



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

SECOND SECTION

CASE OF VODENIČAROV v. SLOVAKIA

(Application no. 24530/94)

JUDGMENT

STRASBOURG

21 December 2000

In the case of Vodeníčarov v. Slovakia,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr B. CONFORTI,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr E. LEVITS, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 7 December 2000,

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

PROCEDURE

1. The case was referred to the Court in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the European Commission of Human Rights (“the Commission”) on 13 September 1999 (Article 5 § 4 of Protocol No. 11 and former Article 48 of the Convention).

2. The case originated in an application (no. 24530/94) against the Slovak Republic lodged with the Commission under former Article 25 of the Convention by a Bulgarian national, Stefčo Vodeníčarov (“the applicant”), on 27 September 1993.

3. The applicant alleged, *inter alia*, that the procedure to review the lawfulness of his detention in a mental hospital did not meet the requirements of Article 5 § 4 of the Convention.

4. In its report of 23 April 1999 (former Article 31 of the Convention), the Commission expressed the opinion that there had been a violation of Article 5 § 4 of the Convention.

5. In the proceedings before the Court the Slovak Government (“the Government”) were represented by their Agent, Mr R. Fico to whom Mr P. Vršanský succeeded in the exercise of this function as from 14 April 2000.

6. The Bulgarian Government, having been informed by the Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 60 § 1 of the Rules of Court), indicated that they had no intention of so doing.

7. On 20 September 1999 the panel of the Grand Chamber determined that the case should be decided by a Chamber constituted within one of the Sections of the Court (Article 5 § 4 of Protocol No. 11 taken together with

Rules 100 § 1 and 24 § 6 of the Rules of Court). Subsequently the application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). On 15 June 2000 the Court decided, after having consulted the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 30 September 1994 the Trnava District Prosecutor charged the applicant with assault causing bodily harm on the ground that he had hit a neighbour. On 12 October 1994 the Trnava District Court (*Okresný súd*) issued a penal order by which the applicant was conditionally sentenced to five months' imprisonment. Upon the applicant's complaint the District Court quashed the penal order and scheduled a hearing in the case.

10. On 5 December 1994 a hearing was held before the Trnava District Court. It was adjourned because of the applicant's misbehaviour. A further hearing was held on 21 February 1995. As the applicant did not behave properly, the judge ordered him to be removed from the court building. The hearing was held in his absence. The applicant was convicted of assault causing bodily harm. A conditional five months' prison sentence was imposed. On 30 March 1995 the Bratislava Regional Court (*Krajský súd*) dismissed the applicant's appeal.

11. On 12 May 1995 the Trnava District Office for Investigations (*Okresný úrad vyšetrovania*) charged the applicant with contempt of court, allegedly committed on 5 December 1994 during the first hearing before the Trnava District Court.

12. On 16 May 1995 the Trnava District Court ordered a psychiatric examination of the applicant in the context of the criminal proceedings. The applicant submitted a certificate from a Bulgarian doctor dated 16 June 1995 and refused to be examined as an out-patient.

13. On 5 June and 7 July 1995 the applicant sought redress from the Constitutional Court (*Ústavný súd*) alleging that the criminal proceedings were unfair, including the order for his psychiatric examination. By letter of the Constitutional Court of 17 July 1995 he was informed that the Constitutional Court is not superior to the police, prosecutor or ordinary

courts and that it is not an appellate body in the ordinary court system. He was further informed that the Constitutional Court has no jurisdiction to change or quash the decisions of ordinary courts or to interfere with their jurisdiction and that judicial decisions can be remedied by the means and according to the procedures prescribed by law.

14. In the meantime, on 11 July 1995, the Trnava District Court had ordered that the applicant be detained for observation in a mental hospital pursuant to Section 116 (2) of the Code of Criminal Procedure. The applicant received the decision on 14 July 1995, and on 15 July 1995 he challenged it.

15. On 17 July 1995 the mental hospital summoned the applicant to be admitted on 20 July 1995.

16. On 19 July 1995 the applicant was handcuffed and escorted by the police to the mental hospital. No warrant was presented. The applicant stayed in the mental hospital until 18 August 1995. From 11 to 13 August 1995 he was granted leave.

17. On 28 July 1995 the applicant's wife complained to the Prosecutor General's Office that on 19 July 1995 the applicant had been confined in the mental hospital although he had appealed against the Trnava District Court's order of 11 July 1995. She claimed that the applicant's detention in the mental hospital was unlawful.

18. On 17 August 1995 the Bratislava Regional Court dismissed the applicant's complaint against the Trnava District Court's order of 11 July 1995. The decision was notified to the Trnava District Court on 28 September 1995. It was not served on the applicant.

19. By letter of 30 August 1995, served on the applicant's wife on 10 September 1995, the Prosecutor General's Office informed her that her complaint had been referred, for reasons of competence, to the Bratislava Regional Prosecutor.

