



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

FOURTH SECTION

CASE OF ČANÁDY v. SLOVAKIA

(Application no. 53371/99)

JUDGMENT

STRASBOURG

16 November 2004

FINAL

30/03/2005

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 Čanády v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

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 26 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 53371/99) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Vladimír Čanády ("the applicant"), on 17 November 1999.

2. The Government of the Slovak Republic ("the Government") were represented by their Agent, Mr P. Kresák.

3. The applicant alleged, in particular, that his right of access to a court had been violated.

4. The application was allocated to the Fourth 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.

5. By a decision of 27 April 2004, the Court declared the application partly admissible.

6. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1956 and lives in Turany. He is a soldier by profession.

8. On 22 May 1997 the applicant's neighbour damaged a fence and entered the applicant's land while fixing the connection of his house pipes to the gas supply in the street. The applicant requested that the neighbour and the workers stop the works as he had not been notified and the neighbour had not shown that he had been authorised to do so. As the neighbour and the workers refused to stop the works, the applicant attempted to prevent them from continuing. The neighbour called the police.

9. Later an employee of the municipal office in Turany asked the applicant to allow the neighbour to fix the connection. As the applicant still prevented the works from being carried out, the police took him, with his consent, to a police station where he was asked to explain his behaviour.

10. On 7 July 1997 the Martin Office of Investigation charged the applicant with an offence in that he had tried to prevent his neighbour from having a gas supply extension fixed. On 6 August 1997 the Banská Bystrica District Military Prosecutor quashed this decision as, in view of their character, the applicant's actions did not constitute a criminal offence. They could be qualified as minor offences falling under the Minor Offences Act of 1990. As a result, the case was transmitted to the rector of the Military Academy in Liptovský Mikuláš where the applicant was attached as a professional soldier.

11. On 27 October 1997 the rector of the Military Academy in Liptovský Mikuláš issued a decision by which he imposed a fine of 1,000 Slovakian korunas (SKK) on the applicant under the Minor Offences Act of 1990. The decision stated that the applicant had committed a disciplinary offence under the Military Order and that his actions constituted a minor offence under sections 49(1)(d) and 50(1) of the Minor Offences Act of 1990. According to the decision, the applicant had acted contrary to the rules of civic propriety in that he had cut through two electric wires belonging to a building company and had forcibly detached a steel pipe. He had thereby rendered difficult works which had been authorised by a public authority and had disregarded his civil obligations. Reference was made to the police case file.

12. The applicant appealed arguing that the neighbour and the authorities had acted contrary to the law.

13. On 10 December 1997 the Ministry of Defence dismissed the applicant's appeal. In March 1998 the Minister of Defence refused to review that decision.

14. On 9 January 1998 the applicant requested the Bratislava III District Court to examine the lawfulness of the decision delivered by the Ministry of Defence on 10 December 1997. On 29 May 1998 the District Court found, with reference to section 83(1) of the Minor Offences Act of 1990, that the decision in question could not be reviewed by courts. The proceedings were discontinued. The applicant appealed. On 26 November 1998 the Bratislava Regional Court discontinued the proceedings as an appeal was not available. On 29 June 1998 the Supreme Court refused to review the above decisions by which the applicant had been fined with reference to Article 248(2)(f) of the Code of Civil Procedure.

15. On 23 March 1999 the applicant complained to the Constitutional Court that, *inter alia*, his right to judicial protection had been violated in that he could not have the administrative decisions imposing a fine on him reviewed by a tribunal. The applicant qualified his submissions as both a petition under Article 130(3) of the Constitution and a constitutional complaint.

16. On 3 June 1999 the Constitutional Court dismissed both the petition and the constitutional complaint. In its decision the Constitutional Court recalled that it had declared unconstitutional section 83(1) of the Minor Offences Act of 1990 by a finding of 15 October 1998. As that finding had no retroactive effect and since the judicial decisions in question had been taken in accordance with the law in force at the relevant time, they did not interfere with the applicant's constitutional right to judicial protection.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

17. At the relevant time, the following provisions governed the access of individuals to the Constitutional Court:

18. Pursuant to Article 127, the Constitutional Court decides on complaints concerning final decisions made by, *inter alia*, central government authorities in cases concerning violations of the fundamental rights and freedoms of citizens, unless the protection of such rights falls within the jurisdiction of another court.

