CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32106/96
by Ioan Kornelij KOMANICKÝ
against Slovakia

The European Court of Human Rights (Second Section), sitting on 13 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,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 1 November 1995 and registered on 2 July 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 7 October 1999,

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

The applicant is a Slovak national, born in 1934 and living in Bardejov.

A. The circumstances of the case

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

1. Proceedings concerning the applicant's dismissal in 1991

The applicant was employed by the District National Committee (*Okresný národný výbor*) in Bardejov. In 1988 he was dismissed for breach of discipline. Subsequently courts at two levels of jurisdiction declared the dismissal unlawful. Their decisions became final on 2 August 1991.

In 1990, while the above proceedings were pending, the national committees ceased to exist *ex lege*, and their liquidation formally ended on 31 July 1991. The national committees were replaced by district offices (*okresné úrady*) which were not formally their legal successors.

On 2 September 1991 the Bardejov District Office gave notice to the applicant pursuant to Section 46 (1) (b) of the Labour Code.

The applicant challenged this decision. He argued, in particular, that the dismissal was unlawful and claimed compensation for damage caused by the termination of his contract of employment.

On 16 July 1993 the Bardejov District Court (*Okresný súd)* dismissed the applicant's action.

The applicant appealed. He challenged the appellate court judges on the ground that they had decided arbitrarily and contrary to the law in different sets of proceedings concerning his cases. On 10 June 1994 the Supreme Court (*Najvyšší súd*) found the applicant's arguments irrelevant and held that the three judges of the Košice Regional Court (*Krajský súd*) dealing with the appeal were not biased.

On 7 July 1994 the Košice Regional Court quashed the first instance judgment and ordered the District Court to take further evidence.

The applicant did not attend hearings before the District Court scheduled for 8 and 26 September 1994, 4 October 1994 as well as for 4 and 14 November 1994. The court noted that the applicant had excused himself in advance that he would not be able to attend the hearings on 4 October and on 14 November 1994.

The next hearing was scheduled for 10 January 1995. The applicant received the summons on 27 December 1994. The applicant submits that on 10 January 1995 at 7.30 a.m. he submitted to the District Court's registry a letter informing the court that he would not attend the hearing scheduled for 8.30 a.m. The applicant explained that, several days earlier, he had not been

allowed to consult the case file and that for this reason he did not consider it necessary to excuse himself for his absence. The Government maintain that the letter was delivered to the court's registry at 10 a.m. This is contested by the applicant who alleges that the time of the receipt of the letter was added to it later and that his copy of the letter, stamped by the court's registry, bears no indication of the hour when it was submitted.

On 10 January 1995 the Bardejov District Court proceeded with the case in the applicant's absence. It delivered a judgment by which it dismissed the action. The hearing started at 8.30 and ended at 8.55 a.m.

In the judgment the District Court found that the District Office was not a legal successor to the applicant's former employer and that the applicant had no right to be employed by the District Office. The court held that, by sending a notice to the applicant, the District Office had acted in accordance with the relevant regulations of the Ministry of the Interior and of the Ministry of Finance. Under these regulations, the district offices were charged with settling issues concerning labour relations which remained unresolved after the working groups established with a view to liquidating the national committees had ceased to exist by 31 July 1991. The court concluded that the District Office had acted in accordance with Section 251 of the Labour Code.

The applicant appealed. He alleged that the District Office had no power to send him a notice and that it should have offered him a job after his dismissal by the previous employer had been declared unlawful. The applicant complained that the District Court had decided contrary to the law and that he had not been able to present his arguments in person.

Before the Košice Regional Court the case was assigned to a different panel of three judges than that which delivered the decision of 7 July 1994. Hearings scheduled for 20 September 1995 and 26 January 1996 were adjourned as the parties did not appear. Prior to the latter hearing the applicant informed the court that he encountered various difficulties including health problems and requested that the case be decided in his presence.

The next hearing was scheduled for 6 March 1996. The Regional Court invited the applicant to submit a medical certificate in case he should not be able to attend failing which the case would be decided in his absence.

In a registered letter addressed to "State Regional Court" in Košice and posted on 2 March 1996 the applicant informed the Regional Court that he was ill and enclosed a certificate to this effect. The applicant further asked the court not to proceed with the case in his absence. The letter indicated the case number, the name of the presiding judge and also the date of the hearing.

The Regional Court's registry stamp on the letter indicates that it was delivered on 5 March 1996. The letter bears a hand-written remark by the president of the Regional Court dated 4 March 1996 and indicating that it

should be transmitted to the presiding judge. The Government submit that the president made a mistake when he dated his instruction. The letter bears another handwritten remark by the presiding judge indicating that the section examining the case received it on 6 March 1996 at 10.30 a.m. This is contested by the applicant.

