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. 32106/96
by Ioan Kornelij KOMANICKÝ
against Slovakia

The European Court of Human Rights (Second Section) sitting on 7 October 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 1 November 1995 by Ioan Kornelij Komanický against Slovakia and registered on 2 July 1996 under file no. 32106/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

## THE FACTS

The applicant is a Slovak national, born in 1943 and living in Bardejov.

### A. Particular circumstances of the case

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

1. Proceedings concerning the reimbursement of an allowance paid to the applicant

In 1988 the applicant was dismissed from the Bardejov National Committee (*Národný výbor*). On 16 January 1991 the Bardejov District Court (*Okresný súd*) declared the dismissal unlawful and on 19 July 1991 the Košice Regional Court (*Krajský súd*) upheld this decision.

In 1991 the Bardejov Labour Office (*Úrad práce*) granted the applicant an advance payment of the unemployment allowance pending the outcome of the proceedings concerning the lawfulness of his dismissal. Since the applicant was successful in the proceedings, the Labour Office claimed back the allowance paid in advance.

On 15 March 1995 the Bardejov District Court granted the Labour Office's claim and on 13 September 1995 the Košice Regional Court upheld this decision. Both courts refused, with reference to the relevant provisions of the Code of Civil Procedure, to accept the applicant's argument that the claim had become statute barred. At the hearing before the Regional Court the president did not allow the applicant to submit all his arguments orally.

On 17 November 1995 the applicant lodged an appeal on points of law. He complained that at the hearing before the Regional Court he could not present all his arguments orally and that the Regional Court had not taken all relevant evidence.

In the course of 1996, after the Regional Court's judgment of 13 September 1995 had become final, the sum granted to the Labour Office was enforced from the applicant.

On 17 June 1998 the Supreme Court (*Najvyšší súd*) quashed the lower courts' judgments, discontinued the proceedings and transferred the case to the Labour Office in Bardejov. The Supreme Court found that the claim for reimbursement of the payments should first have been examined by the competent administrative authority in accordance with the relevant provisions of the Administrative Proceedings Act.

2. Proceedings concerning compensation for the applicant's dismissal in 1988

In a separate set of proceedings the applicant claimed compensation for his dismissal in 1988. On 16 July 1993 the Bardejov District Court granted the claim as regards the lost salary including the default interest in accordance with the relevant law. It further dismissed the applicant's claim to consider also the rate of inflation, the devaluation of the currency and the possible increase in the applicant's salary as these claims had no basis in Slovak law. On 8 March 1994 the Košice Regional Court upheld this decision. The Regional Court's judgment was served and became final on 2 May 1994.

Subsequently the applicant claimed damages from the Ministry of Justice under the State Liability Act (see "Relevant domestic law" below) on the ground that his above claim had not been granted in full.

The action was dismissed by the Bardejov District Court on 13 June 1995. The District Court found that the judgments which the applicant considered unlawful had not been quashed as required by Section 4 (1) of the State Liability Act.

On 18 July 1995 the applicant appealed. He alleged that the District Court had not established the relevant facts of the case and expressed the view that it had applied the relevant provisions of the State Liability Act erroneously.

On 18 October 1995 the Košice Regional Court upheld the first instance judgment. It noted that the applicant's action could not be granted as the condition set out in Section 4 (1) of the State Liability Act was not met.

On 27 November 1995 the applicant lodged an appeal on points of law. He complained, *inter alia*, that the lower courts had disregarded his proposals to take further evidence with a view to establishing the relevant facts of the case.

On 24 June 1998 the Supreme Court rejected the applicant's appeal on points of law. It noted that taking of evidence was within the exclusive competence of the courts. It further found that no supplementary evidence was required for deciding on the case.

3. Proceedings concerning the enforcement of the Bardejov District Office's debt

The Bardejov District Office failed to pay in full the compensation for the applicant's dismissal in 1988 as ordered by the courts (see point 2 above). On 27 March 1995 the Bardejov District Court therefore ordered the enforcement of 4,760.10 Slovak korunas (SKK). The defendant appealed.

