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

FIFTH SECTION

DECISION

Application no. 55925/08
Pavel BRUS
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 19 November 2013 as a Committee composed of:

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Helena Jäderblom, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 November 2008,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Pavel Brus, is a Slovenian national, who was born in 1955 and lives in Spodnja Idrija. He was represented before the Court by Odvetniška Družba Čeferin, a law firm practising in Grosuplje.

The Slovenian Government ("the Government") were represented by their Agent.

A. The circumstances of the case

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

On an unspecified day after 10 November 2006, the police notified the applicant, who runs a transport business, that, on the aforementioned date, drivers employed by his company appeared to be taking part in demonstrations and using a certain road in Ljubljana for purposes other than traffic. His company was requested to send information concerning the identity of the drivers in question.

The applicant's company submitted the information requested by the police.

On 25 January 2007 the applicant received a penalty notice from the police dated 10 November 2006 imposing a fine of 417 euros (EUR) on him on the grounds that his company had been responsible for an administrative offence under section 111, paragraph 1, of the Road Traffic Safety Act, namely the use of a road for a purpose other than traffic.

On 31 January 2007 the applicant lodged a request for judicial review. He denied that any offence had been committed and maintained that the penalty notice contained no information about the circumstances of the offence allegedly committed. He mentioned that he had received a request from the police prior to the issuing of the notice, requesting him to submit information about seven of his drivers who had been driving lorries in Ljubljana during demonstrations at 8.30 a.m. on 10 November 2006. The applicant, referring to section 23, paragraph 1, point 86 of the Road Traffic Safety Act, claimed that the lorries had been driving on the road as they would have been on any other day and that the road in question had always been very busy at that time of the day. Therefore, no offence had been committed.

The Ljubljana Local Court found in its judgment of 4 June 2008 that the applicant had undoubtedly authorized the drivers' activity, and had not submitted anything in evidence that would raise doubts as to the correct establishment of the facts by the police, such as proof that the lorries had at the time in question been driving on the road for purposes other than a demonstration. The court based its decision on the facts established by the police and relied chiefly on the fact that one specific driver employed by the applicant had been driving on the road at the relevant time. However, it upheld the applicant's request in part and changed the classification of the offence. The applicant was now found to be responsible for the offence of causing obstructions on the road in breach of section 123 of the Road Traffic Safety Act, and his fine was reduced to EUR 208.

The applicant did not lodge a constitutional appeal.

B. Relevant domestic law and practice

For relevant domestic law, see *Bradeško and Rutar Marketing d.o.o. v. Slovenia*, no. 6781/09, §§ 16-18, 7 May 2013 and *Suhadolc v. Slovenia* (dec.), no. 57655/08, 17 May 2011.

COMPLAINTS

The applicant relied on Articles 6 and 13 of the Convention. He complained that there had been no oral hearing before the domestic court and that the evidence had not been properly examined. As regards the latter, the applicant submitted that the court had not established what effect his

lorries had had on the traffic situation. The applicant further complained that the domestic court had reclassified the offence but he was not allowed to pay only half of the fine, which he would have been able to do had the fine had been imposed by the police.

THE LAW

The Court observes that the applicant did not lodge a constitutional appeal against the decision of the Ljubljana Local Court of 4 June 2008 issued in minor offences proceedings.

The Court recalls that while the general principles concerning the exhaustion of domestic remedies are set out in *Sejdovic v. Italy* [GC], no. 56581/00, §§ 43-46, ECHR 2006-II, it has already held that, as regards applications lodged against Slovenia, the applicants were in principle required to lodge a constitutional appeal (see *Švarc and Kavnik v. Slovenia*, no. 75617/01, §§ 15 and 16, 8 February 2007; *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, §§ 103-107, 1 December 2009; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 296, ECHR 2012 (extracts)).

In addition, in a recent case *Bradeško and Rutar Marketing d.o.o. v. Slovenia* (cited above) the Court examined the effectiveness of constitutional appeal in minor offences proceedings, and concluded it would be considered effective for the purposes of Article 35 § 1 (ibid., §§ 33-40). The Court sees no reason to depart from its case-law in the present case.

Accordingly, the complaint under Article 6 § 1 of the Convention regarding the lack of oral hearing in minor offences proceedings and the general unfairness of the proceedings, should be rejected under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and the complaint under Article 13 of the Convention under Article 35 § 3 of the Convention as being manifestly ill-founded.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Ann Power-Forde
President