



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ČANÁDY v. SLOVAKIA (no. 2)

(Application no. 18268/03)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 (no. 2),

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 18268/03) 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 2 June 2003.

2. The Government of the Slovak Republic (“the Government”) were represented by Mrs A. Poláčková and Mrs M. Pirošíková, their successive Agents.

3. The applicant alleged, in particular, that his right to a fair hearing by an independent and impartial tribunal had been violated in proceedings leading to the imposition of a fine on him.

4. On 27 March 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Turany. At the relevant time he was attached, as a soldier by profession, to the Military Academy in Liptovský Mikuláš.

6. On 6 May 2002 the dean of the Faculty of Logistics at the above-mentioned military academy issued a disciplinary order with reference to sections 179(2) and 78(2) of the Military Service Act 1997. In it the applicant was found guilty of a disciplinary offence in that he had grossly offended another person in the context of administrative proceedings before the District Office in Martin. The decision stated that his action constituted a minor offence under section 49(1)(d) of the Minor Offences Act 1990.

7. The decision stated that the case related to a disagreement between the applicant and his neighbours and that similar problems had occurred previously. With reference to section 81(c) of the Military Service Act 1997, the applicant was fined 1,500 Slovakian korunas (SKK), which was then the equivalent of approximately 37 euros (EUR). That sanction was considered appropriate in view of the danger for society of the applicant's action. With reference to Regulation 393/1990, the applicant was ordered to reimburse the costs of the proceedings.

8. The applicant appealed, arguing that the decision in question was premature and arbitrary as it had been taken in disregard of the relevant facts.

9. On 24 June 2002 the rector of the military academy dismissed the appeal and upheld the decision in issue. The rector's decision stated that it was final and that it could not be challenged by means of an ordinary remedy.

10. On 27 August 2002 the applicant lodged a complaint with the Constitutional Court. He alleged that the decisions given by the military authorities were arbitrary and that his right to judicial protection had been violated as those decisions could not be reviewed by the courts. He relied, *inter alia*, on Article 6 § 1 of the Convention.

11. The Constitutional Court rejected the complaint for lack of jurisdiction on 11 December 2002. It referred to Article 144 and Article 46 § 2 of the Constitution and to its decision II. ÚS 50/01 and held that administrative decisions which had a bearing on fundamental rights and freedoms could not be excluded from the jurisdiction of the courts. The decision stated that the applicant alleged a violation of his right to judicial protection without having sought protection of his specific rights before an ordinary court. Had the applicant brought an action in an ordinary court, the latter would have been obliged to comply with the Constitution when dealing with it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional provisions and practice

12. Article 46 § 2 provides that any person whose rights have been affected as a result of a decision given by an administrative authority can have the lawfulness of such a decision determined by a court unless the law provides otherwise. However, the review of decisions concerning fundamental rights and freedoms cannot be excluded from the jurisdiction of the courts.

13. Article 144 § 1 provides that judges are independent and bound only by law. Under paragraph 2 of Article 144, judges are also bound by international instruments where the Constitution or the law so provides.

14. In judgment I. ÚS 37/95 of 20 December 1995 the Constitutional Court held that, in the event of doubt about the power of an ordinary court to review administrative decisions, Article 152 § 4 of the Constitution must be applied, pursuant to which the interpretation and application of laws must be in accordance with the Constitution. It must in particular be examined whether the contested administrative decision concerns a person's fundamental rights and freedoms as such decisions cannot be excluded from the jurisdiction of the courts.

In that particular case the Constitutional Court found that an ordinary court's decision to discontinue proceedings, which resulted from an erroneous legal assessment of its power to deal with an action against an administrative decision, amounted to a breach of the right to judicial protection as guaranteed by Article 46 § 2 of the Constitution.

15. In decision II. ÚS 55/99 of 3 June 1999 the Constitutional Court dismissed a complaint in which the present applicant complained about the ordinary courts' refusal to review his superiors' decision to fine him for a minor offence under section 49(1)(d) of the Minor Offences Act 1990. The Constitutional Court held that, since the ordinary courts' refusal to review the decisions on the fine 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 (for further details see *Čanády v. Slovakia*, no. 53371/99, §§ 14-16, 16 November 2004).

16. In judgment PL. ÚS 14/98 of 22 June 1999 the Constitutional Court held that under Article 11 of the Constitution, the public authorities were obliged to apply international treaties where such treaties guaranteed a broader scope of fundamental rights and freedoms than national laws.

17. In decision I. ÚS 9/00 of 22 March 2000 the Constitutional Court pointed out that the ordinary courts were primarily responsible for respecting the fundamental rights and freedoms which the Constitution and international treaties guaranteed to individuals.