On 8 November 1995 the Bardejov District Court partly discontinued the proceedings as the defendant had paid 4,183.80 SKK to the applicant. It upheld the enforcement order as regards the outstanding sum, i.e. 576.30 SKK.

The applicant appealed and complained that the default interest which the defendant had to pay to him had not been determined correctly.

On 28 June 1996 the Košice Regional Court upheld the first instance decision. It noted that the District Court had established the facts correctly and decided in accordance with the relevant provisions of the Code of Civil Procedure. The Regional Court further held that the applicant's additional claims could not be examined in the context of the enforcement proceedings as they were not covered by the original judicial decisions on which the enforcement order was based.

Subsequently the applicant unsuccessfully requested both the president of the Supreme Court and the General Prosecutor to lodge an appeal on points of law on his behalf.

4. Proceedings concerning additional compensation for the applicant's dismissal in 1988

On 15 December 1995 the applicant lodged an action for damages on the ground that in the original proceedings leading to the Košice Regional Court's judgment of 8 March 1994 (see point 2 above) his claims for compensation for his dismissal in 1988 had not been granted in full. In particular, the applicant alleged that, when evaluating the damage, regard should also be had to the rate of inflation, to the devaluation of the currency and to the possible increase in his salary. He further claimed compensation for the expenses related to the search for a new job, for subsidies on meals served in the canteen of his former employer and for the interest which he would have earned had he deposited his salary on a bank account.

On 26 June 1996 the Bardejov District Court dismissed the action. It found that the applicant had received compensation in accordance with the relevant provisions of the Labour Code and that his additional claims had no basis in Slovak law. The applicant appealed and complained that the District Court's judgment was discriminatory and tendentious as it was based on false interpretation of domestic law.

On 15 October 1997 the Košice Regional Court upheld the first instance judgment. The Regional Court dealt with the applicant's objections and found that the applicant had been duly compensated for the damage resulting from his dismissal in accordance with Slovak law. In particular, the Regional Court held that the action could not be granted under the relevant provisions of the Civil Code as there existed no causal link between the dismissal and the damage the applicant alleged to have suffered. Finally, the Regional Court recalled that the judicial decisions complained of had not been quashed. For this reason, the action could not be examined under the State Liability Act.

5. Proceedings concerning the applicant's dismissal in 1991

On 27 August 1991 the applicant was dismissed from his job on the ground that his employer ceased to exist and that there was no similar post available in the newly established local government authority which had taken over the duties of his former employer. The applicant challenged this decision. On 16 July 1993 the Bardejov District Court dismissed the applicant's claim, but on 7 July 1994 the Košice Regional Court quashed the first instance judgment and ordered the District Court to take further evidence.

On 10 January 1995 the Bardejov District Court delivered a new judgment by which it dismissed the applicant's action. The applicant appealed.

A hearing before the Košice Regional Court scheduled for 20 September 1995 was adjourned as the applicant was not able to appear. Another hearing scheduled for 16 January 1996 was also adjourned as both parties failed to appear.

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

In a registered letter 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.

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

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 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.

On 28 May 1998 the Constitutional Court rejected for lack of jurisdiction the applicant's petition alleging a violation of his right to work.

6. Proceedings concerning the applicant's action against a bank

The applicant claimed damages from a bank on the ground that it had at its disposal, without any justification, a sum which had been transferred to him by the Bardejov District Office.

On 19 December 1994 the Bardejov District Court dismissed the action. It established that the sum had been transferred to the bank on 30 May 1994. As the applicant's account no longer existed, the bank informed the applicant about the transfer and invited him to withdraw the sum on 9 June 1994. The applicant failed to do so and the bank returned the sum to the District Office on 6 July 1994. The latter then transferred the money to the applicant by post. The District Court concluded that no unlawful action could be imputed to the bank.

