

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

FIFTH SECTION

DECISION

Application no. 14889/08
Luka MARGUČ
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 15 January 2013 as a Chamber composed of:
Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*
Having regard to the above application lodged on 21 March 2008,
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, Mr Luka Marguč, is a Slovenian national, who was born in 1984 and lives in Slovenske Konjice. He was represented before the Court by Mr L. Poljanec from Slovenska Bistrica.

The Slovenian Government ("the Government") were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

A. The circumstances of the case

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

On 24 April 2006 the applicant was driving a car near the town of Zreče, when an officer using a laser speed measurement device identified his speed as 67 km/h. The speed limit was 50 km/h. After the applicant stopped the car and was informed of his driving speed, a standard report setting out details of the date, time and place of the speed monitoring as well as the results captured and the specifications of the device itself was prepared by the officer. The applicant was issued with a notice inviting him to submit a statement in writing concerning the offence, within five days.

On 28 April 2006 the applicant submitted his statement in which he requested that he be presented with evidence in writing concerning the method of measurement, the measuring device, and the competence of the police officers to use the device. He also complained that only a judge and not the police should have the power to impose a fine, and that five days was insufficient time in which to prepare a defence.

On 27 June 2006 the Slovenske Konjice Police issued a decision. The applicant was found to have committed the offence of driving in excess of the speed limit and was fined approximately 125 euros (EUR) and one penalty point. The decision mentioned that the officer who had used the measuring device was professionally qualified for the purpose and had disclosed the identification number of the device used against the applicant. The applicant was also reminded that if he did not pay the fine, the police would seek a court order for his imprisonment for non-payment. Finally, the applicant was ordered to pay approximately EUR 60 in court costs.

On 10 July 2006 the applicant lodged an application for judicial review, which read as follows:

> "Grounds for the application
>
> My application is based on the principle of the presumption of innocence as provided for in section 7 of the Minor Offences Act and Articles 3, 23, 26, 27 and 29 of the Constitution.
>
> Explanation
>
> Section 7 of the Minor Offences Act states the following:
>
> 'a person who is accused of a minor offence shall be presumed innocent until their guilt is established by a final decision.'
>
> The Constitution in its Article 27 states the same. In my case there was no final judgment and therefore there could be no execution of the decision.
>
> The police cannot and should not be the body which decides on minor offences (see Article 3 of the Constitution). Your decision is therefore irrelevant in terms of law. The charge of a regulatory offence can, in accordance with Article 23 of the Constitution, be decided only by a judge.

Setting a time-limit for an appeal or an application for judicial review is not compatible with Article 29 of the Constitution. It should be made clear whether the time-limit concerns working days or calendar days. An appropriate time would be thirty calendar days, since the State also needs up to thirty days in which to send you documents if you request them.

You are charging me with an offence which you have not specified or explained clearly and about the consequences of which you have submitted no evidence. As a citizen, I am not required to know the paragraphs and sections of the Road Traffic Safety Act. In any event, I do not know what I am charged with. You should present evidence concerning the consequences. I claim that I was driving in accordance with the (traffic) regulations. The accuser must submit clear material or written evidence, therefore I request you to do the following:

- submit documents concerning the measuring device and the types of method for procuring evidence required by the law as standard procedure (a-tests, measuring sheets, a judicial decision proving that the results obtained by this device can be used as evidence);
- submit a judicial decision proving that the results obtained with this device or with this method of measurement or method for procuring evidence can be used as evidence in court;
- submit documents proving that the person who handled the measuring device is authorised and publicly certified to do the measuring or use that method;
- provide evidence proving material or any other damage resulting from the imputed offence.
- Findings of the police are not evidence.

The decision has been issued and signed by an authorised person and the Constitution states in Article 23 that only the judge can adjudicate.

I am interested in the following:
- is the person employed at the Ministry of Justice?
- has he completed a course of legal education?
- does he have a bar qualification?
- is he a judge?

