

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

THIRD SECTION

DECISION

Application no. 39507/06
Peter KOBIDA
against Slovakia

The European Court of Human Rights (Third Section), sitting on 15 November 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 25 September 2006,

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 Peter Kobida, is a Slovak national who was born in 1948 and lives in Prešov. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

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

1. Background information

3. The applicant is handicapped and wheelchair-bound. Since 1982 he has been living, at his request and for payment, in an establishment providing social services (*Dom sociálnych služieb* – "the care home").

4. Between 1994 and 1999, following an agreement with the director of the care home, the applicant himself paid for a person to prepare vegetarian food for him instead of buying the lunches which the home provided to residents and which did not include vegetarian meals.

5. In 1999 a new director was appointed who informed the applicant that the care home was obliged to provide at least two meals a day to him.

6. In 1999 the applicant concluded several consecutive agreements with the home in which he undertook to buy meals. As he had not paid the sums due for the period from July 1999 to March 2000, the home sued the applicant. The Prešov District Court granted the action on 18 June 2004, and the Prešov Regional Court upheld that decision on 18 January 2006.

7. In the meantime, on 19 January 2000 the applicant signed an agreement in which he undertook to buy two meals a day in the care home, namely lunch and an afternoon snack. On 21 January 2000, on the basis of that agreement the care home determined the sum which the applicant had to pay for his board. The Prešov Regional Office upheld that decision.

8. According to the applicant, the director had verbally promised to ensure that vegetarian food was made available to him with reference to section 3(3) of Regulation no. 198/1998. Since vegetarian meals were not made available, the applicant informed the director on 1 February 2000 that he no longer wished to receive lunches in the establishment.

9. An addendum to the internal rules of the care home of 3 July 2000 specified that a resident could refuse to receive food for serious reasons only and subject to the approval of the director. Another addendum to the internal rules of 4 August 2000 indicated the following as relevant grounds for not receiving food for a period exceeding 42 days: absence from the home, placement in a hospital, the death or illness of a member of the resident's family, attending cultural or sports events, or any other serious ground accepted by the director.

10. On 22 September 2000 the care home sued the applicant as he had not paid the sum due for meals in the period from April 2000 to July 2000. On 28 April 2006 the Prešov District Court granted the claim.

11. In the meantime, on 3 August 2000 a physician issued a certificate confirming that the applicant suffered from chronic dyspepsia requiring protective foods.

12. In decisions of 7 August 2000 and 13 December 2000 the care home re-determined the sums due from the applicant for the services it provided, including meals. On 3 October 2000 and 1 February 2001 the Prešov Regional Office dismissed the applicant's appeals against those decisions, which thus became final. In the decision of 1 February 2001 the Regional Office held that buying meals from other sources under section 3(3) of Regulation no. 198/1998 was only possible where such sources were duly authorised to offer catering services. However, that condition was not met in the applicant's case.

13. On 21 August 2001 the social services department of the Prešov Regional Office informed the applicant that vegetarian food would be made available in his care home from 1 October 2001.

14. On 31 October 2001 the care home and the applicant concluded a new agreement under which the latter undertook to buy breakfast and lunch in the establishment. As the applicant failed to pay the sum due, the care home sued him before the Prešov District Court on 19 February 2002. On 6 September 2006 that court approved a settlement under which the applicant undertook to pay the sum in issue in monthly instalments.

15. In 2006 three sets of execution proceedings were brought with a view to enforcing the sums which the courts had ordered the applicant to pay to the care home.

2. Proceedings concerning the action of 29 May 2001

16. On 29 May 2001 the establishment sued the applicant for unpaid meals for the period from August 2000 to March 2001.

17. The applicant argued that he had revoked the agreement on buying food as the lunches served in the care home did not correspond to his health needs and beliefs.

18. On 14 April 2005 the Prešov District Court granted the above action and ordered the applicant to pay the plaintiff 9,388.8 Slovakian korunas (SKK) in monthly instalments of SKK 1,000. The court established that, under the above agreement signed on 19 January 2000, the applicant had undertaken to buy two meals a day in the care home, namely lunch and an afternoon snack. Those decisions had been upheld by the Prešov Regional Office and had become final. During the period between August 2000 and March 2001 the applicant had not paid the sum due for meals, namely SKK 9,388.8.

19. The court further noted that under the relevant regulation persons permanently living in a social care establishment were to be provided with at least two meals a day, one of which had to be lunch. The applicant had thus been obliged to buy such meals. His own decision to stop buying lunches during the period in issue had not been a reason for excusing the applicant from the obligation to pay the costs of his stay in the establishment, including the meals which the care home had been obliged to

provide and which the applicant had been obliged to receive. The District Court further held that the applicant had not shown that his state of health obliged him to eat exclusively vegetarian food.

20. The applicant appealed. He argued that the District Court's judgment was discriminatory and breached his human rights as he had been obliged to pay for meals which he had not wished to receive and which had not corresponded to his health needs and beliefs.

