CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4123/02
by František HUDEC
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 24 October 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 January 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

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

The applicant, Mr František Hudec, is a Slovakian national who was born in 1949 and lives in Slovenská Ľupča. The respondent Government are represented by Mrs A. Poláčková, their Agent.

A. The circumstances of the case

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

The applicant is of fragile health. He was considered by the Social Security Administration (SSA) as partially incapacitated for work.

1. Criminal convictions

On 4 February 1998 the Banská Bystrica District Court (*Okresný súd*) found the applicant guilty of ill-treatment and causing bodily harm to a dependant (his son) contrary to Article 215 §§ 1 and 2 (b) and Article 221 § 1 of the Criminal Code. The applicant was sentenced to three years' imprisonment. On 7 April 1998 the Banská Bystrica Regional Court (*Krajský súd*) upheld the judgment on the applicant's appeal.

The applicant had had two previous criminal convictions: in 1991 for ill-treatment of a dependant and in 1996 for causing grievous bodily harm.

2. Service of prison sentence and related matters

On 10 July 1998, at 10 a.m., the applicant began his sentence in the Banská Bystrica prison. On his admission to the prison, the applicant refused to communicate with the prison personnel. At 5 p.m. he declared that he would not obey orders and prison rules and went on hunger strike. He explained his actions orally and later also in writing as a protest against his conviction, which he considered unjust.

On 13 July 1998 the applicant was brought to the prison doctor who recommended that he be examined by a psychologist.

On 14 July 1998 the applicant was examined by the prison psychologist who concluded that the applicant's behaviour was of a primitive self-serving nature and had a pre-morbid psychopathic origin.

On 17 July 1998 the applicant was brought to the prison doctor for an examination in connection with his hunger strike. The circumstances of the applicant's escort after that examination are disputed.

According to the applicant he was escorted by a single warder who, at around 11 a.m., insulted and severely assaulted him. As a result the applicant lost consciousness and only awoke four days later in the Trenčín prison hospital.

According to the Government the applicant was escorted by two warders, there had been no abuse and the loss of consciousness was a fiction.

On 20 July 1998 the applicant was again examined by a doctor. According to the Government, the applicant was moving around without assistance and came to the examination on foot. The applicant claims that he was unconscious and had to be wheeled on a gurney.

On 21 July 1998 the applicant was admitted to the psychiatric ward of the Trenčín prison hospital. According to the Government, when escorted to

hospital, the applicant was able to walk on his own and without any assistance. The applicant disagrees. He further submits that on 22 July 1998 he complained to the head physician of physical ill-treatment.

As indicated in the report on his hospitalisation, the applicant initially refused to communicate, lay passively in bed and reverted to his original position when moved. On the second day of his stay in hospital the applicant started communicating, stopped his protest and claimed that he had been in a "special state" of which he remembered nothing. He was diagnosed with "combined personality disorder with hysteric manifestations" and received pharmacological treatment.

The applicant stayed in hospital until 22 September 1998 when he was moved to the Dubnica nad Váhom prison.

On 30 March 1999 the applicant was again admitted to a prison hospital in Trenčín. He was placed in the internal medicine unit where he was kept under observation, underwent examinations and tests and received pharmacological treatment. The applicant was released from hospital and was moved back to the Dubnica nad Váhom prison on 4 May 1999.

In 2000 the SSA found that the applicant was no longer partially incapacitated for work and withdrew the corresponding benefits. He appealed against this decision and, in connection with the appeal, had to undergo medical examinations on three occasions.

On 11 January 2000 the applicant requested release on parole, arguing that the serving of the sentence had negative effects on his health and on his relationship with his children. The prison authorities commented on the request in a report and concluded that release was not recommended.

On 26 April 2000 the District Court dismissed the request taking into account *inter alia* the above report. On 8 August 2000 the Regional Court upheld the decision on the applicant's appeal.

On 8 January 2001 the applicant again unsuccessfully requested parole.

On 6 June and 9 July 2001, respectively, the Dubnica nad Váhom prison administration decided that the applicant was to pay the costs of the medical examinations carried out in connection with the above-mentioned disability benefits appeal as well as the costs of his escort to hospital on 21 July 1998.

Further details concerning the serving of the applicant's sentence are disputed.

Without submitting any documents in support of these allegations, the applicant claims that he was made to perform physical work; that he was often mocked and verbally abused by the prison personnel; that his correspondence, which included 46 letters from relatives, was regularly interfered with; that it was not possible for him to see his children; that he did not receive adequate medical care and his general health had deteriorated; and that his attempts to raise his situation with the public prosecution service went unanswered.

