate court may not find the accused guilty of the crime of which he has been acquitted under that judgment.

46. Pursuant to Article 262, when an appellate court remits a case back to the first-instance court for a new examination, it may order that the case be assigned to another chamber of the first-instance court. If there are important reasons to do so, it may also order that the case be assigned to another first-instance court.

47. Pursuant to Article 263 § 7, in terms of changes or supplements to factual findings, an appellate court may take into account only the evidence that has been adduced at a public hearing before that court; this evidence shall be assessed in relation to the evidence dealt with by the court of first instance during the trial. The appellate court is bound by the assessment of the evidence carried out by the court of first instance, apart from in respect of evidence which it (the appellate court) has dealt with itself at the public hearing.

B. Case-law of the Supreme Court

48. In judgment no. 30 Cdo 3867/2011, relying on the case-law of the Court, the Supreme Court stated that one possible form of redress for the unreasonable length of proceedings was a reduction in sentence. In such a case, a criminal court had to explicitly state that it was reducing the sentence for that reason, and define how the sentence was to be reduced.

C. Case-law of the Constitutional Court

49. In leading judgment no. III. ÚS 90/95 of 7 December 1995, the Constitutional Court stated that courts should have recourse to the application of Article 262 of the CCP only if there were distinct, evident and undeniably important reasons for that procedure and the existence of those reasons had been clearly proved. A decision under that provision was entirely exceptional.

50. In judgment no. I. ÚS 608/06, adopted on 29 April 2008, when referring to the rule *in dubio pro reo* which flows from the principle of the presumption of innocence, the Constitutional Court stated that however high a level of suspicion was, it could not in itself constitute a legal basis for a conviction, and the principles of individual responsibility and the presumption of innocence could not be isolated and the courts of general jurisdiction were obliged to respect them unconditionally. In that case, there was a fundamental disagreement between the appellate court and the court of first instance concerning the assessment of the credibility of an important witness whose testimony, assessed individually and in the context of other evidence, raised – according to the court of first instance – reasonable doubts about the applicant's guilt. The Constitutional Court held, in particular:

> "14. A higher court's entitlement to give binding instructions to a lower court stems from the hierarchical concept of court proceedings, which in itself does not contravene the principles of constitutionality ... A higher court may express a legal opinion which is binding for the lower court, but may not oblige it to make a particular assessment of the evidence. In criminal proceedings, the appellate court is explicitly bound by the assessment of the evidence carried out by the court of first instance (Article 263 § 7 of the CCP). ...
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> 15. From the standpoint of constitutional guarantees, the exercise of hierarchical jurisdiction must not conflict with any of the principles of a fair trial, and the appellate court is not empowered to order a change in the assessment of evidence. [A higher court] cannot impose its own assessment of evidence on a lower court. ...
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> 16. Courts of general jurisdiction cannot abandon their assessment of the credibility of a witness's testimony, even if the prosecution privileges [that witness] for some reason. ... This defect becomes constitutionally relevant when such a statement is of crucial importance in proving guilt. If the appellate court had a radically different view on the witness's credibility, it should have heard him itself in order to be able to assess his testimony first-hand and give the defence the opportunity to cast doubt on [his] assertions directly before [the appellate] court. ... The principle of immediacy is constitutionally relevant in respect of the accused's right to defence in criminal proceedings guaranteed by Article 40 § 3 of the Charter [of Fundamental Rights and Freedoms]."

51. In judgment no. I. ÚS 1922/09 of 7 September 2009, the Constitutional Court, relying partly on leading judgment no. III. ÚS 90/95 (see paragraph 49 above) found a violation of the constitutional right to a lawful judge, in a situation where an appellate court had assigned a case to another chamber of a first-instance court, having disagreed with the first-instance court's conclusions regarding the applicant's guilt and having misused Article 262 of the CCP in order to push through its own conclusions. The Constitutional Court criticised the appellate court for having labelled its own conclusions regarding the assessment of the evidence as "binding legal opinion", and found it unacceptable that the appellate court had explicitly criticised the court of first instance for the factual findings it (the first-instance court) had drawn from the evidence it had assessed, even though the appellate court had admitted that the court of first instance had taken into account all the issues which it (the appellate court) had raised in a previous judgment.