If he does not fulfil the above conditions, his actions are not in compliance with Article 23 of the Constitution. Since the police belong to the executive branch of power (Article 3 of the Constitution) they cannot and should not impose punishments or act as an authority in respect of a minor offence, as this is not recognised by the Constitution.

The Constitution, in its Article 29, clearly regulates the proceedings concerning the charges. Since the proceedings so far have not complied with the Constitution, I must inform you about Article 26.

Since the present case also concerns a violation of fundamental human rights and freedoms, I ask you to properly examine this application.

Application

I propose that the decision be annulled."

The Slovenske Konjice Local Court delivered a judgment rejecting the application as unsubstantiated on 17 August 2006. It found that the police procedure had not been in breach of the relevant legislation and, in

particular, that the facts had been properly established by the police officer. The court referred to: (i) a certificate demonstrating that the police officer in question had undergone the relevant professional training for the use of the laser device; and (ii) confirmation from the Slovenian Metrology Institute that the type of device in question complied with the relevant technical requirements. The judgment contained a notice informing the applicant that it could be challenged in an appeal, which the applicant subsequently lodged. He alleged that he had insufficient time to find a defence lawyer and that his constitutional rights had been violated.

On 16 March 2007 the Celje Higher Court dismissed the applicant's appeal, for lack of grounds. The judgment of 17 August 2006 consequently became final on that date. The Celje Higher Court's decision was served on the applicant on 4 April 2007.

On 20 April 2007 the applicant lodged a constitutional appeal, alleging a violation of fair trial guarantees and arguing, in particular, that any fine should be imposed by a judicial rather than a police procedure. The appeal was dismissed on 24 September 2007 by the Constitutional Court which relied on point three of the first paragraph of section 55b of the Constitutional Court Act, read together with point four of the second paragraph of section 55a of that Act. Its decision was served on the applicant on 28 September 2007.

In the meantime, on 4 April 2007, the applicant again appealed against the Slovenske Konjice Local Court's judgment of 17 August 2006, although this course of action was no longer legally possible. This second appeal was declared inadmissible by the court on 3 July 2007. The applicant appealed and his appeal was rejected by the Celje Higher Court on 31 August 2007. A further constitutional appeal was dismissed on 5 November 2009.

On 7 May 2008, the Celje Police Administration informed the applicant that it was seeking an order for his imprisonment for non-payment of the fine.

On 28 May 2008 the Slovenske Konjice Local Court, noting that the applicant had failed to pay the fine within the set time-limit, issued a decision ordering his imprisonment for non-payment. The applicant was also informed that he could apply to have the fine replaced by community service until the commencement date of the prison sentence.

The applicant lodged an objection, in which he stated, *inter alia*, that the police had not been the appropriate body to impose a penalty as they were part of the executive, and that his defence rights had been violated by the police procedure. This objection was rejected on 7 July 2008 by the Local Court, which found that the police's decision to impose a fine had become enforceable on 13 July 2007 and noted that the purpose of the proceedings calling for a prison sentence was to enforce the payment of a fine, and that the court was therefore not in a position to consider the applicant's allegations concerning the initial proceedings.

The applicant's appeal against the above-mentioned decision was rejected by the Celje Higher Court on 2 September 2008. The court found

that the appeal was unsubstantiated and noted that the applicant should have, *inter alia*, submitted facts and evidence, such as medical certificates, to demonstrate why a prison sentence would not be appropriate.

On 10 October 2008 the applicant lodged a constitutional appeal, which was rejected on 20 October 2008 on the same grounds as in the first set of proceedings.

On 2 December 2008 the Celje Police Administration informed the Slovenske Konjice Local Court that the fine had been paid and that it therefore wished to withdraw the request for a prison sentence.

B. Relevant domestic law and practice

For the relevant provisions of the Minor Offences Act (hereinafter referred as "the MOA", Official Gazette no. 7/2003) see *Suhadolc v. Slovenia* (dec.), no. 57655/08, 17 May 2011. Under the MOA, a convicted person may be imprisoned as a consequence of his or her failure to pay a fine in full. The sentence may extend until the payment of the fine but may not, under any circumstances, exceed thirty days. This sentence does not, however, exempt the offender from the obligation to pay the fine (section 202b of the MOA).

