

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

FIFTH SECTION

# CASE OF PETEK v. SLOVENIA

*(Application no. 1543/12)*

JUDGMENT

STRASBOURG

19 June 2014

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



**In the case of Petek 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. 1543/12) 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, Mr Zvonko Petek ("the applicant"), on 21 December 2011.

2. The applicant was represented by Odvetniška družba Gregorovič & Pungartnik d.n.o. o.p., a law firm practising in Šentjur. The Slovenian Government ("the Government") were represented by their Agent, Ms J. Morela, 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 1963 and lives in Žalec.

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

6. On 4 May 2008, the applicant lost control over his motorcycle on a bend by, allegedly, failing to adjust his speed to the road conditions. Consequently, he was severely injured.

7. On 29 July 2008 the police sent the applicant a penalty notice fining him 460 euros (EUR) and six penalty points for failing to adjust his speed according to the road conditions under Section 30 (5) of the Road Traffic Safety Act.

8. On 1 August 2008 the applicant lodged a request for judicial review. He argued that he had not exceeded the speed limit since he had been

driving together with his friends during a Sunday trip and the bends on the relevant part of the road prevented a speed which exceeded the speed limit. In this regard, B. and G., who were driving behind him with their motorcycles, could confirm that he had not exceeded the speed limit. Firstly, in his view, the road could have been covered with sand, as it was the end of the winter time. Secondly, he argued that the road could have been slippery. Whatever the nature of the obstacle on the road, it was that obstacle that caused the traffic accident. In his further submissions he stressed again that he had been driving within the speed limit. He further drew attention to the fact that a sign should have been installed earlier, considering that many accidents involving motorcycles had happened in the past on that road. According to the applicant, one or two days after the accident a slippery road sign had been installed. Therefore, he requested the hearing of the responsible person of the Slovenian Roads Agency. Finally, he pointed out that he was a careful and experienced driver who had followed several trainings on road security.

9. On 20 May 2009 the Slovenske Konjice Local Court rejected the applicant's request without holding a hearing. On the basis of the police record of the scene visit, the sketch of the road accident, the notice of the applicant's physical injury, the penalty notice and the request for judicial review it held that the applicant had been driving carelessly. According to the police findings of fact, the accident happened on a sharp bend with poor visibility due to a forest embankment. Moreover, the road was divided by a solid line. The Local Court held that the applicant should have expected a slippery road and the presence of sand but he failed to adjust his speed accordingly. It further considered that the applicant's complaints related only to exceeding the speed limit, an offence with which he was not charged. The Local Court did not comment on the applicant's request for a hearing.

10. On 24 August 2009 the applicant proposed to the Supreme State Prosecutor's Office to file a request for the protection of legality.

11. On 21 September 2009 the Supreme State Prosecutor's Office notified the applicant that it would not use this legal remedy, having found no violation of a legislative provision.

12. The applicant lodged a constitutional appeal and a petition for a review of the constitutionality and legality of the Minor Offences Act (hereinafter referred to as "the MOA").

13. On 22 June 2011 the Constitutional Court rejected the constitutional appeal and the petition as inadmissible. On 18 July 2011 this decision was served on the applicant.

## II. RELEVANT DOMESTIC LAW

14. For the relevant domestic law and practice see *Suhadolc v. Slovenia* ((dec.), no. 57655/08, 17 May 2011) and *Flisar v. Slovenia* (no. 3127/09, § 14-16, 29 September 2011). In addition, Section 30 of the Road Traffic Safety Act is relevant to the present case which reads as follows:

> "(1) The driver shall drive with such a speed so that he or she can at all times control and stop the vehicle before any obstruction that he or she can anticipate depending on the circumstances.
>
> (2) He or she shall adjust the speed and the driving to his or her skills, the characteristics, conditions and visibility of the road, and to the density and other characteristics of the traffic, to the weather conditions and to the features of the vehicle and the cargo within or on it.
>
> ...
>
> (5) A fine of EUR 460 shall be imposed on a driver who contravenes the provisions of paragraphs 1 and 2 of this Article. 6 penalty points shall be imposed on the driver of the motor vehicle."

# 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. The Court notes that this 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

18. The applicant complained that the domestic proceedings were unfair since the Local Court did not hold a hearing and provided no reasoning in

this respect. In particular, it provided no reasoning as to why the hearing of the witnesses he proposed was not necessary.

19. The Government argued that according to the MOA in force at the relevant time the decision to hold a hearing was within the judge's discretion. The judge was not obliged to hear the offender or to inform him or her of the presentation of evidence. This obligation was imposed on 12 March 2011 when the Act Amending the MOA entered into force. According to the Government the applicant gave an exhaustive statement about the facts and legal aspects of his case in his request for judicial review, stressing several times that he had not exceeded the speed limit. Moreover, the domestic court had established that all the decisive facts had been identified in a reliable and comprehensive manner in the penalty notice. Finally, the domestic procedural rules had not been violated.

20. The Court notes that the present case concerns a traffic offence which was personally observed by B. and G. and, subsequently, documented by the police. It is similar to *Flisar v. Slovenia* (cited above, §§ 33-39, 29 September 2011) which concerned a conviction for offences against public order on the basis of the case-file forwarded by the police. The Court considers that in his request for judicial review the applicant challenged certain factual aspects of the case and expressly requested a hearing. It is true that he mainly challenged the fact that he had not exceeded the speed limit. However, he also drew attention to the fact that the road might have been slippery or covered with sand and with no proper traffic signalisation, proposing in this respect the hearing of three witnesses, two of which had witnessed the accident. The Court further notes that the observations of the police were the sole basis of the applicant's conviction and the Local Court provided no reasoning as to why the hearing was considered unnecessary. In those circumstances, given the nature of the factual questions to be addressed by the Local Court and the fact that the evidence was not obtained by means of an objective method (see, *a contrario*, *Suhadolc v. Slovenia*, cited above) 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, or, in the alternative, without giving reasons for not doing so (see, *mutatis mutandis*, *Flisar v. Slovenia*, cited above; and *Milenović v. Slovenia* (no. 11411/11, 28 February 2013).

21. 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

22. 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

23. The applicant claimed EUR 485 in respect of pecuniary damage and EUR 28,000 in respect of non-pecuniary damage.

24. The Government rejected the applicant's claim as unfounded and exaggerated. They argued that, considering the circumstances of the case, a judgment of the Court establishing a violation would in itself constitute sufficient just satisfaction.

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

26. 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

27. The applicant also claimed EUR 7,442 for the costs and expenses incurred before the Court.

28. The Government argued that this claim was unfounded and exaggerated. According to them, the applicable Attorney's Fee Act determined a fee for the representation before the Court from EUR 500 to EUR 1,500. In the Government's opinion, the complexity and extent of tasks performed justify the minimum amount from the abovementioned fee range.

29. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

### C. Default interest

30. The Court considers it appropriate that the default interest rate 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;

3. *Holds*
   (a) that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
   (b) that the respondent State is to pay the applicant, within three months the amount EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 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.

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| Stephen Phillips | Ann Power-Forde |
| Deputy Registrar | President |