18. In judgment II. ÚS 50/01 of 11 October 2001 the Constitutional Court found that the ordinary courts had violated the plaintiff's rights under Article 46 § 2 of the Constitution. The plaintiff complained that the ordinary courts had discontinued proceedings concerning his action challenging a decision of the Minister of Defence by which he had been dismissed as a professional soldier. The courts based their decision on the fact that review of the decision in issue was excluded from their jurisdiction under Article 248 § 2(d) of the Code of Civil Procedure. The Constitutional Court held that Article 46 § 2 of the Constitution was complied with only where a court examined whether an administrative decision contested by the plaintiff had a bearing on any of his or her fundamental rights and freedoms, regardless of whether or not the relevant law permitted a judicial review of such decisions. In the case under consideration the ordinary courts had discontinued the proceedings on the ground that the law excluded judicial review of the relevant decision, without considering whether or not that decision concerned the plaintiff's fundamental rights and freedoms. In doing so, the ordinary courts concerned had violated Article 46 § 2 of the Constitution.

Decision II. ÚS 50/01 was included in the Collection of Judgments and Decisions of the Constitutional Court which was published on an unspecified date in 2002.

B. The Minor Offences Act 1990

19. Section 10(1)(a) provides that, where a person falling under military disciplinary rules acts in a manner which fulfils the constituent elements of a minor offence, such action is to be examined under a special law.

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

21. Section 79(1) provides that citizens who have been found guilty of a minor offence are liable to reimburse the costs of the proceedings to the State. The details are to be fixed by the Ministry of the Interior.

C. The Military Service Act 1997

22. Section 72 lists the principal duties of a soldier. Subsection 1(j) obliges soldiers to abstain from behaviour which may harm the authority of the armed forces or threaten citizens' trust in them.

23. Section 78(1) defines a disciplinary offence as a wilful breach of a soldier's principal duties unless it constitutes a criminal offence or a minor offence.

Section 78(2) provides that where a soldier's action is qualified as a minor offence under the Minor Offences Act 1990, it is to be examined as a disciplinary offence within the meaning of the Military Service Act 1997.

24. Section 79(1) provides that a disciplinary punishment may be imposed on a soldier who has committed a disciplinary offence. Such punishments may be imposed under the Military Service Act 1997 or pursuant to a special law in cases falling under section 78(2). Among such special laws, reference is made to the Minor Offences Act 1990.

25. Section 81 lists disciplinary punishments which may be imposed on professional soldiers. They include (a) a reprimand; (b) a strict reprimand; (c) a fine; (d) a prohibition on performing a certain activity; (e) confiscation of a particular item; and (f) a protective measure.

26. At the relevant time section 94(1) provided that final decisions on disciplinary matters were not reviewable by courts, with the exception of cases where the sanction imposed involved deprivation of liberty of the person concerned.

Under Section 94(2), as amended with effect from 1 January 2004, final decisions imposing a fine are reviewable by courts.

27. Section 179(2) provides that the military authorities implement the law by issuing personal orders, disciplinary orders, military orders and decisions on compensation for damage.

D. The Code of Civil Procedure

28. Article 248 § 2(f), as in force at the relevant time, excluded judicial review of administrative decisions imposing sanctions on members of the armed forces unless such sanctions restrained the latter's personal liberty or resulted in the termination of their service.

That provision was repealed with effect from 1 January 2004.

E. Regulation 393/1990

29. The Ministry of the Interior's Regulation 393/1990 governs sums which are to be charged in respect of costs of proceedings under the Minor Offences Act 1990.

30. Under section 1(1), as in force at the relevant time, the lump sum which citizens are obliged to pay within the meaning of section 79(1) of the Minor Offences Act 1990 corresponds to SKK 150.

THE LAW

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

31. The applicant complained that the administrative proceedings leading to the imposition of a fine on him had been unfair and that the relevant decisions had been arbitrary. He also complained that his right of access to a court had been breached in that he was unable to have the administrative decisions reviewed by an independent and impartial tribunal. He relied on Article 6 § 1 of the Convention, which, in its relevant parts, reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

32. The Government contested that argument.

A. Admissibility

33. The Government first objected that Article 6 § 1 of the Convention was not applicable. In particular, the applicant was a professional soldier and participated in the exercise of public power in that capacity. He had been fined under the Military Service Act 1997 for his failure to observe military discipline. Similar disciplinary offences concerned a restricted scope of persons, namely members of the armed forces. The nature and degree of severity of the penalty imposed on him showed that the offence in question was not, in terms of Article 6 of the Convention, criminal in nature.

