



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

FOURTH SECTION

CASE OF TKÁČIK v. SLOVAKIA

(Application no. 42472/98)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

24/03/2004

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 Tkáčik v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 September 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42472/98) against the Slovak Republic lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Ondrej Tkáčik ("the applicant"), on 22 February 1998.

2. The Government of the Slovak Republic ("the Government") were represented by Mr P. Vršanský, their Agent, succeeded by Mr P. Kresák as from 1 April 2003.

3. The applicant alleged, in particular, that his rights under Articles 5 § 1 and 8 of the Convention had been violated in the context of the examination of his health between 30 November 1996 and 10 December 1996.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 8 October 2002, the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1954 and at the relevant time he lived in Košice. At present he lives in Spain.

10. In the morning of 30 November 1996 the applicant's wife warned the police by telephone that the applicant intended to drive his car after having drunk alcoholic beverages, that he carried a weapon, that his behaviour was strange and that it was possible that he could cause injury to other persons. Upon this information the police stopped the car driven by the applicant. As the applicant actively resisted his search, the police handcuffed him. A sword was taken away from him. The analysis of his breath indicated that the applicant had alcohol in his blood. According to the applicant, the breath test was forged.

11. The police brought the applicant to a police station, where they withdrew his driving licence. Subsequently he was brought to a psychiatrist. After a short examination the applicant was released. Later on the same day the doctor issued a certificate, at the request of the applicant's wife, in which the police were requested for assistance in transporting the applicant to a mental hospital.

12. In the afternoon of 30 November 1996 the applicant returned to his home but he could not unlock the door. He asked the police for assistance. Upon the arrival of the police the applicant's wife opened the door and asked that the applicant be taken away. He was brought to a mental hospital in an ambulance. After he had refused to undergo an examination, the applicant was brought against his will to another hospital. Medicaments were administered to him during three days and he had to undergo psychiatric tests.

13. On 2 December 1996 the administration of the hospital to which the applicant had been brought on 30 November 1996 informed the Košice II District Court about the applicant's detention on account of the suspicion that he suffered from a mental disorder.

14. On 6 December 1996 the Košice II District Court delivered a decision by which it started proceedings, with reference to Sections 191a (1) and 191b (1) of the Code of Civil Procedure, with a view to determining whether the applicant's placement in a mental hospital was justified. By

another decision delivered on 6 December 1996 the District Court appointed a guardian to defend the applicant's rights in the proceedings.

15. On 9 December 1996 a record concerning the applicant's detention in the mental hospital was drawn up in the presence of the applicant, the Košice II District Court judge dealing with the case and the doctor who treated the applicant. Reference was made to statements of the wife according to which the applicant's behaviour had changed following his return from Venezuela where he had been on business for one year. According to her, the applicant alleged hearing strange voices and that his flat was monitored from outside by means of a fax machine. He had altercations with his colleagues and started carrying weapons. His wife feared that the applicant wanted to drown her in the bath and stated that he had not allowed their children to go to school. The applicant denied such allegations and explained that there had been disagreements between him and his wife. He affirmed that he was not ill and refused examination by psychologists. The record further stated that the applicant was being treated with medicaments and that his brother suffered from paranoid schizophrenia. It concluded that a professor would decide on 10 December 1996 whether further treatment was necessary.

16. In a decision delivered on 9 December 1996 the Košice II District Court found that the applicant's detention in the mental hospital was lawful. Reference was made to the doctors' presumption that the applicant suffered from a mental disorder and to the fact that he was treated with medicaments.

17. On 10 December 1996 the applicant was released from the hospital.

18. On 30 April 1998 the president of the Košice II District Court apologised to the applicant for the delay in serving on him the above decision of 9 December 1996.

19. On 13 May 1998 the applicant was allowed to consult the court's case file. On this occasion he was served with the District Court's decision of 9 December 1996 concerning the lawfulness of his examination in a mental hospital. On 18 May and on 12 August 1998 the applicant appealed against this decision and also against the decision of 6 December 1996 on the appointment of a guardian. He alleged, in particular, that his arrest had been unjustified, that he had been heard by a judge on 9 December 1996, that is several days after his arrest, and that the court had taken more than five days to decide on the lawfulness of his detention contrary to the relevant law.

20. On 25 September 1998 the Košice Regional Court dismissed the appeal. It found that the applicant's detention had been justified by his strange behaviour and by the doctors' presumption that he had suffered from a mental disorder. The Regional Court considered irrelevant the applicant's objection concerning the delay in deciding on his case at first instance and in serving the District Court's decision of 9 December 1996.

II. RELEVANT DOMESTIC LAW

A. Constitution

21. Article 17 (6) provides that a court has to be notified, within twenty-four hours, of a person's detention in a medical institution without his or her consent. Courts are obliged to decide on such a detention within five days.

B. The Code of Civil Procedure

22. Section 191a (1) provides that medical institutions are obliged to inform the competent court, within twenty-four hours, of the detention of any person without his or her written consent.

23. Under Section 191b (1), the court shall start proceedings upon such a notification with a view to determining whether the interference was justified.

24. Pursuant to paragraph 2 of Section 191b, the court shall appoint a guardian to the person concerned unless he or she has a representative.

25. Paragraph 3 of Section 191b provides that the court shall take evidence with a view to determining whether the person was placed in a medical institution in accordance with the law. It shall hear both the person concerned and his or her doctor.