The applicant appealed and complained that the judgment was arbitrary. He alleged that the bank should have returned the sum to the District Office forthwith.

On 24 May 1995 the Košice Regional Court upheld the first instance judgment. It found that the bank had acted in accordance with the relevant rules and that it could not be held responsible for the erroneous transfer carried out by the District Office.

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

On 16 September 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 this decision.

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 in question 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.

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 Post and Telecommunications Administration in Bratislava had acted contrary to the law.

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 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 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 in no way justified the damages claimed by him. 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.

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 substantiate the damage for which he claimed compensation.

8. Proceedings concerning the removal of the applicant's property from a plot of land

In 1985 the applicant erected several poles on a plot belonging to a state owned company with a view to establishing telephone connection to his week-end house. The owner requested the applicant to remove the posts. As the applicant failed to do so, they were sawed off and left on the spot in 1989. Subsequently they disappeared. The applicant unsuccessfully complained to the police and to public prosecutors at three levels.

On 11 May 1993 the applicant claimed damages from the owner of the plot. On 20 January 1994 the Bardejov District Court dismissed the action on the ground that the defendant had not caused any damage to the applicant.

The applicant appealed. The defendant requested to dismiss the claim as being statute barred.

On 26 May 1995 the Košice Regional Court found that the applicant's right to claim damages had lapsed. It noted that the three years' prescription period had expired on 20 June 1992 whereas the applicant had brought the proceedings on 11 May 1993.

**B. Relevant domestic law**

Section 1 of Act No. 58/1969 on Liability for Damage Caused by a State Organ's Decision or by an Erroneous Official Act of 1969 (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom* - "the State Liability Act") provides that the State is liable for damage caused by unlawful decisions delivered by public authorities.

Section 4 (1) of the State Liability Act provides that a claim for compensation may only be brought after the competent authority declared unlawful and quashed the final decision by which the damage was caused.

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 court's conduct, from acting before the court.

**COMPLAINTS**

1. The applicant complains that the proceedings concerning the Bardejov Labour Office's claim for reimbursement of the unemployment allowance paid in advance were unfair and that the courts' decisions are arbitrary. He also complains that in the proceedings before the Košice Regional Court the president of the chamber did not allow him to submit all his arguments orally. He alleges a violation of Articles 6 § 1, 8 and 3 of the Convention.

2. The applicant complains about the refusal to compensate him for all damage which he suffered as a result of his dismissal in 1988 in both the proceedings leading to the Košice Regional Court's judgment of 8 March 1994 and the proceedings leading to the Supreme

Court's decision of 24 June 1998 (see point 2 in "The Facts" above). He invokes Articles 6 § 1, 8, 13 and 3 of the Convention.

3. The applicant further complains under Article 6 § 1 of the Convention that the default interest enforced from the Bardejov District Office in the proceedings leading to the Košice Regional Court's judgment of 28 June 1996 was not determined correctly.

4. Under Article 6 § 1 of the Convention the applicant complains that the dismissal of his action concerning additional compensation for his dismissal in 1988 was arbitrary.

5. 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, in substance, that the proceedings were unfair as he was not able to present his arguments at the hearing before the Košice Regional Court held on 6 March 1996. The applicant alleges a violation of Articles 3, 5 § 1, 6 § 1, 8, 13 and 14 of the Convention.

6. The applicant complains that the dismissal of his action against the bank which had at its disposal money transferred to him was arbitrary and that the reasons invoked in the courts' decisions are naive. He invokes Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

7. 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.

8. Finally, the applicant complains about the removal of his property from a plot and about the dismissal of his claim for compensation. In particular, he alleges that the courts should have taken into consideration that prior to introducing his action for damages he unsuccessfully sought redress by means of criminal complaints. He invokes Articles 6 § 1, 13 and 14 of the Convention and also Article 1 of Protocol No. 1.

**THE LAW**

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, in substance, that the proceedings were unfair as he was not able to present his arguments at the hearing before the Košice Regional court held on 6 March 1996. He alleges a violation of Articles 3, 5 § 1, 6 § 1, 8, 13 and 14 of the Convention.