34. Secondly, the Government argued that the applicant had not exhausted domestic remedies. In particular, prior to lodging a constitutional complaint the applicant should have sought a judicial review of the decisions concerning the fine. The ordinary courts were under an obligation, in accordance with Article 46 § 2 and Article 144 of the Constitution, to deal with such an action to the extent that it concerned the applicant's fundamental rights and freedoms. The Government relied, in particular, on the Constitutional Court's decisions I. ÚS 37/95, PL. ÚS 14/98, I. ÚS 9/00 and II. ÚS 50/01 (see paragraphs 14 and 16-18 above).

35. The applicant disagreed with those arguments. He argued that both the Code of Civil Procedure and the Military Service Act 1997 had explicitly excluded judicial review of similar decisions at the material time.

36. The Court notes that in the disciplinary order of 6 May 2002 the dean had concluded that the applicant had committed an offence against civic propriety within the meaning of section 49(1)(d) of the Minor

Offences Act 1990. It accepts that that decision did not concern the determination of the applicant's civil rights and obligations within the meaning of Article 6 § 1 of the Convention.

37. The Court has previously found that the general character of the legal provision infringed by applicants who were fined for similar minor offences, together with the deterrent and punitive purpose of the penalty imposed on them, sufficed to show that the offence in question was, in terms of Article 6 of the Convention, criminal in nature (see *Kadubec v. Slovakia*, 2 September 1998, §§ 50-53, *Reports of Judgments and Decisions* 1998-VI; *Lauko v. Slovakia*, 2 September 1998, §§ 56-59, *Reports* 1998-VI; and *Čanády* (cited above, § 31).

38. As regards the last-mentioned case in particular, it concerned the imposition of a fine on the present applicant, in a different set of proceedings, on the ground that he had committed a minor offence under, *inter alia*, section 49(1)(d) of the Minor Offences Act 1990. With reference to that Act, the applicant was fined SKK 1,000; he was also ordered to reimburse the costs of the proceedings pursuant to Regulation 393/1990. The decision was issued by the rector of the military academy with reference to section 16(2) of the Military Service Act 1959. That provision qualified as a disciplinary offence an action which constituted a minor offence under, *inter alia*, the Minor Offence Act 1990.

39. In the present case the dean and the rector of the military academy concluded that the applicant had committed a minor offence against civic propriety, that is, the same offence as in his first case (see *Čanády*, cited above, § 11) and in *Lauko* (cited above, § 12). The fact that the relevant decision was given in the context of disciplinary proceedings under the Military Service Act 1997 does not, in the Court's view, affect the qualification of such a minor offence as being of a criminal nature for the purpose of Article 6 § 1 for the reasons set out below in particular.

40. The applicant's sanction did not derive from the fact that he had breached, in the context of his service, the duties of a soldier within the meaning of section 78(1) of the Military Service Act 1997. The inappropriate action imputed to the applicant related to a conflict which he had had with his neighbours outside the context of his service in the army. The decision in issue was based on section 78(2) of that Act, which requires that soldiers' behaviour fulfilling the characteristics of a minor offence under the Minor Offences Act 1990 should be examined as a disciplinary offence within the meaning of the Military Service Act 1997.

41. Similarly, the Court does not attach decisive importance to the fact that in the present case the fine imposed on the applicant was based on section 81(c) of the Military Service Act 1997. As a matter of fact, section 79(1) permitted the imposition of disciplinary punishments in similar cases either under the Military Service Act 1997 or pursuant to a special law, such as the Minor Offences Act 1990. In his decision the dean referred to the

danger for society of the applicant's action and obliged him to reimburse the costs of the proceedings, with reference to Regulation 393/1990, which specifies the sums to be charged for proceedings under the Minor Offences Act 1990 (see also *Lauko*, cited above, §§ 13 and 58).

42. In view of the above considerations, the Court concludes that, as in *Lauko*, *Kadubec* and *Čanády* (all cited above), Article 6 § 1 of the Convention is applicable under its criminal head in the present case.

43. As regards the objection concerning the applicant's failure to exhaust domestic remedies, the Court reiterates that the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism. At the same time it requires in principle that the complaints intended to be made subsequently at international level should have been aired before the domestic authorities, at least in substance and in compliance with the formal requirements laid down in domestic law. Among other things the Court must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust the available domestic remedies (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006; and *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 91, 29 November 2007).

44. In the present case Article 248 § 2(f) of the Code of Civil Procedure, as in force at the relevant time, excluded judicial review of administrative decisions imposing disciplinary penalties on members of the armed forces unless such sanctions restrained the latter's personal liberty or resulted in the termination of their service.

45. The Court has noted that in several decisions on which the Government relied (see paragraphs 14 and 16-18 above) the Constitutional Court expressed the view that administrative decisions with a bearing on persons' fundamental rights and freedoms should always be reviewable by ordinary courts notwithstanding the wording of statutory provisions.