21. The plaintiff maintained that, in accordance with the statutory provisions in force, serving meals was a part of the comprehensive care services which were provided to the applicant. The applicant had undertaken to pay for the two meals which the law obliged him to buy. The food offered respected the principles of healthy nutrition and it was prepared with due regard to the age and state of health of the residents. Upon medical recommendation the care home provided, as required by the law, special food which corresponded to diabetic, high-protein or high-calorie diets. The applicant's preference for vegetarian food was therefore a lifestyle choice and did not constitute special dietary needs.

22. On 17 January 2006 the Prešov Regional Court upheld the first-instance judgment. It noted that the Prešov Regional Office, on 1 February 2001, had approved the decision delivered on 13 September 2000 by the care home in which the applicant lived. Those decisions had determined the amount which the applicant was liable to pay for staying in the care home. It included the price of two meals a day which the applicant was obliged to buy in accordance with section 7 of Regulation 198/1998. The plaintiff had been obliged to prepare the meals, including lunch, for the applicant as he was receiving permanent care in the establishment and his stay there had not been interrupted during the relevant period. The refusal by the applicant to receive the meals for the above-mentioned reasons was not a relevant ground, within the meaning of section 27(5) of Regulation no. 198/1998, for absolving him from the obligation to pay the sum due.

23. Finally, the Regional Court noted that the applicant had not submitted any evidence indicating that his state of health was such that he needed to eat exclusively vegetarian food.

24. On 6 April 2006 the applicant lodged a complaint with the Constitutional Court. He complained that in the proceedings leading to the Regional Court's judgment of 17 January 2006 he had been obliged to pay for meals which he did not wish to buy and which were not suitable from the point of view of his health, beliefs and religion. The applicant alleged a breach of several constitutional provisions, including the right to respect for one's private life, the right to own property and the prohibition of discrimination.

25. On 24 May 2006 the Constitutional Court dismissed the complaint. It held that the ordinary courts involved had addressed and determined the

relevant aspects of the case. The Constitutional Court could not deal with the case on the mere ground that the applicant disagreed with the Regional Court's conclusion.

B. Relevant domestic law

1. The Social Assistance Act 1998

26. Under section 20(3)(a) of the Social Assistance Act 1998 (Law no. 195/1998 Coll.), social service establishments must provide indispensable welfare assistance to residents, which includes meals, accommodation and care.

27. Section 20(4) provides that meals served in such homes have to comply with the requirements of a healthy diet and take into account the age and state of health of the residents.

28. Paragraph 5 of section 20 obliges persons who receive care all year round or on a weekly basis to receive at least two meals a day in the establishment.

29. Pursuant to section 40(2), services provided in social service establishments must be paid for unless the law provides otherwise.

30. Section 43(3)(a) provides that food, accommodation and care is to be paid for in social service homes with the exception of homes for children.

2. Regulation no. 198/1998

31. Regulation no. 198/1998 issued by the Ministry of Labour, Social Affairs and Family provides in section 3(1) and (3) that care homes can obtain meals for persons in their care from different legal or natural persons authorised to provide catering services on the basis of a written agreement specifying the conditions and price.

32. Pursuant to section 7 of that Regulation, where a care home provides social services to a person all year round or on a weekly basis, that person has to be provided with all meals or, as a minimum, two meals a day, one of which must be lunch.

33. Under section 27(5), where a person has informed the social service establishment in a timely manner that he does not wish to receive meals, the sum corresponding to such meals must be restored to him or her by the end of following month.

COMPLAINT

34. With reference to the proceedings leading to the Constitutional Court's decision of 24 May 2006, the applicant complained that he had been

discriminated against in breach of Article 14 of the Convention as he had been obliged, without relevant justification, to pay for meals which he did not wish to receive and which comprised food which was not suitable from the point of view of his health, habits and beliefs.

THE LAW

35. The applicant complained under Article 14 of the Convention that he had been obliged to pay for meals which he did not wish to receive and which comprised food which did not suit him. When communicating the application, the Court, of its own initiative, decided to also put a question as to whether the facts of the case amounted to a breach of Article 8 of the Convention, the provisions of which, as far as relevant, provide:

Article 8

"1. Everyone has the right to respect for his private ... life, ...

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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. Arguments of the parties

36. The Government firstly objected that the applicant had not exhausted domestic remedies. In particular, the decisions of the care home determining his obligation to pay for the meals could be appealed against to the Regional Office and, subsequently, reviewed by the ordinary courts. The applicant had lodged an appeal against some of the care home's decisions, but he had not, subsequently, sought judicial review of the Regional Office's decisions. Ultimately, it was open to the applicant to seek redress before the Constitutional Court. The fact that courts had subsequently ordered the applicant, upon an action lodged by the care home, to pay the sum due did not affect the position. Those proceedings had not involved an effective remedy in respect of the applicant's complaint as the civil courts involved had been bound by the above-mentioned final decisions of the care home or the Regional Office determining the amount due by the applicant.