On 6 March 1996 the Košice Regional Court examined the case in the applicant's absence and upheld the first instance judgment. The reasons for the judgment stated that the applicant's letter posted on 2 March 1996 had reached the judges on 6 March 1996 at 10.30 a.m., i.e. after the hearing had been over. The judgment further stated that the letter had been addressed to the president of the Regional Court and not directly to the presiding judge.

On 23 April 1996 the applicant lodged an appeal on points of law. He complained, *inter alia*, that he had not been able to act before the appellate court and invoked Section 237 (f) of the Code of Civil Procedure.

The Supreme Court (*Najvyšší súd*) rejected the appeal on points of law on 26 November 1997. In its decision the Supreme Court noted that in the proceedings challenged by the applicant there had been no shortcomings within the meaning of Section 237 (f) of the Code of Civil Procedure.

2. Proceedings concerning the disconnection of the applicant's telephone

On 19 June 1989 the District Administration of Telecommunications in Bardejov disconnected the applicant's telephone as he had failed to pay the fees. On 7 August 1989 the Eastern Slovakia Directorate of Telecommunications upheld this decision. On 14 March 1990 the applicant sought a review of both decisions.

On 31 January 1991 the Post and Telecommunications Administration in Bratislava quashed the decisions challenged by the applicant. On 13 March 1991 the Federal Ministry of Telecommunications in Prague quashed the decision delivered by the Post and Telecommunications Administration on 31 January 1991.

On 8 May 1991 the the Post and Telecommunications Administration in Bratislava delivered a new decision by which it dismissed the applicant's appeal.

On 1 July 1991 the Federal Ministry of Telecommunications quashed the decision of 8 May 1991 and returned the case to the Post and Telecommunications Administration in Bratislava.

Subsequently the Post and Telecommunications Administration in Bratislava transferred the case to the District Administration of Post and Telecommunications in Bardejov. On 16 September 1991 the latter decided again that the applicant's telephone was to be disconnected on the ground that he had not paid the fees. On 30 October 1991 the Eastern Slovakia

Telecommunications Directorate upheld the first instance decision. The appellate authority's decision became final on 5 November 1991.

On 2 March 1992 the Regional Public Prosecutor's Office in Košice informed the applicant that the last mentioned two decisions were irrelevant and superfluous. The letter stated that the decisions determined the same issues which had been decided upon in the initial set of proceedings on 19 June 1989 and on 7 August 1989 respectively. As the latter two decisions had not been quashed, the public prosecutor considered that the Post and Telecommunications Administration in Bratislava had acted erroneously in that it had failed to decide on the applicant's request of 14 March 1990. The applicant was informed that the General Prosecutor's Office would notify him of further actions taken in this respect.

On 25 June 1993 the Bardejov District Court discontinued proceedings in which the applicant sought the determination of the lawfulness of the disconnection of his telephone. On 27 January 1994 the Košice Regional Court upheld this decision. Both courts held that they lacked jurisdiction to review the decisions in question as the relevant provisions of the Code of Civil Procedure permitting a judicial review of administrative decisions were enacted with effect from 1 January 1992, i.e. after the relevant decisions in the applicant's case had been taken.

In a letter of 17 January 1995 the General Prosecutor's Office informed the applicant that by transmitting the case to the District Administration in Bardejov the former Post and Telecommunications Administration in Bratislava had acted contrary to the law. The General Prosecutor also requested the competent ministry to provide redress to the applicant.

On 6 March 1995 the Telecommunications Office informed the applicant, with reference to the position taken by the the Ministry of Transport, Telecommunications and Public Works on 2 February 1995, that the ministry could only review the contested decisions, by means of an extraordinary remedy, within three years after they had become final. As that time-limit had lapsed, the ministry could take no further action in the case.

On 28 September 1995 the Bardejov District Court discontinued, for lack of jurisdiction, proceedings in which the applicant claimed that the competent authorities should be ordered to proceed with the case and examine the lawfulness of the decision to disconnect his telephone. On 6 February 1996 the Košice Regional Court upheld the decision to discontinue the proceedings.

On 27 November 1996 the applicant claimed 200,000 Slovak korunas (SKK) under the State Liability Act. He alleged, with reference to the opinion expressed by the General Prosecutor's Office on 17 January 1995, that he had suffered damage as a result of the erroneous action of the former Post and Telecommunications Administration in Bratislava.

On 17 December 1996 the Bardejov District Court dismissed the action. The District Court noted that the applicant had not shown that he had suffered any damage. It therefore considered irrelevant that the Post and Telecommunications Administration in Bratislava had acted erroneously.

On 20 January 1997 the applicant appealed and alleged that the dismissal of his action was arbitrary. He argued, in particular, that his rights both under domestic law and under the Convention had been violated as a result of the administrative authority's failure to decide on his request of 14 March 1990. The applicant maintained that it was difficult to exactly quantify the damage and expressed the view that the amount of the compensation to be granted should be determined by the courts.

