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

FIRST SECTION

DECISION

Application no. 20952/21
A.T.
against Slovenia

The European Court of Human Rights (First Section), sitting on 20 September 2022 as a Chamber composed of:
Krzysztof Wojtyczek*, President,*
Marko Bošnjak*,*
Alena Poláčková*,*
Erik Wennerström*,*
Raffaele Sabato
Lorraine Schembri Orland*,*
Ioannis Ktistakis*, judges,*
and Renata Degener, *Section Registrar,*
Having regard to:
the above application lodged on 3 April 2021;
the decision to request factual information from the Government (Rule 54 § 2 (a) of the Rules of Court);
the decision not to have the applicant's name disclosed;
Having deliberated in private, decides as follows:

THE FACTS

1. The applicant, A.T, is a Slovenian national who was born in 2004. She was represented before the Court by her father.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 11 February 2016 the applicant lodged a petition for constitutional review of certain provisions of the High School Graduation Act and the Primary School Act. She urged the Constitutional Court to decide the case promptly and asked it to temporarily suspend the implementation of the impugned provisions.

4. In December 2016 the applicant, who was shortly to enrol in high school, requested access to information about certain general results for the final national high school examination of a high school in which she was interested. Following the refusal of the State examination centre to provide the information, she appealed and the Agency for Access to Public Information upheld her request, but that decision was quashed by the Administrative Court on 9 May 2018. The Administrative Court found that section 18.a(3) of the High School Graduation Act did not allow such information to be provided since it prohibited the ranking of schools. An application by the applicant for leave to appeal on points of law was dismissed by the Supreme Court. On 10 September 2018 the applicant lodged a constitutional complaint against the above-mentioned court decisions and a request for the temporary suspension of the implementation of the disputed legal provisions. She also requested that the proceedings in her case be joined to proceedings which her father had instituted with respect to a similar request for access to certain information on success rates of high schools and primary schools in Slovenia. The applicant had at that time been in the last year of elementary school.

5. In the meantime, on 14 May 2018 the Constitutional Court notified the applicant that it would not be taking a decision on her request for suspension related to her petition for constitutional review (see paragraph 3 above) because it was preparing to consider her petition.

6. On 8 November 2018 the Constitutional Court accepted the applicant's constitutional complaint for consideration and, in the same decision, found that she could be considered to have a legitimate interest in pursuing the petition for constitutional review of section 18.a(3) of the High School Graduation Act because of her admissible constitutional complaint concerning the Administrative Court's judgment which had relied on that provision. However, it rejected her petition in respect of the Primary School Act and certain provisions of the High School Graduation Act because the impugned court decisions had not relied on them. By a separate decision issued on the same day, the Constitutional Court also accepted for consideration constitutional complaints and a petition lodged by her father for constitutional review of sections 64(8) and 65 of the Primary School Act and section 18.a(3) of the High School Graduation Act. It would appear that later in the proceedings the Constitutional Court decided to consider the applicant's and her father's petitions and constitutional complaints in joint proceedings.

7. On 16 September 2021 the Constitutional Court gave a decision which ran to forty-eight pages and concerned the applicant's petition and constitutional complaint, as well as the petition and constitutional complaints lodged by her father. In that decision, the Constitutional Court decided that the impugned legal provisions, namely sections 64(8) and 65 of the Primary School Act and section 18.a(3) of the High School Graduation Act, were in

compliance with the Constitution. It analysed the requirements stemming from international legal instruments with respect to the right of access to information. It also interpreted the concept of information of a public nature and the requirement in Article 39 of the Constitution that a person seeking such information should demonstrate a legitimate interest. It found among other things that that provision should be interpreted as providing a right to information which was readily available and capable of ensuring the effective exercise of the right to freedom of expression. The Constitutional Court further considered the obligation of the State to provide education and the objectives underpinning the prohibition of the ranking of elementary and high schools based on the results of the external examination. It found that the impugned provisions did not disproportionately affect freedom of expression because they did not prohibit access to other information, such as the success of a particular school in the external examination, and it also considered that those provisions were not incompatible with the right to free choice in education. It noted that its review was limited to issues pertinent to the constitutional complaints and that the determination of the constitutionality of the impugned legal provisions was decisive for its decision on the constitutional complaints. The Constitutional Court also rejected the applicant's father's additional complaint concerning the length of its own proceedings as falling outside its jurisdiction. In the same decision, it quashed the Administrative Court's judgment of 9 May 2018, relying on its finding that the contested legal provision could not be interpreted as prohibiting access to information with respect to a single school, but only as prohibiting the compilation of comparative data.