52. Similarly, in judgment no. I. ÚS 109/11 of 14 April 2011, the Constitutional Court stressed that when an appellate court disagreed with the factual findings of a court of first instance, it could not reach different conclusions as to the factual situation, but could may only point out why it believed that the factual findings of the court of first instance might be erroneous. The Constitutional Court further reiterated that when an appellate court remitted a case to a court of first instance, it could not criticise how evidence had been assessed unless it re-examined such evidence itself (the principle of immediacy). Even then, the appellate court could only instruct the court of first instance as to what further evidence must be obtained and

what should be reassessed, but could not give the court of first instance any binding instructions as to how the evidence should be assessed or what conclusions should be drawn up from it. The Constitutional Court then stated that a case could be assigned to another chamber of the same court, in compliance with Article 262 of the CCP, only if there were important reasons for such an assignment. The Constitutional Court noted that the appellate court in that case had assigned a case to another chamber of the same first-instance court, because there had been a failure to respect its (the appellate court's) binding instructions. However, the Constitutional Court found that the appellate court had criticised the first-instance court's assessment of the evidence and had adopted its own conclusions regarding factual findings and the accused's guilt, conclusions which it (the appellate court) had then imposed on the court of first instance. The Constitutional Court found that such conduct was in breach of the law, and found that there had been a violation of the applicant's constitutional right to a lawful judge.

53. The Constitutional Court further developed that jurisprudence in a subsequent judgment, judgment no. II. ÚS 2317/11 of 24 January 2012, in which it emphasised that the decision to assign a particular case was an absolutely exceptional decision, and therefore the procedure under Article 262 of the CCP should be used only in absolutely exceptional circumstances, and could not be used solely in order to obtain another decision of a court of first instance which was identical to the opinion of an appellate court. The Constitutional Court held that the reasons for applying Article 262 of the CCP must be important, clear and indisputable, and that the existence of those reasons must be unequivocally demonstrated. An appellate court doubting the impartiality of a chamber of a court of first instance as regards a case which it examined – doubt which the appellate court voiced after repeated annulments of decisions of the court of first instance – would certainly count as such a reason. However, if the appellate court reached the same conclusion without justifying it on the basis of the chamber's bias, and merely by finding that the court of first instance had disregarded its (the appellate court's) guidelines for assessing evidence, it could not be considered an absolutely exceptional procedure within the meaning of Article 262 of the CCP.

54. In its later decisions II. ÚS 3564/12 of 5 March 2013, II. ÚS 3780/13 of 11 November 2014, I. ÚS 794/16 of 21 June 2016, II. ÚS 1837/16 of 13 December 2016 and I. ÚS 564/17 of 13 April 2017, the Constitutional Court further clarified under which conditions an appellate court could have recourse to the application of Article 262 of the CCP. In particular, the court stated that such a decision by an appellate court would be constitutional only if it was highly probable that the original judge in the case would not be able to resolve the case in a manner which the appellate court could uphold. The court referred to repeated failures to comply with the binding instructions of an appellate court, including in relation to factual findings

being assessed differently. It reiterated that an appellate court might order a first-instance court to eliminate the discrepancies in factual findings or re-examine and obtain certain pieces of evidence, and that its instructions must be adequately concrete. If those requirements were fulfilled, the appellate court could not quash the first-instance court's decision only in order to push through its own assessment of the evidence and its own findings. The Constitutional Court summarised by stating that the application of Article 262 would demonstrate manifest arbitrariness if an appellate court did not give sufficient reasons for such a procedure, or if it relied on reasons which were evidently not relevant.