Relying on reports from the prison administration, the prison hospital and the public prosecution service, the Government claim that the applicant had performed no work at all; that he had avoided leisure activities; that there had been no incidences of ill-treatment; that the monitoring of the applicant's correspondence had been carried out in accordance with the applicable rules; that none of his official correspondence had been interfered with; that while in prison the applicant had sent no more than two private letters and that there was no indication that they had been interfered with in any way; that the prison authorities had encouraged the applicant on several occasions to contact his children; that his visits to them could not take place because the applicant had not been prepared to pay the costs of his transfer to the children's home where they were placed; that he had been examined numerous times by an internist, a neurologist and a psychiatrist; that he had consulted the prison doctor approximately 180 times; that he had been provided with all necessary medicines and medical aids; that he had contacted the prosecution service on two occasions complaining of the inactivity of his lawyer and the report in reply to his request for release on parole; and that he had never made any other complaints to the prosecution service. None of the reports submitted contained any indication that the applicant had complained of any abuse or that any abuse had been established.

On 10 July 2001 the applicant was released after having served his sentence.

3. Remedies used

The applicant appealed against the decisions of 6 June and 9 July 2001 to the Director General of the Prison Administration. The Director dismissed his appeals as unfounded on 25 July and 9 October 2001 respectively. As regards the escort to hospital on 21 July 1998, the Director found that it had been prompted by the applicant's self-inflicted health condition (the hunger strike) and that his allegations about injuries caused by a beating were unsubstantiated.

After his release, the applicant lodged a detailed complaint with the Director about the conditions of his imprisonment and his alleged ill-treatment.

On 9 August 2001 the Director dismissed the complaint, finding wholly unsubstantiated the applicant's allegations of the beating and subsequent loss of consciousness on 17 July 1998, which was alleged to have been the reason for his hospitalisation. The medical attention given to the applicant in the prison hospital and elsewhere during his imprisonment had been adequate. No breach of any regulation had been established. Similar conclusions were drawn by the Ministry of Justice in their letter of 14 January 2002 in response to the applicant's renewed complaints.

B. Relevant domestic law

Prison Sentences Execution Act

The *lex generalis* governing execution of prison sentences is the Prison Sentences Execution Act (Law no. 59/1965 Coll., as amended).

Supervision of legality in prisons is regulated by its Chapter (*Oddiel*) 10. It is primarily carried out by the public prosecution service (section 44), the courts (section 45) and the National Council of the Slovak Republic (section 47). Public prosecutors, judges and members of parliament have *inter alia* unrestricted access to prisons and the right to speak with prisoners without a third person being present.

Subsidiary supervision is entrusted to religious organisations and citizens' associations (section 48).

COMPLAINTS

1. The applicant complained, in general, that while in prison he had been subjected to constant verbal and emotional harassment and humiliation, beating, torture and arbitrary punishment. He also alleged that he had not received adequate health care and had to perform manual work inappropriate to his state of health. As a result, his health had deteriorated.

Under this head the applicant also complained, specifically, of the incident of 17 July 1998 and of the fact that his complaints about the conditions of his imprisonment and the treatment he had received there had been arbitrarily downplayed and had not been properly examined. He relied on Article 3 of the Convention.

2. Invoking Article 5 of the Convention, the applicant further complained that he had been illegally deprived of his liberty, in particular because his requests for release on parole had been arbitrarily dismissed.

3. The applicant further complained under Article 6 of the Convention that he had not had a fair hearing in the proceedings leading to his conviction and the dismissal of his requests for release.

4. The applicant also alleged a violation of Article 8 of the Convention in that while in prison it had been impossible for him to see his children and his correspondence had been arbitrarily interfered with.

5. The applicant finally complained that he had had to pay costs in respect of his imprisonment. In substance, he relied on Article 1 of Protocol No. 1 and, without further specification, invoked also Articles 13, 14 and 17 of the Convention.

THE LAW

1. The applicant complained that he had been exposed to treatment incompatible with Article 3 of the Convention and that his complaint had not been investigated effectively.

Article 3 of the Convention provides that:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government objected that the applicant had not exhausted domestic remedies, as required under Article 35 § 1 of the Convention, in that he had not claimed damages from the State in the ordinary courts under the rules on State liability. They further submitted that, in any event, the applicant had not been subjected to any treatment the severity of which was above the Article 3 threshold.

The applicant disagreed and reiterated his complaint.

The Court observes that the present case raises the question whether the applicant had been ill treated contrary to Article 3 of the Convention and whether he exhausted domestic remedies in that respect. These questions are linked (see, for example, *Köksal v. the Netherlands* (dec.), no. 31725/96, 19 September 2000). The Court will therefore examine these questions in their correlation.

Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV).

The absolute prohibition enshrined in that Convention provision applies when a "minimum level of severity is attained" (see, for example, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). Measures depriving a person of his or her liberty may often involve an inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Yet it cannot be said that detention in itself raises an issue under Article 3 of the Convention (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

Where an individual raises an arguable claim that he or she has been seriously ill-treated by agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see, for example, *Assenov and Others v. Bulgaria*, judgment of

28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102).

Allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

In the present case the applicant served a three-year sentence. Although he received medical treatment on many occasions, there is no indication that any signs of ill-treatment have ever been observed. Nor is there any indication that the applicant has ever raised his Convention complaints with doctors, prison authorities, the prosecution service, the courts, the National Council of the Slovak Republic or any other person inside or outside the prison at the relevant times. Such possibilities were open to the applicant under the relevant provisions of the Prison Sentences Execution Act. The entire application is thus based on his allegations, which are not supported by any relevant evidence, which were made at the domestic level only after the applicant's release and which the domestic authorities found wholly unsubstantiated.

As to the alleged general deterioration of the applicant's health due to the conditions of his detention, he has not lodged a claim for damages in the ordinary courts. That possibility was also available to him under domestic law (see, *mutatis mutandis*, *Lampášová v. Slovakia* (dec.), no. 43378/98, 9 July 2002).

In the light of the above the Court finds that, in so far as the circumstances of this case have been substantiated and domestic remedies exhausted, it falls outside the scope of the Article relied on.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant also complained that he had been deprived of his liberty in violation of Article 5 of the Convention which, in so far as relevant, provides that:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ..."

The applicant was detained on the basis of a judgment of a criminal court which was upheld on appeal and which imposed on the applicant an unconditional prison sentence. His detention thus falls within the purview of Article 5 § 1 (a) of the Convention.

The applicant's sentence was for a fixed term of three years and the applicant served exactly this term. His detention was justified at the outset by the original conviction and appeal proceedings (see, *mutatis mutandis*, the *Van Droogenbroeck v. Belgium* judgment of 24 June 1982, Series A no. 50, pp. 21-22, §§ 39-40) and, as such, raises no questions under that provision.

As for the dismissal of the applicant's requests for release, the Court reiterates that the Convention does not confer, as such, the right to release on licence or require that parole decisions be taken by or be subject to review by a court (see, as a recent authority, *Jankauskas v. Lithuania* (dec.), no. 59304/00, 16 December 2003).

In so far as the complaint has been substantiated, there is no indication of any "unlawfulness" or "arbitrariness" (see, among many other authorities, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 850-51, § 50) within the Convention meaning.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant complained that the proceedings leading to his conviction and those concerning his requests for release had fallen short of the guarantees of "fairness" contained in Article 6 of the Convention.

The relevant part of Article 6 provides that:

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

(a) The applicant's criminal proceedings ended with his final conviction in 1998, which is more than six months before the introduction of the application in 2002.

It follows that the complaint of their unfairness has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) In so far as the complaint of the dismissal of the applicant's requests for release on licence has been substantiated, these proceedings did not involve a determination of a "criminal charge" against the applicant within the meaning of Article 6 § 1 of the Convention.

It follows that the complaint of the unfairness of those proceedings is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

4. The applicant further complained under Article 8 of the Convention that his correspondence had been monitored and that it had been impossible for him to see his children.

Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government objected that the applicant had not exhausted domestic remedies in that he had not asserted his right to respect for his correspondence by way of an action for protection of his personal integrity under Article 11 et seq. of the Civil Code and that, in any event, the complaint was manifestly ill-founded.

The applicant disagreed and reiterated his complaint.

The Court observes that, unlike in other cases of interference with prisoners' correspondence which it has examined before (see *Varga v. Slovakia* (dec.), no. 47811/99, 22 June 2004), in the present case there is no indication that any specific item of the applicant's mail has been actually subjected to any measure of control. It considers that the information before it is insufficient for it to find that the applicant's right to respect for his correspondence under Article 8 of the Convention has been interfered with and, even assuming it has been, that such interference was incompatible with the ordinary and reasonable requirements of imprisonment (see *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, pp. 37-38, § 98).

As to the alleged impossibility for the applicant to have direct contact with his children, the Court observes that according to the records of the prison administration, which have been submitted by the Government, the applicant did not have the chance to visit his children mainly because he was unwilling to pay for the costs of his escort. There is no indication that the applicant was unable to pay for such costs or that his contact with his children was deliberately hindered by the authorities.

It follows that the complaints under Article 8 of the Convention are manifestly ill-founded and must be rejected in accordance with its Article 35 §§ 3 and 4.

5. Lastly, the applicant complained of his liability to pay costs associated with his imprisonment and alleged a violation of Article 1 of Protocol No. 1 and Articles 13, 14 and 17 of the Convention.

(a) As to the costs associated with the applicant's imprisonment, there is no indication that he challenged the Director's decisions of 25 July and 9 October 2001 by means of an administrative-law action in the ordinary courts or that it was impossible for him to do so.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) To the extent that the complaints under Articles 14 and 17 of the Convention have been substantiated, the Court has found no indication of a violation of these Articles.

Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The applicant's other Convention complaints are inadmissible. For similar reasons, the applicant did not have an "arguable claim" and Article 13 is therefore inapplicable to his case.

It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention; and

Declares the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President