CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 50237/99
by Tibor JURÍK
against Slovakia

The European Court of Human Rights (Second Section), sitting on 27 September 2001 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr A.B. BAKA,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced on 3 June 1999 and registered on 10 August 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Tibor Jurík, is a Slovakian national, born in 1966 and living in Bánov, Slovakia.

A. The circumstances of the case

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

1. Proceedings concerning the applicant's dismissal from the police

In 1995 the applicant was dismissed from the police. He unsuccessfully challenged the dismissal before the Ministry of the Interior.

On 30 November 1995 the Supreme Court *(Najvyšší súd)* dismissed the applicant's request for a review of the administrative decisions concerning his case. The judgment was served on the applicant on 25 January 1996.

On 24 November 1998 the applicant requested that the proceedings be re-opened. On 29 January 1999 the Supreme Court rejected the request as such a remedy was not available.

2. Imposition of a fine on the applicant in the course of criminal proceedings

On 25 August 1999 the Nitra Regional Court (*Krajský súd*) convicted the applicant of extortion. The applicant appealed.

The Supreme Court scheduled a hearing for 25 November 1999. On the latter date the case was adjourned due to the absence of the applicant's lawyer. After the decision to adjourn the case had been announced, the presiding judge imposed a procedural fine of 10,000 Slovakian korunas (SKK) on the applicant pursuant to Article 66 (1) of the Code of Criminal Procedure. The decision stated that the applicant, despite previous admonitions, had unduly interrupted the presiding judge, had disrespected his instructions and that he had disturbed the conduct of the hearing. The decision indicated that it could not be challenged by means of a complaint.

B. Relevant domestic law

Code of Criminal Procedure

Under Article 66 (1), a person who, despite previous admonition, disturbs proceedings or behaves in an offensive manner in relation to a court, a public prosecutor, an investigator or a police authority or, without

sufficient excuse, does not obey an order or does not comply with an instruction addressed to him under the Code of Criminal Procedure, may be punished with a procedural fine amounting up to SKK 50,000.

Pursuant to Article 66 (4), the decision on such a procedural fine may be challenged by a complaint (*sťažnosť*) which has suspensive effect.

Article 141 (2) provides that a decision (*uznesenie*) of a court may be challenged by a complaint only when the law so expressly provides and when the matter is being decided upon by a first instance court.

COMPLAINTS

1. The applicant complains under Articles 6, 13, 14 and 17 of the Convention that his dismissal from the police was arbitrary and that the administrative and judicial proceedings concerning his dismissal were unfair.

2. The applicant further complains under Articles 6, 7 and 13 of the Convention about the procedural fine imposed on him by the presiding judge of the Supreme Court. He alleges, in particular, that the proceedings leading to the imposition of the fine were not fair in that he was fined after the case had been adjourned, and that he had no legal remedies at his disposal in this respect.

THE LAW

1. The applicant complains that his dismissal from the police was unlawful and that the administrative and judicial proceedings concerning this issue were unfair. He invokes Articles 6, 13, 14 and 17 of the Convention.

a) To the extent that the applicant complains about his dismissal from the police, the Court recalls that neither the Convention nor any of its protocols sets forth a right of access to public service (see, e.g., the Glasenapp v. Germany judgment of 28 August 1986, Series A no. 104, p. 25, § 49).

As to the applicant's complaint about the proceedings concerning his dismissal, the Court recalls that employment disputes which are raised by public servants, such as members of the police, are excluded from the scope of Article 6 § 1 of the Convention (see, e.g., *Pellegrin v. France*, no. 28541/95, § 66, ECHR 1999-VIII and *Frydlender v. France*, no. 30979/96, § 33, ECHR 2000-VII).

Finally, the Court notes that the Convention does not guarantee, as such, the right to review of a case and Article 6 § 1 of the Convention does not

apply to proceedings which determine whether the case in a civil matter is to be re-opened.

It follows that this part of the application 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.

b) To the extent that the applicant complains under Article 14 of the Convention about discrimination in connection with his dismissal from the police, the Court recalls that Article 14 complements the other substantive provisions of the Convention and that there can be no room for its application unless the facts of the case fall within the ambit of one or more provisions of the Convention (Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, § 36).

In the present case, the Court found that Article 6 is not applicable. Article 14 of the Convention cannot, therefore, be combined with it on the facts of the case (see Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 23, § 50).

It follows that this part of the application is also 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.

c) As regards the applicant's complaint under Article 13 of the Convention, the Court recalls that this provision has been interpreted as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, e.g., Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Having regard to its above findings with respect to the complaints Article 6 and 14, the Court considers that the applicant does not have an "arguable claim" of a violation of the Convention.

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

d) The Court has also examined the applicant's complaint under Article 17 of the Convention but finds, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the Convention.

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

2. The applicant complains that his right to a fair hearing was violated in the proceedings in which a procedural fine was imposed on him and that he had no effective remedy in this respect. He invokes articles 6, 7 and 13 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints about the imposition of a procedural fine and the absence of an effective remedy in this respect;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President