55. In judgment no. I. ÚS 2726/14, the Constitutional Court explained how an appellate court assessed the evidence before it. It held that when an appellate court assessed evidence differently from a first-instance court, after quashing an impugned judgment, it could not decide the case without evidence being adduced. If, for example, an appellate court disagreed with how a specific witness statement had been assessed, it should hear the witness itself in order to have an adequate basis for assessing the statement differently and changing factual findings. This procedure reflects the principles of directness and immediacy under Article 2 §§ 11 and 12 of the CCP. In a situation where a first-instance court had assessed the evidence and all the circumstances of a case diligently, in compliance with Article 2 § 6 of the CCP, an appellate court could not quash an impugned judgment on the basis that it would assess the same evidence differently. The appellate court could only point out to the first-instance court what other circumstances to take into account, but it should not bind the first-instance court as to what factual conclusions it should reach. For instance, when considering the credibility of a witness, the appellate court could hold that the first-instance court had erred by overrating negligible discrepancies in the description of a perpetrator, because forensic psychology showed that such discrepancies were common when witnesses were in a stressful situation. However, it should not order the first-instance court to consider the witness credible. This would be particularly inappropriate when the appellate court itself had not examined the witness, thereby unlawfully circumventing the first-instance court's task of assessing the credibility of the witness's testimony on the basis of a direct and immediate examination during the trial. Particular caution was required when a first-instance court acquitted an accused with regard to the principle of *in dubio pro reo* and clearly explained its doubts about the accused's guilt. Not having reasonable doubts about the accused's guilt on the basis of the case file – when the first-instance court had had such doubts after examining all the evidence with regard to the principle of immediacy – and therefore quashing the acquittal was allowed only when the doubts of the first-instance court were without merit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A FAIR TRIAL

56. The applicant complained that the appellate court had unlawfully assigned his case to another first-instance court within its jurisdiction, the Prague Regional Court, which had convicted him on the basis of an arbitrary assessment of the evidence along the lines of the appellate court's opinion. He claimed that the appellate court had assessed the credibility of the key witness without hearing him and had instructed the first-instance court on what conclusions it should reach. The applicant alleged that such conduct by the appellate court raised doubts as to its independence and impartiality. He relied on Article 6 § 1 of the Convention, which, so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

A. Admissibility

57. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicant claimed that the appellate court had violated the relevant provisions of the domestic law in assigning his case to another first-instance court within its jurisdiction, the Prague Regional Court, in its judgment of 29 May 2007 – its fourth judgment quashing the Plzeň Regional Court's decisions. He claimed that in its judgment of 6 March 2007 the Plzeň Regional Court had respected the provisions concerning the assessment of evidence, and the appellate court had only reassigned the case to another court in order to push through its own opinion about his guilt based on its own assessment of the credibility of the key witness L.V., whom it had not heard. The applicant further argued that there were no clear rules regulating to which court a case should be assigned when the case was reassigned to a different first-instance court, unlike the rules regulating a situation when a case was reassigned to another chamber of the same first-instance court, which was contrary to the principle of a

tribunal established by law. The applicant alleged that the courts which had decided his case had not been independent and impartial.

59. The Government claimed that the Prague Regional Court had to be regarded as a tribunal established by law because it was part of the system of ordinary courts which was vested with, *inter alia*, the power to administer justice in criminal cases. Under Article 262 of the CCP, an appellate court was limited in its choice of first-instance court, as it could only choose a court within its own jurisdiction and it had to take into account the court's distance from the accused's place of residence and the related costs of transport. Moreover, the High Court could not in any way have influenced which chamber of the Prague Regional Court would eventually deal with the applicant's case. The Government further argued that Article 262 of the CCP was neither unclear nor unforeseeable. In their view, the provision, as interpreted by domestic courts, set out clear limits for its application, and thereby prevented its overuse by appellate courts.

60. The Government further noted that the High Court had respected those limits. The reasoning of the appellate court's decision on the assignment of the case to another first-instance court clearly indicated that the Plzeň Regional Court had assessed the evidence contrary to the principles set out in Article 2 § 6 of the CCP. In the Government's view, the appellate court had not given any binding instructions to the first-instance court. As regards the issue of the assessment of the key witness, the High Court had only addressed this issue indirectly, in connection with substantiating the deficiencies identified in the decision.

