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

FIRST SECTION

DECISION

Application no. 33160/17
Daniel LIPŠIC
against Slovakia

The European Court of Human Rights (First Section), sitting on 30 November 2021 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Lorraine Schembri Orland, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 May 2017,

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 Daniel Lipšic, is a Slovak national, who was born in 1973 and lives in Bratislava. He was represented before the Court by Mr P. Kubina, a lawyer practising in Bratislava.

2. The Government of the Slovak Republic ("the Government") were represented by Ms M. Bálintová, their co-Agent.

A. The circumstances of the case

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

4. The applicant is a known lawyer and a former politician.

5. On 17 August 2009 an individual brought a libel action against the applicant and a television channel, arguing that the applicant's comments, broadcast on 14 August 2009 on the main news, concerning certain criminal charges against her, violated her personal integrity. She sought to have the

applicant's apology broadcast on the main news and claimed from him some 33,190 euros (EUR) in respect of non-pecuniary damage.

6. The action was examined by the ordinary courts at two levels and dismissed by judgments of 20 May 2013 and 17 July 2014, respectively. The matter was thereby settled with final effect. In sum, while there had been an interference with the plaintiff's personal integrity by the applicant and the other defendant, the courts could not order them to broadcast the apology on the main news due to the nature of that programme. As for the claim concerning non-pecuniary damages, the plaintiff had failed to substantiate her claim.

7. The plaintiff challenged the judgments by way of a complaint under Article 127 of the Constitution, alleging, *inter alia*, a violation of her right to respect for dignity and reputation. The proceedings were regulated by the Constitutional Court Act (Law no. 38/1993 Coll., as amended).

8. On 9 November 2016 the Constitutional Court allowed the complaint, quashed the judgment of 17 July 2014, and remitted the case to the court of appeal for re-examination. The applicant did not participate in the constitutional proceedings and only learned about the constitutional judgment from the media.

9. Following the constitutional judgment, it became incumbent on the court of appeal to examine anew the plaintiff's appeal against the first-instance judgment.

10. Following the communication of the case to the respondent Government, the Government informed the Court that the fresh examination of the plaintiff's appeal by the court of appeal had resulted in the quashing of the first-instance judgment and a remittal of the case to the first-instance court for re-examination. The action had then been examined and again dismissed at two levels of jurisdiction in judgments of 20 March 2018 (first instance) and 27 November 2019 (appeal). As opposed to their original judgments, the courts found that only the second defendant (and not the applicant) had interfered with the plaintiff's personal integrity. In their view, it could not be established with certainty that the applicant's comments themselves had referred to her. As the plaintiff had sought no damages from the television channel (but only from the applicant), none could be awarded.

B. Relevant domestic law

11. The 1993 Constitutional Court Act (see paragraph 7 above) was replaced by a "new" Constitutional Court Act (Law no. 314/2018 Coll., as amended), the relevant part of which entered into force on 1 March 2019. It provides for a third-party (*zúčastnená osoba*) participation in the constitutional proceedings once the Constitutional Court accepts a complaint for further examination (section 126). A third party is defined as a person who has been a party to the underlying proceedings in which the impugned

decision or a measure has been adopted or in which an interference has occurred (section 33(2)).

COMPLAINT

12. The applicant complained under Article 6 § 1 of the Convention that he had been unable to participate in the constitutional proceedings, although they had concerned his civil rights and obligations and had had an impact on a final and binding judgment in his favour.

THE LAW

13. The applicant complained that he had been unable to participate in the constitutional proceedings, invoking Article 6 of the Convention.

A. The parties' submissions

14. Referring to the outcome of the civil dispute, the Government asserted, *inter alia*, that the applicant's non-participation in the constitutional proceedings had had no negative impact on his ability to defend his civil rights and obligations before the ordinary courts. As a result, he had not suffered a "significant disadvantage" and the complaint was to be rejected under Article 35 §§ 3 (b) and 4 of the Convention.

They submitted that in the light of the legislative developments concerning participation in constitutional proceedings (see paragraph 11 above), respect for human rights did not require an examination of the application on the merits.

15. The applicant contested these arguments. While conceding that the new legislation resolved *pro futuro* the problem which had been at the core of the present case, he argued, *inter alia*, that despite the final (favourable) outcome of the dispute, he had had to undergo a full re-examination of the merits of the case following the constitutional judgment, which had represented three additional years of litigation and legal uncertainty. In view of that, he considered that the disadvantage he had suffered had been significant. In addition, he contended that the Constitutional Court had exceeded its competences and that this could have influenced the outcome of the dispute as the ordinary courts had been bound by its conclusions.

The applicant further stated that a finding of a violation of his rights was a sufficient satisfaction and made no monetary claims.

B. The Court's assessment

16. The Court considers that it must first examine the Government's submission that the applicant has not suffered any significant disadvantage.

17. Article 35 § 3 (b) of the Convention, as amended by Article 5 of Protocol No. 15 to the Convention, provides:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
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> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits."

18. The Court observes that although the application as such is aimed at the proceedings before the Constitutional Court, those proceedings are situated within the framework of the proceedings before the ordinary courts in the action against the applicant and that the resumption of the proceedings before the ordinary courts following the impugned constitutional judgment was a continuation of the same underlying "determination" of the applicant's "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see *Harabin v. Slovakia*, no. 18006/14, § 17, 19 June 2018).

19. As before the constitutional judgment, the outcome of the determination of the action against the applicant was favourable for him. In fact, having examined the case anew, the ordinary courts ultimately established (as opposed to their prior conclusions) that the applicant had not interfered with the plaintiff's personality rights at all (see paragraphs 6 and 10 above). This advantageous outcome at the very least reduced the damage otherwise suffered by the applicant due to his inability to participate in the proceedings before the Constitutional Court (see, *mutatis mutandis*, *Galović v. Croatia* (dec.), no. 54388/09, § 74, 5 March 2013). Besides the distress from having to litigate for another three years in a state of uncertainty, the applicant does not claim having suffered any other detriment, such as for example additional legal costs. The absence of any other detriment appears to be reflected also in the fact that, except for the finding of a violation of his Convention rights, the applicant seeks no other compensation (see paragraph 15 above). While the state of uncertainty due to the resumed litigation undoubtedly amounts to a disadvantage, taking into account all the circumstances of the present case, the Court finds that it did not attain the minimum level of severity to be "significant" for the purposes of the Convention (see *Gagliano Giorgi v. Italy*, no. 23563/07, §§ 56-58, ECHR 2012-II (extracts)).

20. As to whether respect for human rights as defined by the Convention and its Protocols requires the examination of the merits of the complaint, the Court observes that the issue of third-party participation in the proceedings before the Constitutional Court in Slovakia has been sufficiently addressed in its jurisprudence (see *López Guió v. Slovakia*, no. 10280/12, §§ 101-105, 3 June 2014, and *Frisancho Perea v. Slovakia*, no. 383/13, §§ 71-73, 21 July 2015) and that the domestic legislation has been amended to ensure

compliance with the Convention standards (see paragraphs 11 and 14 above). In fact, the applicant himself admits that the issue as such has been resolved (see paragraph 15 above). In these circumstances, the Court concludes that respect for human rights does not require an examination of the present complaint on its merits (see *Léger v. France* (striking out) [GC], no. 19324/02, § 51, 30 March 2009).

21. It follows that the present complaint is inadmissible under Article 35 § 3 (b) of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 January 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President