

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

FIFTH SECTION

CASE OF KASTELIC v. SLOVENIA

(Application no. 25326/11)

JUDGMENT

STRASBOURG

19 June 2014

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



In the case of Kastelic v. Slovenia,

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

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

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 27 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 25326/11) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Ms Lilijana Kastelic ("the applicant"), on 12 April 2011.

2. The Slovenian Government ("the Government") were represented by their Agent, Ms A. Vran, State Attorney.

3. On 30 August 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Ljubljana.

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

6. On 2 September 2009 the applicant stopped her car on the road in front of a school to let her children get out of the car. At that time, during a regular control, police officer S. found that the applicant had failed to use the seat-belt. The next day, the applicant allegedly approached S. and started insulting her. S. asked the applicant to follow her to the police station but the applicant refused to do so. Then S. requested the applicant to present her identity card which the applicant also refused to do. On the same day, S. issued a penalty notice against the applicant for not using the seat-belt, indecent behaviour, failure to comply with a public official's lawful order and failure to submit identity papers. The fine amounted to 991.12 euros (EUR).

7. On 22 October 2009 the applicant filed a request for judicial review in which she submitted that on 3 September 2009 she was at home and she was not the person that S. dealt with.

8. On 15 September 2010 the Ljubljana Local Court heard S. According to the applicant, she was not informed of the hearing.

9. On 16 September 2010 the Local Court rejected the request for judicial review on the basis of S.'s statement. Moreover, it held that the applicant had failed to submit any evidence in support of her application.

10. On 11 October 2010 the applicant lodged a constitutional appeal challenging the Local Court's findings of fact. Moreover, she complained that she had not been heard.

11. On 2 November 2010 the Constitutional Court rejected the applicant's constitutional appeal as inadmissible.

II. RELEVANT DOMESTIC LAW

12. For the relevant provisions of the Minor Offences Act (hereinafter "the MOA") and the Constitutional Court Act, see *Suhadolc v. Slovenia* ((dec.), no. 57655/08, 17 May 2011) and *Flisar v. Slovenia* (no. 3127/09, §§ 13-18, 29 September 2011).

13. Section 169 of the MOA provides:

> "(1) A request for protection of legality may be filed against any decision issued at the second instance or against any final decision, if this Act or regulation governing minor offences has been violated.
>
> (2) A request for protection of legality may be filed by a public prosecutor *ex officio* or at the initiative of a person who has the right to appeal against a minor offence judgment issued by a court of first instance."

14. On 13 March 2011 Section 65 of the MOA was amended to the effect that the court shall inform the offender of its intention to repeat or supplement the evidence-taking procedure.

THE LAW

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

15. The applicant complained about the lack of fair trial before the Local Court provided in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...
>
> ..."

16. The Government contested that argument.

A. Admissibility

17. Firstly, the Government objected that the applicant had failed to exhaust domestic remedies. According to them the applicant should have proposed the State Prosecutor to lodge a request for protection of legality under Section 169 of the Minor Offences Act which could have achieved the modification of the contested decision.

18. The applicant did not contest this argument.

19. The Court observes that the proposal to lodge a request for protection of legality could not be regarded as an effective remedy because it was not open to the applicant to complain directly to the court and it depended on the discretion of the Supreme State Prosecutor (see *Tănase v. Moldova* [GC], no. 7/08, § 122, ECHR 2010; and, *mutatis mutandis*, *Jankovec v. Slovenia* (dec.), nos. 8032/06, 8040/06, 19253/06, 7 September 2010).

20. Secondly, the Government argued that prior to the amendment of the MOA the Local Court was obliged neither to hear an offender nor to inform him or her of the production of evidence. Accordingly, if the applicant considered that the previous regulation was unconstitutional, she should have filed an initiative for the review of constitutionality of the MOA before the Constitutional Court.

21. The applicant did not contest this argument.

22. The Court notes that according to the MOA, as applicable at the relevant time, the hearings in minor offences cases were held at the judge's discretion. The Court has previously held that such a system could not be regarded to be *per se* incompatible with the guarantees enshrined in Article 6 (see *Suhadolc v. Slovenia*, cited above). The Court notes that in her constitutional appeal, the applicant did not challenge the relevant statutory provision, but rather the manner in which the rule was applied in her case. She considered that in view of the factual questions raised in her judicial review she should have had a hearing. In this regard, it does not appear that this complaint could not be appropriately addressed in the constitutional appeal, the remedy which the applicant used in order to obtain redress for the alleged breach of her right to a fair trial (see *Bradeško and Rutar Marketing v. Slovenia* (dec.), no. 6781/09, §§ 16-18, 7 May 2013). Having regard to this, the Court considers that the applicant was not required also to attempt to obtain redress by initiating the review of constitutionality of the statutory provision granting the judges the power to decide whether or not to hold an oral hearing.

23. In the light of the foregoing considerations, the objection of non-exhaustion of domestic remedies made by the Government should be rejected.

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

B. Merits

25. The applicant complained that she was found guilty of a minor offence without a public hearing, she was not heard and she was not able to submit any evidence on her behalf.

26. The Government contested this allegation. According to them the MOA in force at the relevant time gave the judge discretionary power to decide whether to hold a hearing or not on the basis of the arguments and evidence proposed by the applicant. In her request for judicial review the applicant failed to request a hearing. Nor did she propose other evidence. The Government were of the view that the allegations submitted by the applicant were of a general nature and did not call for a hearing. Moreover, according to them the Local Court assessed the police officer's statement as credible and trustworthy. In this regard, the applicant failed to submit any evidence that might have shown that she had not committed the minor offence. In the proceedings involving requests for judicial review the reversed burden of proof applies. Thus, the applicant should have indicated specifically what evidence was to be produced and what she sought to prove through the production of such evidence. It was not the court's duty to look for exonerating evidence.

27. The Court notes that the present case is similar to *Flisar v. Slovenia* (cited above, §§ 33-39) which concerned a conviction for offences against public order on the basis of the case-file forwarded by the police. In that case, the applicant did not request an oral hearing; however, he challenged certain factual aspects of the case which called for direct assessment of the evidence at an oral hearing. In the present case, the Court notes that the applicant requested judicial review alleging that she was not the person that verbally assaulted police officer S. Thus she contested the facts established by S. The Local Court, however, heard only S. Therefore, regardless of the fact that the applicant did not request a hearing the Court is of the view that the Local Court could not, as a matter of fair trial, have properly determined the facts or the applicant's guilt without a direct assessment of the evidence at an oral hearing.

28. In view of the foregoing, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its well-established case-law on the subject, the Court considers that there has been a violation of Article 6 § 1of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed EUR 18,000 in respect of pecuniary and non-pecuniary damage.

31. The Government argued that, considering the circumstances of the case, a judgment of the Court establishing a violation would in itself constitute sufficient just satisfaction.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

33. In respect of non-pecuniary damage, the Court considers that the finding of a violation is, in itself, sufficient just satisfaction for the purposes of Article 41 of the Convention (see *Mesesnel v. Slovenia*, no. 22163/08, § 44, 28 February 2013).

B. Costs and expenses

34. The applicant made no claim under this head.

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* that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

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

Done in English, and notified in writing on 19 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Ann Power-Forde President