2. The Court's assessment

(a) General principles

61. The Court reiterates that what constitutes a fair trial cannot be the subject of a single unvarying rule, but must depend on the circumstances of the particular case. The Court's primary concern, in examining a complaint under Article 6 § 1, is to evaluate the overall fairness of the criminal proceedings.

62. The Court acknowledges that the applicant in the present case raises various complaints under paragraph 1 of Article 6 (see paragraph 56 above). However, having regard the particular circumstances of the criminal proceedings concerned, it considers it appropriate to examine the applicant's complaints globally under the head of general fairness, which is the key principle governing the application of Article 6 (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016).

63. In this regard, the Court reiterates that the right to a fair trial holds so prominent a place in a democratic society that there can be no justification

for interpreting the guarantees of Article 6 § 1 of the Convention restrictively (see *Hodžić v. Croatia*, no. 28932/14, § 57, with further references, 4 April 2019). Compliance with the requirements of a fair trial must thus be examined in each case, having regard to the development of the proceedings as a whole, and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Beuze v. Belgium* [GC], no. 71409/10, § 121, 9 November 2018).

64. At the same time, it is not the function of the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention. Article 6 § 1 of the Convention does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. Normally, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Hodžić* cited above, § 58, with further references).

(b) Application of the principles to the circumstances of the present case

65. The Court observes that the present case was examined five times by the courts of first and second instance, with the additional and repeated involvement of the Constitutional Court, as the High Court quashed four consecutive judgments of the Plzeň Regional Court acquitting the applicant of the charge of murder. The High Court remitted the case to the same chamber of the first-instance court which had given the original judgment (see paragraph 11 above). Thereafter, relying on Article 262 of the CCP, the High Court referred the case to another chamber of the same court (see paragraphs 14-15 above) which examined the case twice, and then lastly to a different first-instance court within its jurisdiction (see paragraph 25 above).

66. Indeed, Article 262 of the CCP provides that when an appellate court remits a case to a first-instance court for a new examination, it may order the case to be assigned to another chamber, or to another first-instance court if there are important reasons for that assignment (see paragraph 46 above). Concurrently, according to the long-standing case-law of the Constitutional Court (see paragraphs 49-55 above), established both before and after the

adoption of the decisions of the Constitutional Court in the present case, Article 262 of the CCP is to be interpreted as enabling an appellate court to remit a case to another chamber or another first-instance court only if there are "distinct, evident and undeniably important reasons for that procedure and the existence of those reasons has been clearly proved". An appellate court may order a first-instance court to eliminate the discrepancies in factual findings or re-examine and obtain certain pieces of evidence, and its instructions must be adequately concrete. When these requirements are fulfilled, the appellate court cannot quash the first-instance court's decision only in order to push through its own assessment of the evidence and its own findings. Accordingly, regarding the assessment of evidence, the appellate court may only indicate to the first-instance court what circumstances are to be taken into account, but should not bind the first-instance court as to what factual conclusions it should reach.

67. As has already been noted, it is primarily for the national courts to interpret the provisions of domestic law, and the Court may not question their interpretation unless there has been a flagrant violation of domestic law (see paragraph 64 above). In the present case, the Court observes that while a decision under Article 262 of the CCP should be "entirely exceptional" (see paragraph 49 above), the High Court applied this provision repeatedly (see paragraph 65 above), until the Prague Regional Court – to which the case had ultimately been transferred by the High Court – found the applicant guilty of murder and sentenced him to life imprisonment (see paragraph 28 above), in contrast to the Plzeň Regional Court, which had acquitted the applicant four times (see paragraphs 9, 12, 19 and 24 above).