20. On 30 August 1995 the prosecution for contempt of court was stayed in the light of the experts' conclusion that the applicant suffered from a permanent personality disorder which had prevented him from controlling his behaviour during the hearing before the Trnava District Court of 5 December 1994.

21. On 21 September 1995 the Bratislava Regional Prosecutor informed the applicant's wife that her complaint of 28 July 1995 had been sent, for reasons of competence, to the Trnava District Prosecutor. The applicant and his wife received no further information in this respect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

22. By virtue of Article 130 (3), the Constitutional Court may commence proceedings upon a petition (*podnet*) presented by an individual or a corporation claiming that their rights have been violated.

23. Article 17 (1) and (2) provide that personal liberty of every individual shall be guaranteed and no one shall be prosecuted or deprived of liberty unless for reasons and by methods set by law. According to Article 17 (6), a person may be committed to or held in a health-care institution without his or her consent only in cases specified by law. Such cases shall be reported to a court within twenty-four hours and the court shall decide within five days. According to Article 17 (7), “a psychological examination of a person charged with an offence is permissible only upon a written court order”.

B. The Code of Criminal Procedure

24. Section 116 (1) provides for the appointment, upon a written order by the court, of two psychiatric experts when there is a need to examine the mental health of the accused. Pursuant to Section 116 (2), if the mental health of the accused cannot be examined in any other way, the court can order detention for observation in an institution. The order can be challenged by a complaint which has suspensive effect.

25. According to Section 167, the accused has a right, at any time in the course of the investigation, to request the rectification of defects in the investigator’s procedure. Such a request, to which no statute of limitation applies, must be submitted immediately to the public prosecutor who is required to deal with it without delay, and to inform the accused about the finding of the review.

C. Practice of the Constitutional Court

26. In the judgment No. I ÚS 79/93 of 15 September 1993 the Constitutional Court, sitting in a chamber of three judges, ordered the release of a patient confined in a mental establishment without his consent. In this case, the patient had been detained for more than two months without any authorisation by a competent ordinary court. He alleged a violation of Article 17 (6) of the Constitution and the Constitutional Court considered the matter in the light of Article 5 § 4 of the Convention. This judgment was not included in the Collection of Findings and Decisions (*Zbierka náleзов a uznesení*) published by the Constitutional Court and comprising decisions

which the plenary session of the Constitutional Court considers important from the legal point of view. The judgment has been neither confirmed nor developed subsequently.

27. In its subsequent practice the Constitutional Court has consistently held that it is not an appellate body in the ordinary court system and that it has no jurisdiction to interfere with proceedings before ordinary courts or to quash their decisions.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

28. The Government claimed, as they had before the Commission, that the applicant's complaint under Article 5 § 4 of the Convention was inadmissible for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention. They pointed out that the applicant had not sought to have the shortcomings in the investigator's procedure reviewed by a public prosecutor in accordance with Section 167 of the Code of Criminal Procedure and that he had not filed a petition pursuant to Article 130 (3) of the Constitution claiming that his detention was unlawful.

29. The Court finds that the Government's arguments are closely linked to the well-foundedness of the applicant's complaint under Article 5 § 4. The plea should therefore be joined to the merits.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

30. The applicant complained that the proceedings for the review of his detention for observation in the mental hospital did not satisfy the requirements of Article 5 § 4 of the Convention which provides as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

31. The Government contended that the applicant could have filed a petition with the Constitutional Court pursuant to Article 130 (3) of the Constitution, claiming that his constitutional right was being breached as he was deprived of his personal liberty guaranteed by Article 17 (1) and (7) of the Constitution and asking for an urgent review of the lawfulness of his deprivation of liberty. A favourable decision of the Constitutional Court would have resulted in the applicant's release from the mental hospital. They refer to the Constitutional Court's judgment No. I ÚS 79/93 of

15 September 1993 (see paragraph 26 above). The Government maintained that in such a situation the Constitutional Court deals with a petition outside the usual order of cases.

32. The Government further contended that the applicant could, under Section 167 of the Code of Criminal Procedure, have submitted a petition to a public prosecutor immediately after his detention for observation in the mental hospital, seeking a remedy for any wrong procedure that may have occurred. In the Government's view, there is no doubt that the public prosecutor would have ordered the release of the applicant from the mental hospital as the latter had been placed there prior to an effective judicial decision.

33. The Court recalls that under Article 5 § 4 an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions which are essential for the "lawfulness" of his or her deprivation of liberty. The intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question. In order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place (see, among other authorities, the *Winterwerp v. the Netherlands* judgment of 24 October 1979, Series A no. 33, p. 23, § 57; *Trzaska v. Poland*, no. 25792/94, § 74 and *Jecius v. Lithuania*, no. 34578/97, § 100, ECHR 2000). Article 5 § 4, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (*Musial v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

34. In the present case, the applicant was confined in the mental hospital for observation upon the Trnava District Court's order of 11 July 1995 which had not yet become effective as the Bratislava Regional Court had still not determined the applicant's complaint challenging this order pursuant to Section 116 (2) of the Code of Criminal Procedure.