19. Pursuant to Article 130(3), the Constitutional Court may start proceedings upon a petition ("*podnet*") lodged by legal or natural persons alleging a violation of their rights.

B. The Minor Offences Act of 1990

20. Section 49, as in force at the relevant time, governs minor offences against civic propriety. Its paragraph 1(d) provides that a minor offence is committed by a person who deliberately offends against civic propriety by threat of bodily harm, by causing minor bodily injury, by unjustifiably accusing another person of a minor offence, by annoyances or other rude behaviour. Under section 49(2) such a minor offence is punishable with a maximum fine of SKK 3,000.

21. Section 50(1) provides that a person who deliberately damages other persons' property or attempts to do so commits a minor offence against property provided that the damage does not exceed twice the minimum monthly salary as defined in the relevant law. Paragraph 2 of section 50 provides that such a minor offence may be sanctioned by a maximum fine of SKK 10,000.

22. According to section 83(1), as operational until 14 October 1998, decisions on minor offences imposing a fine exceeding SKK 2,000, prohibiting the exercise of a certain activity for a period exceeding six months or confiscating an object having a value exceeding SKK 2,000 can be reviewed by the courts.

C. The Code of Civil Procedure

23. Article 248(2)(f), as in force until 31 December 2003, provides that courts shall not review administrative decisions imposing sanctions on members of the armed forces unless such sanctions restrain the latter's personal liberty or result in termination of their service.

D. Practice of the Constitutional Court

24. In a complaint lodged in 1994 a plaintiff alleged a violation of Article 6 of the Convention in that, in the context of proceedings leading to imposition of a fine under the Minor Offences Act of 1990, there had been no fair and public hearing before a tribunal in his case and that the administrative authorities dealing with it had not been impartial.

25. On 24 November 1994 the Constitutional Court dismissed the complaint as being manifestly ill-founded. It held, *inter alia*:

“A minor offence is characterised, in general, by a wrongful breach of law or legal obligations in different spheres of public administration which represents a minor danger to the society. Because of its character, a minor offence is not subject to examination by a court... In accordance with the Minor Offences Act, the examination of minor offences falls within the competence of administrative authorities. Pursuant to section 83 of the Minor Offences Act, in conjunction with Articles 244 et seq. of the Code of Civil Procedure, the lawfulness of administrative organs' decisions on minor offences can be reviewed by courts only in cases where a fine exceeding SKK 2,000

has been imposed, the exercise of a certain activity has been prohibited for a period exceeding six months or an object of a value exceeding SKK 2,000 has been confiscated. The aforesaid provision of the special Act governing minor offences is fully binding also on the Constitutional Court of the Slovak Republic.”

26. In a finding of 15 October 1998 the Constitutional Court held, in proceedings brought by the General Prosecutor, that section 83(1) of the Minor Offences Act of 1990 was unconstitutional and contrary to Article 6 § 1 of the Convention to the extent that it limited the judicial review of decisions on minor offences to, *inter alia*, fines exceeding SKK 2,000. The Constitutional Court's finding was published in the Collection of Laws on 23 October 1998. As from that date, the relevant provisions of section 83(1) of the Minor Offences Act of 1990 became ineffective.

THE LAW

I. SCOPE OF THE CASE

27. Following the Court's admissibility decision, the applicant made submissions alleging that, when rejecting a part of his application, the Court had not duly considered all relevant facts of the case and the context in which his conflict with the neighbour and his ensuing actions had arisen. He referred to Article 38 § 1 (a) of the Convention and requested that the Court should examine the merits of all his complaints.

28. The Court recalls that the scope of the case before it is determined by the decision on admissibility (see, *mutatis mutandis*, Çiraklar v. Turkey, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII, p. 3070, § 28). In its decision of 27 April 2004 the Court declared admissible the complaint under Article 6 § 1 of the Convention relating to the alleged violation of the applicant's right of access to a court and declared inadmissible the remainder of the application. Since the Court finds no reason to review its decision to declare inadmissible a part of the application, the scope of the present case is limited exclusively to the above complaint under Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that his right of access to a court had been violated in that he could not have reviewed by a court the decisions relating to the imposition of a fine on him. He relied on Article 6 § 1 of the Convention the relevant part of which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

30. In their observations on the admissibility and merits of the case the Government admitted that the applicant's complaint was not unsubstantiated.