A sentence of imprisonment for non-payment of fines can only be handed down by a court. The court may order imprisonment of its own motion or upon the request of the court or administrative authority which imposed the fine. The convicted person can lodge an objection against the sentence, requesting that the fine be replaced by a community service order. The objection is considered by the same court, which may decide to hold a hearing if necessary to establish the convicted person's financial situation or any other relevant facts. An appeal can be lodged against any decision dismissing the objection.

A sentence of imprisonment for non-payment of a fine cannot be imposed when the fine was imposed by a payment order issued by the administrative authorities or if the convicted person is a minor.

The amended provisions of the Constitutional Court Act (Official Gazette no. 51/2007, entered into force on 15 July 2007), which limited the availability of constitutional appeals regarding the decisions issued in minor offences proceedings to exceptional cases raising important constitutional questions read as follows:

Section 55a

"(1) A constitutional appeal shall not be admissible if the violation of human rights or fundamental freedoms [alleged] did not have significant consequences for the complainant.

(2) It is deemed that there has been no violation of human rights or fundamental freedoms having significant consequences for the complainant with regard to individual decisions:

- issued in small-claims disputes ...;

- concerning costs of proceedings, where such decision alone is challenged in the constitutional appeal;

- issued in trespass to property disputes;

- issued in minor offence cases.

(3) Irrespective of the preceding paragraph, the Constitutional Court may in particularly justified cases decide exceptionally on a constitutional appeal against the individual decisions referred to in the preceding paragraph, notably where the decision appealed against concerns an important constitutional question which goes beyond the importance of the actual case."

Section 55b

"(1) A constitutional appeal shall be rejected:

- if it does not concern an individual act by which a state authority, local authority, or a holder of public power decided on the rights, obligations or legal interest of the complainant;

- if the complainant does not have a legal interest in a decision on the constitutional appeal;

- if it is not admissible, except in the instance referred to in the third paragraph of the preceding section;

- if it was not lodged in due time;

...

(2) A constitutional appeal shall be accepted for consideration:

- if there has been a violation of human rights or fundamental freedoms which has had significant consequences for the complainant; or

- if it concerns an important constitutional question which goes beyond the importance of the actual case.

..."

THE LAW

A. Lack of an oral and public hearing under Article 6

The applicant complained that he had not had an oral and public hearing before a court, in breach of his right to a fair trial as provided for in Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing... by [a] ... tribunal ..."

1. The parties' submissions

The Government argued that the applicant had failed to lodge his application within the six-month time-limit, that Article 6 did not apply to the proceedings in question and that the application should be rejected under Article 35 § 3 (b) of the Convention. In the alternative, they argued that the applicant had had a fair hearing as required by Article 6. His case had been reviewed by a court with full jurisdiction.

The Government further submitted that the lack of a hearing in the present case had not been the result of a structural problem or deficiency in domestic legislation, arguing instead that there had been no need for an oral presentation of the applicant's arguments. Furthermore, the applicant had not made a request for any witnesses to be examined by the court. The arguments the applicant had raised in his request for judicial review had merely concerned points of law, the credibility of the speed measurement device used against him and the police officer's competence to use it. The last two points were easily verifiable on the basis of publicly available technical documentation and the police officer's training certificates, which, being of an objective nature could be established by the court without a hearing. In addition, the applicant had had the opportunity to respond to the charges during the police procedure and had also had an opportunity to examine the case file.

The Government finally submitted that hearings were held in minor offence cases in circumstances where the facts had not been sufficiently established or where the accused had had no opportunity to reply to the charges laid against him during the police procedure.

The applicant argued that he had been charged and convicted by one and the same body, namely the police, and that the judicial review of the process had been inadequate as it had not afforded him an oral and public hearing. He also submitted that he had been put at risk of imprisonment as a result of his conviction.