37. The Government further maintained that the application had been submitted outside the time-limit of six months laid down in Article 35 § 1 of

the Convention. The situation complained of, namely the obligation to pay for meals which did not suit the applicant, had come to an end on 1 October 2001 when the care home had started offering vegetarian meals to the residents.

38. Finally, the Government argued that the application was in any event manifestly ill-founded. In particular, the applicant had freely decided to live in the care home, which, in accordance with the law in force at the relevant time, provided comprehensive care to him which comprised, as a minimum, two meals a day including lunch. The meals served corresponded to the principles of healthy nutrition and were suited to the age of the residents. In case of need, upon medical recommendation, three different diets were available. The applicant's preference for vegetarian meals was a question of lifestyle and not of diet. The applicant had not invoked any relevant grounds, within the meaning of the internal rules of the care home, justifying his ceasing to buy meals in accordance with the agreement which he had signed. He had not shown that vegetarian food was indispensable for him from a medical point of view. The Government argued that the applicant had not shown that he had been subjected to discriminatory treatment contrary to Article 14 of the Convention.

39. The applicant maintained that he had been discriminated against as a handicapped person in that he had been obliged to buy meals which did not suit his health and beliefs.

2. The Court's assessment

40. The Court notes that the applicant had lived in the care home since 1982 and that he was used to vegetarian food, which the director allowed him to have prepared by a third person between 1994 and 1999. Subsequently, newly enacted legislation, namely the Social Assistance Act 1998 and Regulation no. 198/1998, introduced the obligation for care homes to provide residents in a similar position with at least two meals a day, one of which must be lunch. The residents were obliged to buy those meals.

41. As from 1999 the applicant concluded several consecutive agreements with the care home in which he undertook to buy meals in accordance with the above-mentioned legislation (see paragraphs 6 and 10 and 14). In the ensuing proceedings the amount which the applicant had to pay on the basis of such agreements was determined by the administrative authorities (see paragraphs 7 and 12). However, the applicant did not seek judicial review of the administrative decisions and he did not, ultimately, seek redress before the Constitutional Court. In respect of those proceedings the applicant has not, therefore, exhausted domestic remedies as required by Article 35 § 1 of the Convention.

42. The applicant refused to pay for the meals which the care home had prepared for him in accordance with the above-mentioned agreements. He

argued that, despite a verbal promise by the director, there was no vegetarian food available in the care home.

43. To the extent that the applicant may be understood as complaining about the absence of vegetarian food in the care home, the Court notes that no such right is guaranteed by Article 8 or any other provision of the Convention or its Protocols. In this respect his complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

44. Following the applicant's failure to pay the sums due, the care home instituted three sets of civil proceedings seeking their recovery. In his application the applicant specifically complained about the proceedings concerning the action of 29 May 2001 which led to the Constitutional Court's decision of 24 May 2006 (see paragraphs 16-25 above). In respect of those proceedings, where the domestic authorities addressed the issues of which the applicant now complains before the Court, the applicant exhausted domestic remedies and introduced his application within the period of six months. The Government's objection that this part of the application is inadmissible on account of the applicant's failure to respect the requirements of Article 35 § 1 of the Convention must therefore be dismissed.

45. The subject-matter of the present application is the alleged discrimination against the applicant stemming from the obligation imposed on him, in the above-mentioned proceedings, to pay for the meals provided by the care home. The applicant maintained that those meals did not suit his habits, health and beliefs. In his application the applicant exclusively alleged a breach of Article 14 of the Convention. Upon its communication to the respondent Government the Court decided to also put a question under Article 8 of the Convention.

46. In their observations the Government submitted arguments in respect of compliance with the applicant's rights under Article 8. However, in his reply the applicant failed to address that issue. In these circumstances, the Court considers that it is not required to examine whether the facts of the case amount to a breach of Article 8 of the Convention taken alone.

47. In the proceedings complained of the domestic courts determined the applicant's obligation to pay for meals, which had arisen from his written undertaking as a resident in the care home where he had chosen to live (see paragraphs 18-19 and 22-23 above).

48. The Court finds no indication that by doing so the domestic courts discriminated against the applicant contrary to Article 14 of the Convention in conjunction with Article 8. In particular, it has not been shown that other residents in a similar position were absolved from the obligation to pay for meals in the care home which they had undertaken to buy.

49. The applicant also invoked his beliefs and religion both in the domestic proceedings and before the Court. However, he did not put

forward any specific argument with a view to substantiating his allegation in that regard. In these circumstances there is no call for an examination of the applicant's complaint under Article 14 in conjunction with Article 9 of the Convention (see also *Jakóbski v. Poland*, no. 18429/06, §§ 44 and 48-55, 7 December 2010).

50. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant's complaint in respect of the proceedings in issue does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President