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints. 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.

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 Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints. 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.

3. The applicant complains that the proceedings concerning the Bardejov Labour Office's claim for reimbursement of the unemployment allowance paid in advance were unfair and that the courts' decisions are arbitrary. In particular, he complains that in the proceedings before the Košice Regional Court the president of the chamber did not allow him to submit all his arguments orally. He alleges a violation of Articles 6 § 1, 8 and 3 of the Convention.

a) The Court notes that on 17 June 1998 the Supreme Court quashed the lower courts' decisions granting the Bardejov Labour Office's claim for reimbursement of the allowance paid to the applicant and that subsequently no further decision has been delivered on the issue. The applicant cannot, therefore, claim to be a victim of a violation of his rights guaranteed by the Convention within the meaning of Article 34 of the Convention in the proceedings leading to the Supreme Court's decision of 17 June 1998.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

b) To the extent that the applicant may complain that the sum granted to the Labour Office was enforced after the Košice Regional Court's judgment of 13 September 1995 became final, the Court notes that the applicant failed to claim, after the delivery of the Supreme Court's decision of 17 June 1998, compensation for the sum enforced and for damage he may have suffered. In this respect the applicant has not, therefore, exhausted domestic remedies as required by Article 35 § 1 of the Convention.

If follows that this part of the application must be rejected under Article 35 § 4 of the Convention.

4. The applicant complains about the refusal to compensate him for all damage which he suffered as a result of his dismissal in 1988 in the proceedings leading to the Košice Regional Court's judgment of 8 March 1994. He alleges a violation of Articles 6 § 1, 8, 13 and 3 of the Convention

The Court notes that the Košice Regional Court's judgment of 8 March 1994 was served on 2 May 1994 whereas this part of the application was introduced on 1 November 1995. Accordingly, the applicant failed to respect the six months' time-limit set out in Article 35 § 1 of the Convention.

If follows that this part of the application must be rejected under Article 35 § 4 of the Convention.

5. The applicant complains that the dismissal of his other two actions for damages in respect of his dismissal in 1988 was arbitrary, that the default interest enforced from the Bardejov District Office in the proceedings leading to the Košice Regional Court's judgment

of 28 June 1996 was not determined correctly, about the dismissal of his action against the bank which kept money transferred to him and also about the removal of his property from a plot and the dismissal of his claim for compensation in this respect (see point 2 *in fine* as well as points 3, 4, 6 and 8 in "The Facts" above). He alleges a violation of Article 6 § 1 of the Convention which provides, so far as relevant, as follows:

> "In the determination of his civil rights and obligations .... everyone is entitled to a fair ... hearing ... by a[n] ... tribunal..."

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 in 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 (see the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, to be published in *Reports of Judgments and Decisions* 1999).

The Court considers that the reasons on which the national courts based their decisions in question are sufficient to exclude the assumption that the way in which they established and evaluated the evidence in the applicant's case was unfair or arbitrary.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

6. The Court has also examined the applicant's complaints under Articles 3, 8, and 13 of the Convention in respect of the proceedings concerning compensation for his dismissal in 1988 which ended by the Supreme Court's decision of 24 June 1998, the complaint under Article 1 of Protocol No. 1 as regards the dismissal of the applicant's action against a bank and also the applicant's complaints under Articles 13 and 14 of the Convention as well as under Article 1 of Protocol No. 1 in respect of the removal of his property from a plot of land (see points 2, 6 and 8 in "The Facts" above). The Court finds, to the extent that these complaints have been substantiated and are within its competence, that they 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 within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

**DECIDES TO ADJOURN** the examination of the applicant's complaints about the proceedings concerning his dismissal in 1991 and the disconnection of his telephone.

**DECLARES INADMISSIBLE** the remainder of the application.

Erik Fribergh
Registrar

Christos Rozakis
President