26. Pursuant to paragraph 4 of Section 191b, the court shall decide on the lawfulness of the interference within five days from the moment when the person concerned was brought to the hospital.

27. Section 191c (1) provides, *inter alia*, that a judicial decision under Section 191b (4) shall be served on the person concerned within twenty-four hours after it has been taken and not later than five days from the moment when his or her liberty was restricted unless the doctor indicates that such a person is not capable of understanding its contents.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

28. The applicant complained that his placement in a mental hospital between 30 November 1996 and 10 December 1996 had been unlawful. He relied on Article 5 § 1 of the Convention the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;”

29. The Government maintained that the applicant’s deprivation of liberty had been in accordance with the relevant provisions of the Slovakian law. The examination of the applicant was made necessary by his strange behaviour which justified the suspicion that he suffered from a mental disorder.

30. In the Government’s view, the alleged procedural shortcomings invoked by the applicant could not affect his rights under Article 5 § 1 as they had no impact on the examination of the applicant’s health by doctors which was a prerequisite for the court’s decision on the lawfulness of his deprivation of liberty. In any event such shortcomings fell to be examined under Article 5 § 4 of the Convention, and the Court had declared inadmissible the applicant’s complaint under that provision.

31. The applicant contended that the procedure laid down in Sections 191a, 191b and 191c of the Code of Civil Procedure had not been followed and that, accordingly, his deprivation of liberty had been unlawful. In his view, there existed no objective justification for such an interference.

32. The applicant was transported to the hospital upon the recommendation of a doctor issued at the request of the applicant’s wife. The latter alleged that the applicant’s behaviour had changed and that she did not feel herself safe in his presence. In the light of the documents before it the Court accepts that the applicant’s deprivation of liberty fell within Article 5 § 1 (e) of the Convention. It does not consider it necessary to examine whether such a restriction of the applicant’s liberty was justified in the particular circumstances of the case as, in any event, it was contrary to Article 5 § 1 for the following reasons.

33. The main issue to be determined in the present case is whether the applicant’s deprivation of liberty was “lawful”, including whether it complied with “a procedure prescribed by law”. The Convention here refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see, for example, *Witold Litwa v. Poland*, judgment of 4 April 2000, *Reports of Judgments and Decisions* 2000-III, §§ 72 and 73 and *Van den Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, § 22, with further references).

34. The Slovakian law provides for several procedural steps and safeguards the purpose of which is to protect persons held without their consent in a medical institution from arbitrariness. The documents before

the Court indicate that the domestic authorities did not comply with the relevant provisions in that (i) the Košice II District Court was informed about the applicant's detention in the hospital on 2 December 1996 which is more than twenty-four hours after he had been placed there, contrary to Article 17 (6) of the Constitution and to Section 191a (1) of the Code of Civil Procedure, (ii) the Košice II District Court decided on the lawfulness of the applicant's confinement on 9 December 1996 which is more than five days after his liberty had been restricted, contrary to Article 17 (6) of the Constitution and to Section 191b (4) of the Code of Civil Procedure, and (iii) the Košice II District Court's decision on the lawfulness of the applicant's detention was not served on the applicant within five days from the moment when his liberty had been restricted as required by Section 191c (1) of the Code of Civil Procedure.

35. Thus the domestic authorities failed to comply "with a procedure prescribed by law". As a result, there has been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained that his placement in a mental hospital between 30 November 1996 and 10 December 1996 had unlawfully restricted his right for respect for his private life. He relied on Article 8 of the Convention the relevant part of which provides as follows:

"1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

37. The Government argued that the interference complained of had been in accordance with the relevant law, that it had pursued the legitimate aim of protecting the rights and freedoms of others and that it had not been disproportionate to that aim.

38. The applicant disagreed and maintained, in particular, that the Slovakian authorities had acted unlawfully.

39. The Court observes that the applicant's placement in a mental hospital is at the core of the complaints under consideration. Having held that the applicant's deprivation of liberty was unlawful for the purposes of Article 5 § 1 of the Convention, it does not consider it necessary to undertake a separate examination of the case under Article 8 (see, *mutatis mutandis*, *Tsirlis and Kouloumpas v. Greece*, judgment of 29 May 1997, *Reports* 1997-III, p. 926, § 70).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed, with reference to the facts of his case, 5,000,000 Slovakian korunas (SKK) in compensation for pecuniary and non-pecuniary damage which he had suffered as a result of the alleged violations of his rights under Articles 3, 5, 6, 8 and 13 of the Convention and under Article 1 of Protocol No. 1. He further contended that his children had also suffered trauma in this context and claimed SKK 600,000 on their behalf.

42. The Government argued that the applicant had failed to substantiate his claims and that there was no causal link between the alleged violation of his rights and the damages claimed.

43. The Court shares the Government’s view that there is no causal link between the applicant’s claim for pecuniary damage and the violation found. It further notes that in the present case it was not called upon to examine whether any of the Convention rights of the applicant’s children were infringed. Accordingly, the applicant’s claims in this respect must be dismissed.

44. On the other hand, the Court finds that the applicant suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, it awards the applicant 1,000 euros under this head.

B. Default interest

45. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

2. *Holds* that it is not necessary to examine whether there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage to be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President