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

FIRST SECTION

DECISION

Application no. 16472/20
Peter KODRIČ
against Slovenia

The European Court of Human Rights (First Section), sitting on 3 May 2022 as a Committee composed of:

Péter Paczolay, *President,*
Alena Poláčková,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 16472/20) against Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 24 March 2020 by a Slovenian national, Mr Peter Kodrič, who was born in 1967 and lives in Sežana ("the applicant") who was represented by Mr M. Rajčevič Lah, a lawyer practising in Ljubljana;

the decision to give notice of the complaint concerning the requirement of impartiality under Article 6 § 1 of the Convention to the Slovenian Government ("the Government"), represented by their Agent, Mrs V. Klemenc, State Attorney, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the proceedings in which the applicant's application to be included in the list of attorney candidates was dismissed. One of the members of the Bar Association's administrative board that dismissed the said application was R.Č. Following the applicant's unsuccessful challenges of that decision before the Administrative Court and the Supreme Court, the applicant lodged a constitutional complaint. On 15 November 2019 the

Constitutional Court in a three-judge panel, which included R.Č., who had in the meantime become a Constitutional Court judge, decided not to accept the applicant's constitutional complaint for consideration.

2. On 18 February 2021 the Constitutional Court, not including, *inter alia*, judge R.Č., decided to annule its decision of 15 November 2019 on the grounds that judge R.Č. should have not taken part in the consideration of the case because of his prior involvement in the proceedings before the Bar Association's administrative board. The decision was taken by five votes against two. One of the dissenting judges was of the view that the annulment of the impugned decision would risk precluding the applicant's right to complain within the Convention system.

3. On 11 November 2021 the Constitutional Court, in a composition not including judge R.Č. and the two remaining members of the original composition, considered the applicant's complaint and unanimously decided not to accept it for consideration.

4. The applicant complained under Article 6 § 1 of the Convention that his case had not been heard by an impartial tribunal because the Constitutional Court's panel, which had decided on his constitutional complaint on 15 November 2019, had included judge R.Č. who had also been a member of the Bar Association's administrative board that had dismissed his application to be included in the list of attorney candidates.

THE COURT'S ASSESSMENT

5. The Court notes that the Government invoked Rule 44D of the Rules of Court in relation to certain of the applicant's representative's submissions, including his allegation that judge R.Č. must have learned about the present case being pending before the Court from someone who worked at the Court.

6. The Court does not consider it necessary to deal with this argument as an objection relating to an alleged abuse of the right of application (see *Beg S.p.a. v. Italy*, no. 5312/11, § 70, 20 May 2021) or in any other way since the application is in any event inadmissible for the following reasons.

7. The Court recalls that to deprive an individual of his or her status as a "victim" the national authorities have to acknowledge, either expressly or in substance, and then afford redress for, the breach of the Convention (see *Kumitskiy and Others v. Russia*, nos. 66215/12 and 4 others, § 15, 10 July 2018, and *Amuur v. France*, judgment of 25 June 1996, Reports of Judgments and Decisions 1996-III, p. 846, § 36).

8. In the present case, the Constitutional Court annulled the decision which had given rise to the applicant's grievance, noting that judge R.Č. should have not taken part in the consideration of the applicant's case before the Constitutional Court due to his prior involvement in the matter. By doing this the domestic authorities have recognised, at least in substance, the breach of the applicant's right to an impartial tribunal (see *Aleksanyan v. Russia*

(dec.), no. 7010/05, 27 March 2008, and *Katayeva and Katayev v. Russia* (dec.), no. 45550/99, 6 July 2004). It remains to be decided whether the domestic authorities afforded the applicant redress for this breach and, if so, whether the redress can be considered sufficient.

9. The Court notes that by its decision of 18 February 2021 the Constitutional Court ordered a fresh examination of the applicant's case. As regards the applicant's argument that during such fresh examination his constitutional complaint should have been decided by a reasoned decision on the merits in order to eliminate any doubt about fairness of the proceedings, the Court refers to its established case-law to the effect that for the national superior courts – such as the Constitutional Court – it suffices, when declining to admit a complaint, to simply refer to the legal provisions governing that procedure if the questions raised by the complaint – as in the present case – are not of fundamental importance (see, among many authorities, *Suhadolc v. Slovenia* (dec.), no. 57655/08, 17 May 2011, and, regarding the same grounds for the dismissal of the constitutional complaint as in the present case, *Ahac and Others v. Slovenia* (dec.) [Committee], no. 80531/12, 16 March 2021). It further observes that, in the new proceedings, the Constitutional Court decided the applicant's constitutional complaint in a composition which did not include judge R.Č. or any of the remaining judges involved in the initial consideration of the case. There is no indication of any arbitrariness or any procedural shortcoming undermining the fairness of these fresh proceedings.

10. Therefore, the Court finds that the applicant was afforded the opportunity to have his claim determined anew in accordance with a fair procedure. This can be regarded as sufficient redress for the alleged unfairness of the proceedings by which the applicant's constitutional complaint was initially decided. Therefore, the applicant can no longer claim to be a victim of the alleged violation.

It follows that the application is incompatible *ratione personae* with the Convention 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.

Done in English and notified in writing on 2 June 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President