31. The Court has previously found that the general character of the legal provisions governing minor offences under the Minor Offences Act of 1990 together with the deterrent and punitive purpose of the penalty imposed for their infringement suffices to show that such offences are, in terms of Article 6 of the Convention, criminal in nature (see *Lauk v. Slovakia*, judgment of 2 September 1998, *Reports* 1998-VI, § 58). It recalls that, while entrusting the prosecution and punishment of similar minor offences to administrative authorities is not inconsistent with the Convention, the person concerned must have an opportunity to challenge any decision made against him or her before a tribunal that offers the guarantees of Article 6 (see *Kadubec v. Slovakia*, judgment of 2 September 1998, *Reports* 1998-VI, § 57).

32. In the present case the applicant was fined under the Minor Offences Act of 1990 by the rector of the Military Academy in Liptovský Mikuláš where he was employed. This decision was reviewed by the Ministry of Defence. Thus the decisions in question were taken by administrative authorities which - and this has not been disputed before the Court - did not meet the requirements of an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. Since section 83(1) of the Minor Offences Act of 1990 and Article 248(2)(f) of the Code of Civil Procedure, as in force at the relevant time, precluded such decisions from being examined by ordinary courts, and given that the Constitutional Court failed to redress the situation complained of, the Court concludes that the applicant's right to a hearing by a tribunal has not been respected. The fact that the relevant legal provisions preventing the ordinary courts from reviewing administrative decisions on minor offences in similar cases were later repealed cannot affect the position in the present case.

33. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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.”

35. The applicant claimed compensation for pecuniary and non-pecuniary damage, and the reimbursement of his costs and expenses.

A. Damage

36. The applicant claimed SKK 48,490 in compensation for pecuniary damage. That sum comprised the fine and costs of the administrative proceedings leading to its imposition, loss of income due to the fact that his employer had not paid a salary supplement to him as a result of the finding that he had committed a minor offence, and also compensation for the burden which he had to bear as a result of the construction of a gas extension by his neighbour.

The applicant further claimed SKK 500,000 in compensation for damage of a non-pecuniary nature. He submitted that the authorities' approach to his case and his attempts to defend his rights had caused him lasting suffering and emotional stress.

37. The Government contended that there existed no causal link between the alleged breach of Article 6 § 1 of the Convention and the pecuniary damage allegedly sustained by the applicant. As to the claim relating to damage of non-pecuniary nature, the Government were of the opinion that, if found established, the finding of a violation of Article 6 § 1 would in itself constitute sufficient just satisfaction.

38. The Court does not find it established, on the material before it, that the pecuniary damage claimed was causally linked to the fact that the applicant had been deprived of access to a court. Consequently, there is no justification for making any award to him under this head.

The Court accepts that the violation found has caused the applicant non-pecuniary damage which is not redressed by the mere finding of a violation. On an equitable basis, the Court awards the applicant 500 euros as compensation for non-pecuniary damage.

B. Costs and expenses

39. The applicant sought reimbursement of SKK 36,044.50¹ for costs and expenses. That sum comprised postal, travelling and telephone expenses, translation costs, stamp duty on official documents, purchase of law literature and also the cost of an expert opinion prepared at the applicant's request and concerning the impact on the applicant's rights of the construction of the gas supply extension by his neighbour.

40. The Government argued that the applicant's claim was to be dismissed as the sum in question had neither been necessarily incurred with a view to preventing the violation found, nor had it been reasonable as to the quantum.

41. Under the Court's case-law, the reimbursement of costs can only be ordered to the extent that they were actually and necessarily incurred in

¹ The equivalent of approximately 900 euros.

order to prevent or obtain redress for the matter found to constitute a violation of the Convention (see, among other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, p. 83, § 77; and *Malama v. Greece* (just satisfaction), no. 43622/98, § 17, 18 April 2002). Having regard to the documents before it, the Court awards the applicant 400 euros under this head.

C. Default interest

42. 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 6 § 1 of the Convention;
2. *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 500 (five hundred euros) in respect of non-pecuniary damage and EUR 400 (four hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President