35. Accordingly, Slovak law provided for a review of the lawfulness of the applicant's deprivation of liberty within the meaning of Article 5 § 4 of the Convention. However, this review procedure initiated by the applicant was disregarded by the national authorities when they confined him in the mental hospital. The applicant challenged the order of the Trnava District Court on 15 July 1995 and the Bratislava Regional Court decided on 17 August 1995, i.e. one day before the applicant's release from the hospital.

36. In the light of its case-law and having regard to the particular circumstances of the case, the Court finds that the review of the lawfulness

of the applicant's confinement in a mental hospital was not carried out "speedily" as required by Article 5 § 4 of the Convention.

37. As to the Government's objection that the applicant could have sought redress before the competent public prosecutor pursuant to Section 167 of the Code of Criminal Procedure, the Court finds that this remedy does not meet the requirements of Article 5 § 4 of the Convention as the procedure followed by a public prosecutor lacks judicial character.

38. It remains to be determined whether a possible intervention of the Constitutional Court in proceedings brought under Article 130 (3) of the Constitution could be regarded as complying with Article 5 § 4 in the particular circumstances of the case.

39. On 5 and 7 July 1995 the applicant sought redress from the Constitutional Court complaining, *inter alia*, about the order for his psychiatric examination. On 17 July 1995, i.e. shortly before his confinement in the mental hospital, the Constitutional Court sent a letter to the applicant informing him, in accordance with its established practice, that it is not superior to ordinary courts, that it does not constitute an appellate body in the ordinary court system and that it has no jurisdiction to change or quash the decisions of ordinary courts or to interfere with their jurisdiction (see paragraph 13 above).

40. The Court is therefore not convinced that the applicant could have been reasonably expected to file a constitutional petition at the same time while the proceedings concerning his ordinary remedy under Section 116 (2) of the Code of Criminal Procedure were pending before the Bratislava Regional Court. The Court has found above that this remedy provided for a review of the lawfulness of the applicant's deprivation of liberty within the meaning of Article 5 § 4 of the Convention.

41. In claiming that the applicant should have filed a petition pursuant to Article 130 (3) of the Constitution the Government mainly relied on the Constitutional Court's judgment No. I ÚS 79/93 leading to the order to release a patient confined in a mental establishment without his consent.

42. The Court finds that the case invoked by the Government concerned a different factual situation as the petitioner was confined in the mental establishment for more than two months without any court decision. In the present case, the applicant was detained for observation during the criminal procedure under a court decision which had not become effective at the time of the applicant's confinement in the mental hospital because of the procedure on appeal which was pending.

43. The Court further notes that the Constitutional Court's judgment referred to by the Government was given on 15 September 1993 and has remained its only decision in this area of law, so that it has never been confirmed or developed. Moreover, the plenary session of the Constitutional Court has not included this judgment delivered by a chamber

of three judges in the official publication comprising important decisions which form the established case-law of the Constitutional Court.

44. In these circumstances, the Court concurs with the Commission that, at the material time, the remedy provided for in Article 130 (3) of the Constitution did not exist with a sufficient degree of certainty to satisfy the requirements of Article 5 § 4 of the Convention.

45. There has accordingly been a violation of Article 5 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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. Pecuniary damage

47. The applicant claimed 220,000 Slovak korunas (SKK) mainly referring to the loss which he had suffered as a result of the exchange of his flat for a smaller one. He alleged that he had been forced to carry out the exchange with a view to avoiding further conflicts with his neighbours.

48. The Government submitted no comments on this claim.

49. The Court sees no direct causal link between the identified breach of the applicant's rights under the Convention and the claimed pecuniary loss. Consequently, it sees no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

50. The applicant claimed SKK 25,000,000 as compensation for suffering resulting from the treatment to which he had been subjected by the Slovak authorities in the context of the criminal proceedings against him.

51. The Government considered that sum excessive.

52. The Court finds that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of his rights under the Convention. Making its assessment on an equitable basis, the Court awards the applicant SKK 60,000 under this head.

C. Costs and expenses

53. The applicant sought reimbursement of SKK 53,689. This sum corresponded to his expenses on postage, translation of documents and to the costs of journeys to France and Bulgaria which he had undertaken with a view to protecting his rights.

54. The Government did not comment on the claim.

55. The Court is not satisfied that the amounts claimed may be regarded as necessarily incurred with a view to preventing or remedying the violation of the Convention found. Nevertheless, the applicant clearly incurred some expenses. The Court therefore considers it reasonable to award SKK 2,000.

D. Default interest

56. According to the information available to the Court, the statutory rate of interest applicable in Slovakia at the date of adoption of the present judgment is 17.6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts: 60,000 (sixty thousand) Slovak korunas in respect of non-pecuniary damage and 2,000 (two thousand) Slovak korunas for costs and expenses.
 - (b) that simple interest at an annual rate of 17.6 % shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 21 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President