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

FIRST SECTION

DECISION

Application no. 31870/20
Karol JECKO against Slovakia
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 11 July 2023 as a Committee composed of:

Péter Paczolay*, President*,
Alena Poláčková,
Gilberto Felici*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications 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 17 July 2020 by three Slovak nationals listed in the appended table ("the applicants"), and who were represented by Mr Z. Perhács, a lawyer practising in Jelenec;

the decision to give notice of the complaints concerning the warrants that led to the applicants' surveillance and the impact on the fairness of the criminal proceedings against them of the evidence obtained by that surveillance to the Government of the Slovak Republic ("the Government") represented by their Agent, Ms M. Bálintová, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. This case is about covert audio-video surveillance of the applicants and the use in evidence of its materials in criminal proceedings against them.

2. The applicants served as customs officers at Slovakia's border with Ukraine. On 9 September 2008 an inquiry was opened against one or more customs officers unknown, but attached to the unit in which the applicants

were serving, on suspicion of abuse of official authority and taking bribes in connection with carrying out customs inspections.

3. On 14 September 2008 the Specialised Criminal Court ("the SCC") issued two warrants for the said surveillance on the premises where the customs inspections took place. This resulted in recordings and transcripts later used in support of the applicants' charges and at their trial.

4. On 16 September 2015 the SCC found them guilty of the said offences and sentenced them to prison terms. Their appeals and appeals on points of law were examined by the Supreme Court and brought about a reduction in their prison terms. They filed two constitutional complaints, to no avail.

5. As before the Constitutional Court, the applicants complained to the Court that the surveillance warrants were unlawful on the grounds that the warrants did not identify them personally and contained no reasoning in relation to them. Moreover, they did not identify the issuing judge and were treated as confidential. The materials resulting from the implementation of those warrants had thus been obtained unlawfully and their use in evidence at their trial was arbitrary. The applicants rely on Article 6 § 1 and Articles 8 and 13 of the Convention.

THE COURT'S ASSESSMENT

6. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

A. Article 8 of the Convention

7. The applicants alleged a violation of their rights under Article 8 of the Convention in that the surveillance warrants did not identify them as targets, contained no reasoning in relation to them and did not specify the identity of the judge who had issued them.

8. The Government pointed out that on 6 October 2017 the Constitutional Court had rejected the first of the applicants' complaints, upholding its practice to the effect that it had been open to them to seek protection of their rights by contesting the evidence in question before the courts trying them. In their view, this was the final decision and it had been given more than six months before the introduction of the applications on 17 July 2020. This was not altered by the applicants' subsequent constitutional complaint since its part concerning the warrants had been rejected on 13 December 2018 as being *res iudicata* by the decision of 6 October 2017.

9. The applicants replied, *inter alia*, by arguing that the warrants had never been served on them, contained no instructions as to any available remedies and had in fact not been subject to any appeal or other remedy.

10. The Court is unable to follow the rationale of the Government's inadmissibility argument. It has been established that the domestic remedy to

be used in relation to alleged violations of Article 8 of the Convention on account of alleged flaws in surveillance warrants is a complaint to the Constitutional Court (see, most recently, *Potoczká and Adamčo v. Slovakia*, no. 7286/16, §§ 26, 39, 61 and 62, 12 January 2023, with further references).

11. The applicants' Article 8 complaint concerns precisely the surveillance warrants in question, they pursued it before the Constitutional Court and the last decision in that regard was its judgment of 10 March 2020, which was within the time-limit under Article 35 § 1 of the Convention. The Government's objection under that provision is accordingly dismissed.

12. The warrants in question have not been made available to the Court. However, the information available provides the basis for an assessment of the applicants' specific arguments. They are essentially twofold. The first part rests on the uncontested absence of their identification and any individual reasoning in their respect in the impugned surveillance warrants. In that regard, the court of appeal noted specifically that there was a slight variation in the wording of the prosecution's request for the warrants and the warrants themselves. However, they undoubtedly concerned the same behaviour (marked by corruption) by the same suspects (officers attached to the given duty station), the description of which fully corresponded to the given stage of the proceedings, and other means of identifying the individual officers under suspicion had not been feasible.

13. The second part of the applicants' argument is based on the uncontested lack of nominal identification of the judge who issued the warrants, with only an illegible signature and a service stamp with a number having been attached. In that regard, upon a thorough examination, the court of appeal established that the warrants had undoubtedly been issued by an SCC pre-trial judge in charge of such matters under the work schedule in force at the SCC at that time. The fact that her name had not been indicated in the warrant was a rectifiable error that had been rectified. Moreover, it was noted that the line of constitutional case-law on which the applicants had relied (see *Zoltán Varga v. Slovakia*, nos. 58361/12 and 2 others, §§ 33 and 55, 20 July 2021) concerned surveillance in a different type of situation and was accordingly not directly transposable to their case. In sum, the warrants had been lawful both as to their substance and their form.

14. In so far as the complaint has been substantiated, it is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 6 of the Convention

15. Relying on their arguments as indicated above, the applicants argued that the evidence obtained by implementing the warrants had been obtained unlawfully. Moreover, this evidence had arbitrarily been treated as

confidential. As a result of its use in the trial against them, the proceedings had been unfair.

16. The Government argued that it was not the Court's role to determine whether particular types of evidence might be admissible, but rather to determine whether the proceedings as a whole were fair, which in the applicants' trial had been the case. The applicants reiterated their complaints.

17. The Court considers that in so far as the applicants' arguments have been dismissed above with reference to their complaint under Article 8, the same applies *mutatis mutandis* to those arguments when advanced under Article 6. What remains is the complaint that the warrants had been treated as confidential. As noted by the domestic courts, this by no means meant that the applicants had not had full access to these warrants. It is true that they had not been allowed to make copies of them. However, through the intermediary of their lawyer, they did have full access and their argumentation before the domestic courts indicates that they were able to contest them perfectly. This part of the applications is therefore likewise manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Remaining complaint

18. In connection with the above complaints, the applicants also relied upon Article 13 of the Convention.

19. However, the Court reiterates that this Article does not apply in the absence of an arguable claim (see *Maurice v. France* [GC], no. 11810/03, § 106, ECHR 2005-IX). Bearing in mind the conclusions set out above in relation to Articles 6 and 8, the complaint under Article 13 is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 7 September 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President

APPENDIX

No.	Application no.	Application name	Applicant Year of Birth Place of Residence
1.	31870/20	Jecko v. Slovakia	**Karol JECKO** 1966 Košice
2.	31896/20	Csonka v. Slovakia	**Tibor CSONKA** 1964 Boťany
3.	31903/20	Slivka v. Slovakia	**Milan SLIVKA** 1969 Biel