68. The Court further observes that when quashing the first-instance judgments, the High Court mainly criticised the court of first instance for how it had assessed the evidence (see paragraphs 11, 14, 22 and 25 above) and the credibility of the witness L.V. in particular (see paragraphs 21 and 25, and also paragraphs 11 and 14 above). However, the Court considers that this approach seems to be at odds with Article 263 § 7 of the CCP as interpreted by the Constitutional Court, in accordance with which the appellate court is bound by the assessment of the evidence carried out by the court of first instance (see paragraph 50 above). In this context, the Court refers to the reasoning of the High Court's judgment by which the case was transferred to a different chamber of the Plzeň Regional Court for a second time, and which went on to draw an alternative conclusion from the evidence previously examined by the court of first instance (see paragraphs 20-22 above), without the witness L.V. being heard by the High Court. The Court also refers to the judgment of the High Court by which the case was transferred to a different court of first instance, and which contains formulations that may be interpreted as suggesting that the first-instance court should reach different conclusions as to the credibility of the witness

L.V., and that the appellate court would not accept any outcome other than the applicant's conviction (see paragraph 25 above). The Court observes that such conclusions sit uneasily with the Constitutional Court's long-standing case-law, which establishes, as summed up above (see paragraph 66 above), that an appellate court may not assess the credibility of a specific witness unless it hears him itself**,** as provided for in Article 263 § 7 of the CCP (see paragraph 47 above), and should not quash a judgment on acquittal unless the doubts of the first-instance court concerning the guilt of the accused are without any merit. Moreover, it may not, under any circumstances, instruct the first-instance court as to whether it should or should not find the accused guilty.

69. The Court adds that the High Court provided no reason justifying its decision not to hear the witness L.V. directly and assess his credibility itself. Indeed, as the disagreement between the concerned jurisdictions turned essentially on the credibility of a witness, L.V., an issue which inherently depends on seeing the witness give evidence, it would have been appropriate to at least give some reasons on why hearing the witness in question was unnecessary.

70. What is more, it appears that the High Court based its doubts concerning the independence and impartiality of the judges of the first-instance court, and its conclusion that the first-instance court had failed to comply with its (the High Court's) binding instructions, exclusively on the fact that the first-instance court had made factual findings and conclusions as to the applicant's guilt which were different from what was right in the appellate court's view. The Court notes that an appellate court may decide to reassign a case to another chamber of the same court, or to another court, in cases where it has doubts as to a first-instance court's impartiality and independence, or in cases where a first-instance court fails to comply with a binding instruction. However, according to the long-standing case-law of the Constitutional Court, an appellate court does not have competence to criticise a first-instance court's assessment of evidence or factual findings, or its actual judgment on an acquittal. Therefore, it may base neither its doubts concerning judges' independence and impartiality nor its criticism of a first-instance court's failure to comply with binding instructions on the mere fact that a first-instance court has made factual findings and a conclusion in respect of an applicant's guilt which the appellate court merely disagrees with.

71. Against this background, the Court considers that the procedural approach adopted by the High Court in the present case could have had as a consequence that the Prague Regional Court come to the conclusion that the only decision susceptible of being accepted by the High Court and bring the proceedings to an end was a guilty verdict. In the Court's view, the particular succession of events in the present case strongly indicates a

dysfunction in the operation of the judiciary, vitiating the overall fairness of the proceedings.

72. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE CRIMINAL PROCEEDINGS

73. The applicant further maintained that his right to a trial "within a reasonable time" had not been respected, and that there had accordingly been a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

1. The parties' submissions

74. The Government maintained that in the light of the judgment of 29 November 2013 (see paragraph 36 above), the application was incompatible *ratione personae* with the provisions of the Convention, as the applicant could no longer claim to be a victim of a violation of Article 6. Indeed, the domestic courts had acknowledged a violation of his right to a trial within a reasonable time, considering that acknowledgement sufficient redress, given the circumstances of the case.

75. They contended that the acknowledgment by the domestic courts that the length of the criminal proceedings had breached the "reasonable time" requirement within the meaning of Article 6 § 1 of the Convention constituted sufficient redress for the applicant. They argued in this respect that the Court should not require a monetary award of just satisfaction for the non-pecuniary damage suffered. They noted that only negligible damage might be suffered by persons who were repeatedly prosecuted for committing an intentional offence, or persons who were serving a sentence of imprisonment while they were subject to a criminal prosecution. The Government asserted that the applicant was an extremely dangerous recidivist who had already been serving a prison sentence at the time of the proceedings for murder, and therefore one could be doubt whether he had suffered anxiety, uncertainty or inconvenience in connection with those proceedings.