46. However, in the previous set of proceedings leading to the imposition of a fine on him for a minor offence against civic propriety the applicant had sought redress before the ordinary courts, which had refused to review the decision of his superiors. The applicant then complained to the Constitutional Court, which, on 3 June 1999, dismissed his complaint, *inter alia* on the ground that the ordinary courts' refusal to review the decisions on the fine had been taken in accordance with the law in force at the relevant time. According to the Constitutional Court, they did not therefore interfere with the applicant's constitutional right to judicial protection (see paragraph 15 above).

47. Thus, in his previous case concerning the same issue the applicant was unable to obtain redress before the ordinary courts and the Constitutional Court, notwithstanding that he had acted in the manner in

which, according to the Constitutional Court's decision of 11 December 2002 (see paragraph 11 above), he should have proceeded in the present case.

48. It is true that after the decision on the first case of the applicant the Constitutional Court, in judgment II. ÚS 50/01 of 11 October 2001, unequivocally held in a similar case that Article 46 § 2 of the Constitution was complied with only where a court examined whether an administrative decision contested by the plaintiff had a bearing on any of his or her fundamental rights and freedoms, regardless of whether or not the relevant law permitted a judicial review of such decisions (see paragraph 18 above).

49. However, the Court finds it relevant that the above-mentioned judgment was not published in the Collection of Laws. It was, however, included in the Collection of Constitutional Court's judgments and decisions which was published on an unspecified date in 2002, that is, either a short time before the applicant lodged his constitutional complaint on 27 August 2002, or after that date.

50. In view of the above, and in particular the way in which the Constitutional Court dealt with the applicant's previous case concerning a similar issue, the Court accepts that the applicant did everything that could reasonably be expected of him in the particular circumstances of the case to exhaust the available domestic remedies.

51. Accordingly, the Government's objections cannot be upheld.

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

B. Merits

53. The applicant maintained that his right of access to an independent and impartial tribunal had been breached and that he had been fined arbitrarily.

54. The Government submitted no arguments on the merits of the case.

1. Alleged breach of the applicant's right to be heard by an independent and impartial tribunal

55. The Court reiterates that in *Čanády* (cited above, §§ 31-33) it concluded, with reference to its earlier case-law, that the present applicant's right to a hearing by a tribunal fulfilling the requirements of Article 6 § 1 had not been respected in proceedings leading to decisions by which his superiors had found him guilty of a minor offence against civic propriety.

56. It sees no relevant distinctive features in the present case that would warrant reaching a different conclusion.

57. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was deprived of his right to a hearing by an independent and impartial tribunal in the proceedings complained of.

58. The Court welcomes the legislative amendments which have permitted a judicial review of similar decisions as from 1 December 2004 (see paragraphs 26 and 28 above). However, those amendments cannot affect the position in the present case as they were introduced after the time when the facts complained of by the applicant occurred.

59. There has accordingly been a violation of Article 6 § 1 of the Convention on the ground that the impugned decisions could not be reviewed by a tribunal.

2. Alleged unfairness of the proceedings

60. Having regard to its conclusion that there was an infringement of the applicant's right to a hearing by a tribunal satisfying the requirements of Article 6 of the Convention for the reasons stated above, and considering that it has only limited powers to deal with errors of fact or law allegedly committed by national authorities, the Court does not find it necessary to examine separately the applicant's complaint relating to the alleged arbitrariness of the imposition of a fine on him (see also, *mutatis mutandis*, *Kadubec*, cited above, § 61, and *Komanický v. Slovakia*, no. 32106/96, § 56, 4 June 2002).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed EUR 55 in respect of pecuniary damage. That amount was equivalent to the fine and the fees which he had been obliged to pay for the proceedings leading to its imposition. The applicant further claimed an award in respect of non-pecuniary damage, the amount of which he left to the discretion of the Court.

63. The Government contested the applicant's claim.

64. The Court does not find it established, on the material before it, that the pecuniary damage claimed was causally linked to the breach of the Convention which it has found. There is therefore no justification for making any award to the applicant under this head.

It 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 EUR 500 under this head.

B. Costs and expenses

65. The applicant also claimed EUR 50 for the costs and expenses incurred both before the domestic authorities and before the Court.

66. The Government asked the Court to decide on the claim in accordance with its practice.

67. The Court considers it reasonable to award the applicant the sum claimed, namely EUR 50, in respect of his out-of-pocket expenses incurred in the context of the present case.

C. Default interest

68. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention since the criminal charge against the applicant was not determined by an independent and impartial tribunal;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention that the domestic authorities proceeded in an unfair and arbitrary manner;
4. *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, EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 50 (fifty euros) 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President