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

FIRST SECTION

DECISION

Application no. 6251/20
Milan KIAČEK
against Slovakia

The European Court of Human Rights (First Section), sitting on 13 February 2025 as a Committee composed of:

Georgios A. Serghides*, President*,
Alena Poláčková,
Alain Chablais*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 6251/20) 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 23 January 2020 by a Slovak national, Mr Milan Kiaček ("the applicant"), who was born in 1955, lives in Bratislava and was represented by Mr A. Werner, a lawyer practising in Bratislava;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning the non-communication to the applicant of the observations of a third party in reply to his constitutional complaint in the proceedings before the Constitutional Court to the Slovak Government ("the Government"), represented by their Agent, Ms M. Bálintová, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The case concerns the non-communication of third-party observations to the applicant in the proceedings before the Constitutional Court and the alleged lack of respect for adversarial trial.

2. The applicant became a party to administrative proceedings initiated by his parents against a decision of the building authority approving the

construction of a building on a plot of land adjacent to that of the applicant's parents. The administrative action was dismissed by two levels of courts. The applicant's claim that the building authority should have applied a newly adopted land use plan was dismissed by both instances. They found that the new plan did not contain any interim provisions and the law explicitly obliged the administrative organs to protect rights acquired in good faith as much as possible. The building company had legitimate expectations that its application would be decided on the basis of the law effective at the time of the submission of its application.

3. The applicant lodged a constitutional complaint challenging the Supreme Court's decision. In a judgment of 3 July 2019, the Constitutional Court dismissed it as manifestly ill-founded finding the Supreme Court's decision duly reasoned. It stressed that the lower court could not have adopted a different approach to the question of applicability of the new land use plan. Given the absence of interim provisions, its application would have violated the prohibition of retroactivity of legal provisions, which would be contrary to the principles of the rule of law and legitimate expectations (file no. III. ÚS 333/2018).

4. In the proceedings before the Constitutional Court, the applicant's constitutional complaint had also been sent to the building company as a third party and it submitted observations stating that the applicant's complaints were manifestly ill-founded since they had been repeatedly and unsuccessfully raised before the administrative bodies and the lower courts. While the observations referred mainly to the domestic authorities' decisions, they also contained a more comprehensive passage regarding the applicant's complaint concerning the alleged application of an outdated land use plan. These observations were not communicated to the applicant.

5. Relying on Article 6 § 1 of the Convention, the applicant complains that the Constitutional Court based its decision on the arguments presented by the third party in its observations. Given the failure to communicate them to him, he could not comment on them, and the proceedings were therefore not adversarial and fell short of the principle of equality of arms.

## THE COURT'S ASSESSMENT

6. Referring to the Court's judgments in *Stepinska v. France*, no. 1814/02, 15 June 2004, *Sale v. France*, no. 39765/04, 21 March 2006, and *Verdú Verdú v. Spain*, no. 43432/02, 15 February 2007, the Government, *inter alia*, objected that the complaint was manifestly ill-founded, because the third-party observations were not, even theoretically, capable of changing the outcome of the case before the Constitutional Court. In this regard they stressed that the third-party observations did not contain anything new beyond its argumentation already presented before the lower courts and there

is nothing in the reasoning of the Constitutional Court's judgment to suggest that it based its conclusion on the observations in question.

7. The applicant maintained his complaints.

8. The general principles concerning the right to adversarial proceedings were recently summarised in *Janáček v. the Czech Republic*, no. 9634/17, § 46, 2 February 2023.

9. Turning to the facts of the present case, the Court notes that as far as the third-party observations addressed the complaints raised by the applicant merely by reference to the lower courts' decisions, they did not contain any new factual or legal argumentation leading to the dismissal of the constitutional complaint (see *a contrario* ibid., § 52).

10. However, as regards the alleged application of an outdated land use plan (see paragraph 4 above) the Court observes that the third-party observations appear to go beyond a mere reference to the domestic courts' decisions. Nevertheless, the Court reiterates that the right to adversarial trial is not absolute, and its scope may vary according to the specific features of the proceedings in question. In certain specific cases, where the possibility to comment on a document submitted in the proceedings would not have changed their outcome as the legal approach adopted was not open to discussion, the Court has accepted that the non-communication of that document had not violated the fairness of the proceedings (see *Verdú Verdú*, §§ 26-28, and *Stepinska*, §18, both cited above).

11. In this context the Court notes that in its judgment the Constitutional Court stressed that there was no other legal solution that the Supreme Court could have adopted (see paragraph 3 above). The Court does not want to speculate as to whether the Constitutional Court's judgment was or was not based on the third-party observations as its wording does not allow for a clear conclusion. Nevertheless, the Court agrees with the Government that the arguments contained in the third-party observations concerning the alleged application of an outdated land use plan had been presented, examined and answered before both levels of the lower courts; the latter always providing the same answer as there was no other option. In this regard, the Court also notes that before all levels of jurisdiction the applicant's arguments did not go beyond the mere assertion that the domestic authorities were supposed to retroactively apply the newly adopted land use plan.

12. Since the applicant had a chance to familiarise himself and comment on the third-party's arguments concerning this legal issue during the domestic proceedings, including before the Supreme Court, whose decision was the subject matter of the constitutional review, the non-communication of the observations could not have constituted an obstacle to present, in the proceedings before the Constitutional Court, all arguments he deemed necessary for the success of his constitutional complaint (see *Verdú Verdú*, cited above, § 27).

13. Thus, given these circumstances the Court considers that providing the applicant with an opportunity to comment on the third-party's observations would not have changed the outcome of the proceedings as the legal approach adopted by the domestic courts was not open to discussion.

14. Therefore, the application is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 13 March 2025.

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| Liv Tigerstedt<br>Deputy Registrar | Georgios A. Serghides<br>President |