76. The applicant contested this view. He pointed out that the delays in the criminal proceedings should have been reflected in a reduction in his sentence, or if civil proceedings for compensation had been initiated then

he, as the victim, should have received sufficient monetary redress. Neither of those options applied in his particular situation, therefore he had not lost his victim status.

2. The Court's assessment

77. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" of a violation of a Convention right unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *inter alia*, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 180, ECHR 2006‑V, with further references).

78. As to the redress which has to be afforded to an applicant in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation found. In cases concerning a breach of Article 6 § 1 due to the excessive length of criminal proceedings, the Court has repeatedly found that redress could notably be granted by adequately reducing the prison sentence of the person found guilty of an offence in an express and measurable manner, or by discontinuing the criminal proceedings on account of their excessive length. The Court has further accepted in other length-of-proceedings cases that monetary compensation can constitute adequate redress for excessively lengthy proceedings, and that the party concerned can then no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Chiarello*, cited above, § 55, with further references).

79. Turning to the present case, the Court observes at the outset that on the basis of the national case-law, it was open to the national courts acting in the criminal proceedings to reduce the applicant's sentence (see paragraph 48 above). However, they decided not to pursue this avenue.

80. In the subsequent compensation proceedings, the District Court expressly stated that the length of the criminal proceedings against the applicant, which had been attributable to the national authorities, did not comply with the "reasonable time" requirement laid down in Article 6 § 1 (see paragraph 36 above). Its conclusion was confirmed by the Municipal Court (see paragraph 37 above). However, the courts decided not to award any monetary compensation to the applicant, finding this inappropriate, having regard, in particular, to the seriousness of the crimes of which the applicant had been convicted and the fact that he had already been serving a sentence of imprisonment at the time of the trial, and thus had most probably not felt any substantial anxiety in connection with the criminal proceedings at issue.

81. As to the question of whether the result of the compensation proceedings constituted adequate redress in the circumstances of the present case, the Court reiterates that, under exceptional circumstances, the finding

of a violation constitutes in itself sufficient just satisfaction for any damage suffered by an applicant. Thus, in previous cases, the Court has not awarded any monetary compensation to an applicant convicted of manslaughter and several counts of sexual abuse against children, whose prosecution lasted over seven years (see *Szeloch v. Poland*, no. 33079/96, § 122, 22 February 2001), or an applicant who was a recidivist convicted of rape of a minor and an adult, whose prosecution lasted almost five years (see *Cherakrak v. France*, no. 34075/96, § 29, 2 August 2000).

82. However, the Court is of the view that the present case has to be distinguished from those cases. In this regard, it observes that the protracted length of the criminal proceedings was mostly due to the case being repeatedly remitted to the first-instance court. Moreover, even though the applicant was already serving a sentence of imprisonment at the time of the trial, the Court is not convinced by the Government's argument that he did not feel any anxiety, uncertainty or inconvenience in connection with the criminal proceedings at issue, and therefore suffered only minimal or negligible damage. Indeed, although he was already imprisoned, the applicant was facing a sentence of life imprisonment in those proceedings. Having been acquitted of murder by the Plzeň Regional Court four times before finally being found guilty by the Prague Regional Court, the applicant must have felt substantial anxiety and uncertainty regarding the sentence that could be imposed on him.

83. In view of the foregoing, the Court finds that the applicant has not received adequate and sufficient reparation at domestic level for the damage caused to him by the protracted length of the criminal proceedings. Consequently, he has not lost his victim status within the meaning of Article 34 of the Convention and the Government's objection must be dismissed.

84. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

85. The applicant claimed that the length of the criminal proceedings, which had lasted over ten years, could not be seen as reasonable, notably in a situation where all delays had been attributable to only the appellate court.

86. The Government referred to the findings of the domestic courts and admitted that it was likely that the criminal proceedings against the applicant had breached the right to a hearing within a reasonable time.

2. The Court's assessment

87. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of a case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant (see *Chiarello v. Germany*, no. 497/17, § 45, 20 June 2019, with further references).