8. The Constitutional Court's decision was sent to the applicant's mother in her capacity as the applicant's legal guardian. However, on 18 October 2021 the mail was returned with an indication that the addressee had not been found at the address given. The decision was then displayed on the Constitutional Court's notice board. The applicant confirmed in correspondence with the Court that she had received the decision late because she was living abroad. The decision could likewise not be served on the applicant's father, who did not pick up the mail within the prescribed fifteen-day deadline. In accordance with the relevant domestic legislation, the decision was considered to have been served on the applicant and her father on 26 October 2021.

9. In the above-mentioned proceedings the applicant was represented by her parents.

COMPLAINT

10. The applicant complained under Article 6 § 1 of the Convention that her petition for constitutional review had not been decided on within a reasonable time.

THE LAW

11. The applicant complained of a breach of the "reasonable time" requirement in Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

12. She alleged that the Constitutional Court had taken over five years to decide on her petition for constitutional review, and that this should be considered excessive in view of the Court's judgments in *Grubić v. Croatia* ([Committee], no. 33602-17, 18 March 2021), *Šikić v. Croatia* (no. 9143/08, 15 July 2010) and *Díaz Aparicio v. Spain* (no. 49468/99, 11 October 2001). She argued that her petition for constitutional review concerned a simple question involving the interpretation of one sentence of legislation. She also argued that she had not contributed to the length of the proceedings but had in fact urged the Constitutional Court to decide quickly and had asked for the law to be suspended in the meantime. Lastly, she pointed out that delays in proceedings before the Constitutional Court were increasing over the years and that this was an important problem for the administration of justice in Slovenia.

13. The Court first notes that the domestic courts recognised the existence of the right underlying the access to information in the present case. The information sought was meant, as the applicant contended, to facilitate her choice of school. Noting that the Constitutional Court accepted that access to information in the present case concerned the exercise of freedom of expression (compare *Kenedi v. Hungary*, no. 31475/05, §§ 33 and 34, 26 May 2009, and *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, § 27, 9 February 2017) and that it could also relate to the applicant's right of access to education (see *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 104, ECHR 2010), the Court therefore accepts that the subject matter of the case falls under the civil limb of Article 6 § 1.

14. The Court further observes that the applicant specifically complained only about the length of the constitutional review proceedings before the Constitutional Court, that is the proceedings which concerned an abstract review of legislation and could be initiated by the Constitutional Court following a petition lodged by an individual, who must demonstrate a legal interest (see, in so far as relevant, *Oklešen and Pokopališko Pogrebne Storitve Leopold Oklešen S.P. v. Slovenia*, no. 35264/04, § 18, 30 November 2010). The Court notes in this connection that Constitutional Court proceedings do not in principle fall outside the scope of Article 6 § 1 of the Convention. However, for Article 6 § 1 to be applicable, the outcome of such proceedings must be decisive for the individual's civil rights or obligations (see *Süßmann*

v. Germany, 16 September 1996, §§ 39 and 41, *Reports of Judgments and Decisions* 1996-IV; *Gavella v Croatia* (dec.), no. 33244/02, ECHR 2006-XII; *Batinović and POINT-TRADE, d.o.o. v. Croatia* (dec.), no. 30426/03, 10 July 2007; and *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, §§ 187-91, 7 May 2021, with further references). The Court further notes that it has previously examined the length of proceedings before the Constitutional Court alone, including when those proceedings had constituted a remedy in respect of decisions given by the ordinary courts (see, for instance, *Oršuš and Others*, cited above, §§ 108 and 109, and *Project-Trade d.o.o. v. Croatia*, no. 1920/14, §§ 92 and 99-103, 19 November 2020).

15. In the present case, the proceedings in issue were initiated by the petition for constitutional review. However, such a petition did not automatically lead to a constitutional review: a separate decision of the Constitutional Court was required to that end. In this connection, the Court notes that, unlike the situation in *Batinović and POINT-TRADE, d.o.o.* (cited above), where the Croatian Constitutional Court never decided to institute review proceedings on the applicants' petition and the Court therefore considered that Article 6 § 1 of the Convention did not apply to those proceedings, in the present case the Constitutional Court accepted the applicant's petition for consideration (see paragraph 6 above). That decision was based on the fact that the applicant had lodged an admissible constitutional complaint and therefore had a legitimate interest in the review proceedings. In the Court's view, this has two implications for the assessment of the starting-point of the relevant period.

