

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

FIRST SECTION

# CASE OF ADAMČO v. SLOVAKIA

*(Application no. 20877/19)*

JUDGMENT

STRASBOURG

2 June 2022

*This judgment is final but it may be subject to editorial revision.*



**In the case of Adamčo v. Slovakia,**

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Péter Paczolay, *President,*
Alena Poláčková,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 20877/19) 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") on 8 April 2019 by a Slovak national, Mr Branislav Adamčo, born in 1978 and being detained in Leopoldov ("the applicant"), who was represented by Mr J. Sabó, succeeded by Mr P. Piovarčí Jr., lawyers practising in Sečovce and Košice, respectively;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning the alleged violation of the right of access to a court to the Government of the Slovak Republic ("the Government"), represented by their Agent, Ms M. Bálintová, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 3 May 2022,

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

# SUBJECT MATTER OF THE CASE

1. The application concerns a situation in which the applicant, being detained, deposited an appeal in a civil-law matter with the prison authorities on the last day of the period for appealing. However the prison authorities posted it only the next day, as a result of which the appeal was rejected as belated. The applicant then asked that the appeal be nevertheless examined, by way of a request for leave to appeal out of time (Article 122 of the Code of Civil Contentious Procedure), but that request was dismissed and his appeal remained unexamined on the merits. The applicant complained under Article 6 § 1 of the Convention about being denied access to court.

# THE COURT'S ASSESSMENT

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

2. The Court notes first of all that no objection has been raised to the applicability of Article 6 § 1 of the Convention *ratione materiae* to the proceedings in issue in view of their subject matter (a defamation action against judges of criminal courts in connection with an alleged violation by

their decisions in relation to another person of the applicant's right to be presumed innocent).

3. Addressing this issue of its own motion (see *Studio Monitori and Others v. Georgia*, nos. 44920/09 and 8942/10, § 32, 30 January 2020), the Court observes that the applicant's claim was essentially aimed at the protection of his right to be presumed innocent. While it is a matter of interpretation of domestic law by which type of action, in which jurisdiction and against whom it was to be pursued, the existence of such a right is beyond any doubt.

4. The Government challenged the admissibility of the application on account of non-exhaustion of domestic remedies in that the applicant had failed to assert his rights by way of an appeal on points of law against the decision to reject his appeal. The applicant responded by pointing out two instances when his "belated" appeals in a similar context had previously been examined following his requests for leave to appeal out of time, which meant for him that this request was an effective remedy for the problem in question.

5. Where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, for example, *M.B. and Others v. Slovakia*, no. 45322/17, § 52, 1 April 2021).

6. In the present case, the applicant pursued his rights by a request under Article 122 of the Code of Civil Contentious Procedure (a separate remedy independent of an appeal on points of law) and ultimately by a complaint to the Constitutional Court. The latter, being the country's supreme authority in charge of protection of fundamental rights and freedoms and being limited in the exercise of its jurisdiction by the principle of subsidiarity (ibid., § 54), did not reproach the applicant for not having exhausted any other remedies, did not question the suitability of the remedy chosen, and proceeded to examine and ultimately to dismiss his arguments. The essential reason behind the courts' decision was that the appeal was out of time and that the applicant had failed to show that he had been unable to appeal in time. Despite their suggestion to the contrary, there is no indication that the remedy proposed by the Government was more likely to be successful, in particular as regards the timeliness of the applicant's appeal. The non-exhaustion objection must accordingly be dismissed.

7. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

8. The general principles concerning access to court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-81, 5 April 2018).

9. The case concerns the rejection of the applicant's appeal in a civil-law matter for having been lodged too late. Under the applicable statute (Article 121 § 5 of the Code of Civil Contentious Procedure), the period for appealing is respected if the appeal is deposited within the set time-limit with an organ that is duty-bound to ensure its delivery to the respective court. Under the established practice (as summarised in the Supreme Court's decision of 5 February 2014 in a case no. 7Cdo 142/13), in case of prisoners the respective prison administration is considered to be such an organ. The Government have not contested this position.

10. In line with the conclusions of the national courts in the applicant's case, the Government have rather concentrated their argumentation (opposed by the applicant) on the internal regulation of the handling of inmates' post in prisons, on what they considered to be an existing practice in the applicant's prison, and on the applicant's knowledge of those rules and practices.

11. The Court notes that the Government's argument in essence means that a general statutory period for appealing should in the case of inmates be shortened by the time that it takes for the prison administration to post their appeals.

12. It is unclear how this premise could be consistent with the established judicial practice, uncontested by the Government, as cited at paragraph 9 above. Moreover, the Court is not persuaded that any rules governing the prison administration's responsibility in handling inmates' mail should impact on the length of time-limits allowed by statute to litigants for appealing.

13. Even assuming that the rejection of the applicant's appeal in the present case was conform to the domestic law, as a result of it, the applicant's appeal was not examined on the merits. Its rejection accordingly amounted to an interference with his right to court and the Government have advanced no explanation as to any legitimate aim it might have pursued, in particular in view of the fact that the applicant deposited the appeal with the prison authorities within the time-limit. As no such aim has been identified, it is not necessary to examine the contested measure in terms of proportionality (see, for example, *Oorzhak v. Russia*, no. 4830/18, §§ 20 and 21, 30 March 2021).

14. These considerations are sufficient for a conclusion that the applicant's right of access to court has been infringed.

15. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage, as well as EUR 1,370.40, EUR 1,304.35 and EUR 456 for, respectively, legal fees concerning the merits of his defamation action, legal fees before the Court, and translation costs.

17. The Government considered the claim in respect of non-pecuniary damage excessive and argued that there was no causal link between the object of the present proceedings before the Court and the applicant's legal expenses before the domestic courts in relation to the merits of his defamation action.

18. The Court awards the applicant EUR 7,800, plus any tax that may be chargeable, in respect of non-pecuniary damage.

19. The Court agrees with the Government that there is no nexus between the domestic legal fees and the violation found. Having regard to the documents in its possession, it considers it reasonable to award EUR 1,750, plus any tax that may be chargeable to the applicant, for the proceedings before the Court.

## 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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,750 (one thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 2 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Liv Tigerstedt<br>Deputy Registrar | Péter Paczolay<br>President |