88. The Court has already held that repeated remittals as a result of the poor and incomplete assessment of evidence and parties' submissions, and procedural errors for which courts are responsible, may amount to a violation of the rights enshrined in Article 6 § 1 of the Convention (see *Yaroshovets and Others v. Ukraine* in table no. 2, §§ 169-171, and *Yurtayev v. Ukraine* in table no. 2, § 41). In this regard, the Court points out that the repeated remittals to the court of first instance did substantially increase the overall length of the criminal proceedings in question, and that if the High Court had made use of the procedural possibility to question the witness L.V. itself, then this could certainly have reduced the duration of the proceedings.

89. The Court observes that the criminal proceedings at issue were of a certain complexity, having regard to the serious nature of the charges against the applicant. The Government did not dispute that the criminal proceedings, which had lasted a total of ten years and one month over four levels of jurisdiction, had suffered from delays and had breached the right to a hearing within a reasonable time within the meaning of the Article 6 § 1 of the Convention. Furthermore, the Court notes that the length of the proceedings is attributable mainly to the case being repeatedly remitted to the court of first instance. The applicant in no way contributed to the delays, and it was mostly the public prosecutor who lodged the appeals.

90. In view of all these circumstances, the Court cannot regard the period of time that elapsed in the instant case as reasonable.

III. OTHER ALLEGED VIOLATIONS

91. The applicant alleged that the proceedings had been unfair, because the appellate court had carried out an assessment of the credibility of the witnesses without hearing them. He further complained that his right to a fair trial in the criminal proceedings against him had been violated, because the appellate court had essentially imposed a presumption of guilt upon the first-instance court which had acquitted him four times. He relied on Article 6 §§ 1 and 2 of the Convention.

92. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that they are not inadmissible on any other grounds. They must therefore be declared admissible.

93. However, having regard to the facts of the case, the submissions of the parties and its findings under Article 6 § 1 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to examine separately the merits of the remaining complaints (see, among other authorities, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; *Women On Waves and Others v. Portugal*, no. 31276/05, § 47, 3 February 2009; *Velcea and Mazăre v. Romania*, no. 64301/01, § 138, 1 December 2009; *Villa v. Italy*, no. 19675/06, § 55, 20 April 2010; *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 72, ECHR 2012; and *Mehmet Hatip Dicle v. Turkey*, no. 9858/04, § 41, 15 October 2013; see also *Varnava and Others*, cited above, §§ 210-11; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

95. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage sustained in connection with different alleged violations of his rights, without further specifying the amount claimed in respect of each individual alleged violation.

96. The Government stated that the amount claimed was completely arbitrary. The Government submitted that in the event that the Court found a violation of the applicant's procedural rights, the appropriate remedy would be the reopening of the relevant proceedings. In their view, the applicant should not be granted any monetary compensation, because the finding of a violation would constitute sufficient redress.

97. Taking into account the specific circumstances of the present case and the overall length of the proceedings, the Court awards the applicant EUR 12,500 in respect of the non-pecuniary damage sustained in connection with the violation of his rights.

B. Costs and expenses

98. The applicant also claimed 215,726 Czech korunas (CZK – EUR 8,297) for the costs and expenses incurred before the Court.

99. The Government claimed that the applicant had failed to provide any supporting documents proving that costs or expenses had actually been incurred, and hence he should not be awarded any compensation in this regard.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant provided an invoice in the amount of CZK 27,371 (EUR 1,069) for the translation of the Government's observations, but failed to submit any further documents proving that the costs and expenses claimed had actually been incurred. In such circumstances, the Court considers it reasonable to award the sum of CZK 27,371 (EUR 1,069), less the amount paid by the Council of Europe in respect of legal aid, that is EUR 850. Therefore, the applicant shall be awarded the sum of EUR 219.

C. Default interest

101. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a fair trial;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;

4. *Holds* that no separate issue arises in respect of the remaining complaints under Article 6 §§ 1 and 2 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 219 (two hundred and nineteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Ksenija Turković President