On 6 October 1997 the Prešov Regional Court upheld the first instance judgment. It shared the District Court's view according to which the applicant had failed to specify and substantiate the damage for which he claimed compensation as required by the law.

B. Relevant domestic law

Section 46 (1) (b) of the Labour Code provides that a person may be dismissed from a job when the employer ceases to exist or when a part of the organisation concerned is to be incorporated into another organisation and the latter has no possibility of offering the person concerned a job in accordance with his or her contract of employment.

Pursuant to Section 251 of the Labour Code, in cases when an organisation with the status of a state body is being liquidated, the liquidator has to satisfy the claims of the employess of such an organisation. When all claims have not been satisfied by the date when the liquidation ended, the claims are to be satisfied by the state.

Pursuant to Section 237 (f) of the Code of Civil Procedure, an appeal on points of law is available when a party was prevented, by the appelate court's conduct, from acting before the court.

Section 18 (1) of Act No. 58/1969 on the liability of the State for damage caused by a State organ's decision or by its erroneous official action (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* - "the State Liability Act") renders the State liable for damage caused in the context of carrying out functions vested in public authorities which results from erroneous official actions of persons entrusted with the exercise of these functions. A claim for compensation under this provision can only be granted when the plaintiff shows that he or she suffered damage as a result of an erroneous action of a public authority, quantifies its amount, and shows that there is a causal link between the damage and the erroneous action in question.

COMPLAINTS

1. The applicant complains that the courts' decisions on the lawfulness of his dismissal in 1991 were arbitrary as, in his view, he was entitled to a job in the newly established local government authority. He also complains that the proceedings were unfair as he was not able, in the second round of the proceedings, to present his arguments to the Bardejov District Court and the Košice Regional Court in person and that the judges involved lacked independence and impartiality. The applicant alleges a violation of Articles 3, 5 § 1, 6 § 1, 8, 13 and 14 of the Convention.

2. The applicant complains that, as a result of erroneous action of the Telecommunications Administration in Bratislava, he has not been able to have the lawfulness of the decision to disconnect his telephone examined by the competent authorities including the courts. He also complains that the dismissal of his claim for damages in this respect was arbitrary. He alleges a violation of Articles 6 § 1, 13 and 14 of the Convention.

THE LAW

1. The applicant complains that his right to a fair and public hearing by an independent and impartial tribunal was violated in the proceedings concerning the lawfulness of his dismissal in 1991. He invokes Articles 3, 5 § 1, 6 § 1, 8, 13 and 14 of the Convention.

The Government object, with reference to the Court's finding in the case of Neigel v. France (judgment of 17 March 1997, *Reports* 1997-II, p. 411, § 44), that Article 6 of the Convention is not applicable. They further submit that, in any event, this part of the application is manifestly ill-founded. As regards the applicant's complaint about a violation of his right to a public hearing in particular, the Government maintain that the applicant caused himself, by his inappropriate behaviour, that the courts decided on the case in his absence. They contend that the applicant was aware that his request for the hearing scheduled for 6 March 1996 should have been addressed directly to the presiding judge and that he could also have notified the court of his absence by phone or by a telegramme. They consider that the applicant waived, in substance, his right to attend the hearings as he neither appeared before the courts in person, nor presented an excuse in due time and form. The Government conclude that, considering the proceedings as a whole, the applicant's right to a fair and public hearing was respected.

The applicant contends that Article 6 is applicable and that it has been violated in that the courts decided arbitrarily and without having heard him. As to the hearing before the Košice Regional Court of 6 March 1996, the applicant submits that his letter with relevant documents indicating that he

would not be able to attend the hearing was delivered in time. He considers it irrelevant that the administration of the court failed to transmit it to the presiding judge prior to the hearing.

As to the Government's argument that Article 6 is not applicable to the proceedings concerning the applicant's dismissal, the Court recalls that it has made a distinction between "civil servants" enjoying a special status in domestic law and "employees governed by private law" when determining the applicability of Article 6 to proceedings concerning labour disputes (see the Neigel v. France judgment cited above, pp. 410-411, § 43).

In the present case, the applicant's contract of employment was governed by the Labour Code and the applicant had no special status as a civil servant which would make his position distinct from other employees in the then Czech and Slovak Federal Republic. Furthermore, the applicant not only challenged the lawfulness of his dismissal, but he also claimed damages which he considered to have suffered in this context. In these circumstances, the Court finds that Article 6 § 1 applies.

a) The applicant alleges a violation of Article 6 § 1 of the Convention in that the judges dealing with his case lacked impartiality as they proceeded with the case in his absence. He also complains that the judges were not independent as, in particular, the Regional Court's decisions of 7 July 1994 and 6 March 1996 respectively were delivered by two different panels of judges.