16. On the one hand, the Constitutional Court could not have considered the merits of the petition for constitutional review without the applicant having lodged a constitutional complaint which also determined the limits of the constitutional review (see paragraph 6 above). There had therefore been no genuine dispute over the applicant's civil rights or obligations before the constitutional complaint was lodged. On the other hand, the constitutional review was directly decisive for the outcome of the proceedings concerning the constitutional complaint (see paragraph 7 above). The latter became capable of affecting the outcome of the dispute before the ordinary courts and the determination of the applicant's civil rights for the purposes of Article 6 § 1 at the point when the constitutional complaint was lodged and not merely when the complaint, together with the petition, was accepted for consideration (see *Süßmann*, cited above, § 39). The relevant period should therefore be considered to have started running on 10 September 2018 (see paragraph 4 above).

17. As regards the end of the relevant period, the Court notes that the Constitutional Court's decision of 16 September 2021 could not be served on either of the applicant's parents, through no fault of the Slovenian authorities (see paragraph 8 above). It should therefore be considered that the proceedings ended when the attempts were made to serve the decision on

them. As the date when service was first attempted is not known, the Court holds that the period to be taken into consideration ended no later than on the date on which the mail was returned to the Constitutional Court, that is, on 18 October 2021. The proceedings therefore lasted about three years and one month.

18. The Court must now determine whether the duration of the proceedings before the Constitutional Court exceeded a reasonable time within the meaning of Article 6 § 1. It reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

19. The Court observes that the proceedings before the respective constitutional courts in the cases cited by the applicant (see paragraph 10 above) lasted three years (see *Díaz Aparicio*, cited above, in which the Court did not find the issue before the relevant court to be of any particular complexity), three years and nine months (see *Šikić*, cited above, which concerned dismissal from employment) and four years and three months (see *Grubić*, cited above, where the Court found that there had been a certain degree of complexity in view of the breadth of the constitutional complaint but that this alone was not enough to explain the length of the proceedings). The Court however notes that, unlike those cases, the present case concerns not only an ordinary constitutional complaint but also the applicant's petition for a constitutional review, that is, an abstract review of provisions contained in the High School Graduation Act and the Primary School Act. The determination of the issues raised by the applicant had potential implications which went beyond her case and required in-depth assessment of the objectives of the impugned legislation and its appropriate interpretation in view of the Constitution and the State's international obligations. Having regard to the reasoning of the Constitutional Court, the Court has no doubt that these issues were complex.

20. The Court next notes that the applicant could not be blamed for prolonging the proceedings before the Constitutional Court, except for the situation in which the Constitutional Court was unable to serve its decision on her parents. As regards the conduct of the Constitutional Court, the Court notes that it decided to deal with the applicant's case and her father's constitutional complaint and petition in the same decision. This increased the complexity of the issues examined and might have contributed to the length of the proceedings. However, given that the issues raised by the applicant and her father were closely related, it was reasonable for the Constitutional Court to deal with them jointly (compare *Süßmann*, cited above, §§ 57-59, and *Gast and Popp v. Germany*, no. 29357/95, § 76, ECHR 2000-II). Moreover, the

applicant herself requested that the proceedings instituted by her father and by her be joined (see paragraph 4 above).

21. The Court further finds it important to reiterate that the duty of States to organise their judicial systems in such a way that their courts can hear cases within a reasonable time cannot be construed in the same way with respect to the Constitutional Court as with respect to an ordinary court (see *Süßmann*, cited above, §§ 55 and 56). Its role as guardian of the Constitution makes it particularly necessary for the Constitutional Court to be able to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (see *Gast and Popp*, cited above, § 75). This aspect of the role of the Constitutional Court takes on particular significance with respect to the constitutional review of legislation.

22. Finally, the Court must have regard to what was at stake in the proceedings for the applicant. It accepts that the results of the external examination could have been a relevant consideration for the applicant when deciding which high school to enrol in, but it has not been shown that the absence of such information had particularly significant consequences for her. The Court notes, moreover, that the applicant lodged her constitutional complaint when she was already in the last year of elementary school, and thus even if the proceedings before the Constitutional Court, to which this complaint is limited, had been particularly prompt, it is unlikely that they would have had any impact on her choices. In any event, it cannot be accepted that the issue raised was of such importance as to impose on the Constitutional Court a duty to review the impugned legislation as a matter of particular urgency.

23. Having regard to the above considerations, most notably the special nature of constitutional review proceedings, the Court finds no appearance of a violation of Article 6 § 1 of the Convention on account of the duration of the proceedings before the Constitutional Court.

24. The application must therefore be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2022.

Renata Degener Registrar	Krzysztof Wojtyczek President