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

FIRST SECTION

DECISION

Application no. 74543/17
Štefan HARABIN
against Slovakia

The European Court of Human Rights (First Section), sitting on 30 November 2021 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Lorraine Schembri Orland, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 October 2017,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Štefan Harabin, is a Slovak national, who was born in 1957 and lives in Bratislava. He was represented before the Court by Ms E. Ľalíková, a lawyer practising in Bratislava.

2. The Government of the Slovak Republic ("the Government") were represented by Ms M. Bálintová, their co-Agent.

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

4. In the past the applicant held several prominent posts in the judiciary and Government.

5. On 16 May 2005 the applicant brought a libel action against a publishing house in relation to an article that had been published on 28 February 2005.

6. The action was examined by the ordinary courts at two levels and allowed by judgments of 18 June 2007 and 1 December 2011 respectively. The defendant was ordered to pay the applicant the equivalent of some 33,200 euros (EUR) in respect of non-pecuniary damage and to publish a written apology. The matter was thereby settled with final effect.

7. The defendant nevertheless challenged the judgment of 1 December 2011 by way of a complaint under Article 127 of the Constitution, alleging, *inter alia*, a violation of its freedom of expression.

8. On 26 April 2016 the Constitutional Court allowed the complaint, quashed the impugned judgment, and remitted the case to the court of appeal for re-examination. It considered the court of appeal's reasoning arbitrary in that it contained no assessment of the proportionality of the award of damages.

9. The constitutional judgment was published on the website of the Constitutional Court on 12 September 2016. Not having participated in the constitutional proceedings, the applicant claimed to have only learned about that judgment on 9 May 2017.

10. Following the constitutional judgment, it became incumbent on the court of appeal to re-examine the defendant's appeal against the first-instance judgment of 18 June 2007.

11. Following the communication of the case to the respondent Government on 27 May 2020, the Government informed the Court that, at a hearing of the appeal held on 9 May 2017, the applicant had withdrawn his action on the grounds that the defendant had already paid him the adjudicated amount and that the dispute had thereby been resolved (*dôvod konania odpadol*). Despite repeated requests, the defendant failed to respond. In view of this, on 22 September 2017, the court of appeal had quashed the first-instance judgment, terminated the proceedings, and awarded the applicant all costs of the appellate proceedings. The decision had become final on 15 October 2018.

COMPLAINT

12. The applicant complained under Article 6 § 1 of the Convention that he had been unable to participate in the constitutional proceedings although they had clearly concerned his civil rights and obligations.

THE LAW

13. The applicant complained that his rights under Article 6 of the Convention had been violated.

A. The parties' arguments

14. The Government submitted, *inter alia*, that the applicant had failed to provide the Court with all relevant information and that his conduct constituted an abuse of the right of individual application. In particular, in his application of 12 October 2017, he had failed to disclose that he had withdrawn his libel action at the hearing of 9 May 2017 and, subsequently, he had not informed the Court that the civil proceedings had been

discontinued. They argued that he must have been aware that those circumstances were relevant, in the light of the Court's decision to strike out of its list of cases a previous application of the applicant in which the position had been similar (see *Harabin v. Slovakia* (dec.), no. 18006/14, 19 June 2018).

15. The applicant reiterated his complaint. In reply to the Government's submission relating to the alleged abuse of the right of individual application, he pointed out that the court of appeal's decision to discontinue the proceedings following the withdrawal of his action had only become final on 15 October 2018, which was after the introduction of the present application. In addition, he argued that through the withdrawal of his action he had merely sought to avoid generating further costs of proceedings.

B. The Court's assessment

16. The Court considers that it must first examine the Government's submission that the applicant has abused the right of individual petition. Article 35 § 3 (a) of the Convention reads, in so far as relevant, as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is ... an abuse of the right of individual application."

17. It reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings. Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014).

18. The Court notes that although the present application as such is aimed at the proceedings before the Constitutional Court, those proceedings are situated within the framework of the proceedings before the ordinary courts on the applicant's libel action, and that the resumption of the proceedings before the ordinary courts following the impugned constitutional judgment was a continuation of the same underlying "determination" of the applicant's "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see *Harabin*, cited above, § 17). The Court further observes that the developments of the proceedings before the ordinary courts after the constitutional judgment clearly constituted "circumstances relevant to the application" in terms of Rule 47 § 7 of the Rules of Court (ibid, § 18).

19. In particular, the Court stresses that the applicant did not inform the Court when he lodged his application in October 2017 that he had withdrawn his action in May 2017 and that the court of appeal had terminated the proceedings in September 2017. Moreover, he did not inform the Court that the appellate court's decision had become final in October 2018, that is before the Court communicated the case to the Government. The Court learned about these developments only from the Government's observations. No convincing explanation for these omissions was provided.

20. Having regard to the fact that the information withheld concerned the very core of the application, the Court finds that such conduct was contrary to the purpose of the right of individual application. Lawyers must understand that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it the introduction of unmeritorious complaints and, both before proceedings have been instituted and thereafter, they must inquire diligently into all the details of the case, meticulously abide by all the relevant rules of procedure and must urge their clients to do the same. Otherwise, the wilful or negligent misuse of the Court's resources may undermine the credibility of lawyers' work in the eyes of the Court and even, if it occurs systematically, may result in particular individual lawyers being banned from representing applicants under Rule 36 § 4 (b) of the Rules of Court (see *Begić and Others v. Bosnia and Herzegovina* (dec.), [Committee], no. 63784/19, 4 February 2021). This must have been clear to the applicant already when lodging the present application, and at the very latest, through the Court's decision on his previous application no. 18006/14, adopted on 19 June 2018 (see *Harabin*, cited above).

21. In the light of the foregoing, the Court considers that the present application constitutes an abuse of the right of individual application within the meaning of Article 35 § 3 (a) *in fine* of the Convention. It must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President