The Court notes that the applicant challenged the Košice Regional Court judges on the ground that, in different sets of proceedings concerning his cases, they had decided arbitrarily and contrary to the law. On 10 June 1994 the Supreme Court found irrelevant the applicant's arguments and held that the three Košice Regional Court judges dealing with the case were not excluded. The Court considers that this position was not arbitrary. In the Court's view, the fact that the Bardejov District Court and the Košice Regional Court decided against the applicant and took their decisions in the second round of the proceedings in the applicant's absence does not in itself permit the conclusion that the judges lacked impartiality.

As to the applicant's objection concerning the alleged lack of independence of the Košice Regional Court judges, it does not appear from the documents submitted that the applicant raised this objection in the proceedings before the domestic courts. In any event, there is no indication that the case was assigned to a different panel in the second round of the proceedings contrary to the relevant rules or that the applicant's right to a hearing by an independent tribunal was thereby infringed.

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

b) To the extent that the applicant complains under Articles 6 § 1 and 13 of the Convention that his right to a fair and public hearing was violated and that he did not have an effective remedy at his disposal in this respect, the

Court considers, in the light of the parties' submissions, that these complaints raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

c) The Court has also examined the remaining complaints which the applicant makes under Articles 3, 5 § 1, 8, 13 and 14 of the Convention but finds, to the extent that they have been substantiated and are within its competence, that they do not disclose any appearance of a violation of the Convention.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that, as a result of erroneous action of the Telecommunications Administration in Bratislava, he has not been able to have the lawfulness of the decision to disconnect his telephone examined by the competent authorities including the courts. He also complains that the dismissal of his claim for damages in this respect was arbitrary. He invokes Articles 6 § 1, 8, 13 and 14 of the Convention and also Article 1 of Protocol No. 1.

The Government maintain that the final decision in the proceedings complained of was delivered by the Eastern Slovakia Telecommunications Directorate on 30 October 1991 and conclude that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3.

The applicant contends that the Post and Telecommunications Administration in Bratislava had failed to decide on his request for a review of the decisions concerning the disconnection of his telephone, that he has had no possibility of seeking redress before the courts in this respect and that his claim for damages was dismissed arbirtrarily.

a) The Court notes that, following the decision delivered by the Federal Ministry of Telecommunications on 1 July 1991, the Post and Telecommunications Administration in Bratislava returned the case to the lower administrative authorities. On 16 September 1991 the Bardejov Disistrict Administration of Post and Telecommunications decided again that the applicant's telephone was to be disconnected on the ground that the had not paid the fees. On 30 October 1991 the Eastern Slovakia Telecommunications Directorate upheld this decision. A judicial review of these decisions was not available under the law then in force. In 1992 and in 1995 respectively the Regional Public Prosecutor's Office in Košice and the General Prosecutor's Office expressed the view that the Post and Telecommunications Administration in Bratislava had acted contrary to the law in that it had failed to decide on the applicant's request of 14 May 1990

and that it had transferred the case to the lower administrative authorities. However, by the time when it was seized with the matter, the competent Ministry could no longer provide redress to the applicant.

Thus the flaw in the procedure before the Post and Telecommunications Administration in Bratislava had the consequence that the final decision in the case was delivered by the Eastern Slovakia Telecommunications Directorate on 30 October 1991. The Court therefore finds that the relevant facts of the case are prior to 18 March 1992 when the former Czech and Slovak Federal Republic, to which Slovakia is one of the successor states, ratified the Convention and recognised the right of individual application. However, the Convention only governs facts which are subsequent to its entry into force with respect to the Contracting Party concerned.

In the Court's view, neither the decisions on remedies which the applicant subsequently tried nor the public prosecutors' views expressed in 1992 and in 1995 respectively can affect the position since none of the authorities involved had jurisdiction to effectively examine the case.

It follows that this part of the application s incompatible *ratione temporis* 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 6 § 1 of the Convention about the dismissal of his action for damages, the Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see the Garcia Ruiz v. Spain judgment of 21 January 1999, *Reports* 1999-I, pp. 98-99, § 28).

In the present case, courts at two levels of jurisdiction found, for reasons expressly set out in their judgments, that the applicant had failed to specify and substantiate the damage which he had allegedly suffered as required by the domestic law. In the Court's view, these decisions are not arbitrary. Furthermore, there is no indication that the proceedings leading to these decisions were unfair.

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

c) The Court has also examined the remaining complaints which the applicant makes under Articles 8, 13 and 14 of the Convention as well as under Article 1 of Protocol No. 1 in the context of the dismissal of his claim for damages but finds, to the extent that they have been substantiated and

are within its competence, that these complaints do not disclose any appearance of a violation of the Convention or its protocols.

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.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints that his right to a fair and public hearing was violated in the proceedings concerning his dismissal from a job in 1991 and that he had no effective remedy at his disposal in this respect;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President