2. The Court's assessment

As regards the Government's objection concerning the applicability of Article 6, the Court notes that a similar objection has already been rejected in *Flisar v. Slovenia* (no. 3127/09, §§ 25-26, 29 September 2011). It sees no reason to reach a different conclusion in the present case. Article 6 should therefore apply to the proceedings in the applicant's case.

As to the objection concerning the six-month time-limit, the Court finds that the applicant did comply with this rule. He lodged his application with the Court on 21 March 2008, which was within six months after the last relevant decision with regard to his speeding offence had been served on him (28 September 2007).

Further, the Court does not find it necessary to examine the Government's objections concerning the application of Article 35 § 3 (b), as the case should, in any event, be declared inadmissible for the reasons set out below.

The Court refers to the relevant principles which were summarised in the *Suhadolc* decision (cited above). It observes that the present case concerns summary proceedings under the MOA with respect to the regulatory offence of speeding as set out in the Road Traffic Safety Act. It is similar to *Suhadolc* (cited above) in that the applicant's conviction was based on evidence obtained by technical means, namely the laser device which recorded the speed of the car. In the aforementioned decision, finding that a hearing had not been necessary, the Court relied predominantly on the fact that the case concerned merely technical issues (ibid. and see also *Berdajs v. Slovenia* (dec.), no. 10390/09, 27 March 2012). However, the Court notes that the present applicant, unlike the applicant in the *Suhadolc* case, was at risk of imprisonment if the fine was not paid. The threat of such a severe punishment could legitimately call for stronger guarantees to apply to proceedings and the Court would therefore be reluctant to conclude that the hearing in such cases could be considered unnecessary merely by the nature of the offence. Having said that, the Court notes that the domestic legislation did not exclude the possibility of a hearing in cases of this type, but left the question to the relevant judge's discretion (see *Berdajs*, cited above, and *Flisar*, cited above, § 39). It remains to be examined whether, in the present case, this discretion was exercised in a way which was compatible with the requirements of Article 6.

In this connection, the Court notes the present applicant lodged an application for judicial review which was almost identical to the one lodged by the applicant in the *Berdajs* case (cited above). This request presented no arguments with respect to the material elements of the offence. It asserted, without giving specific details, that the applicant had been driving in accordance with the traffic regulations, and included general criticism of the regulations governing summary proceedings conducted by the police, and an objection to some unspecified measuring device and method. In the Court's opinion, the applicant's application for judicial review disclosed no

genuine attempt to challenge the police findings and did not contain anything which might have called for an oral presentation of arguments or the cross-examination of witnesses. In these circumstances, the Court considers that, despite the risk of a prison sentence being imposed on the applicant, it was legitimate for the national courts to have regard to the demands of efficiency and economy and to dispense with holding an oral and public hearing (see, *mutatis mutandis*, *Jussila v. Finland* [GC], no. 73053/01, § 42, ECHR 2006-XIII and *Berdajs*, cited above).

In view of the above, this part of the application is manifestly ill-founded and should be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

Relying on Articles 6 and 13 of the Convention, the applicant complained that the Constitutional Court had refused to deal with his constitutional appeal and had merely referred to section 55a of the Constitutional Court Act, which had entered into force after his appeal had been lodged. He argued that this decision of the Constitutional Court had denied him access to a court and had retroactively interfered with his rights.

In addition, the applicant complained that the judgment by which he was found guilty of the traffic offence had been based solely on the police file, that no witnesses had been examined, that there had been a breach of his right to the presumption of innocence and that, contrary to Articles 6 and 13 of the Convention, he had not had the opportunity to appeal against the Slovenske Konjice Local Court's judgment. Finally, the applicant complained that the police had interfered with his right to liberty, as he had been stopped without any warning.

In his further submissions of 3 February 2009, the applicant complained that he had not had a public hearing during the proceedings calling for the imposition of a prison sentence for non-payment of the fine and had been unable to present evidence in his favour, in breach of Article 6 of the Convention.

As regards the applicant's argument concerning the allegedly retroactive effect of the Amendment to the Constitutional Court Act, it is true that in accordance with section 38 of the Amendment (see *Suhadolc*, cited above), the new provisions concerning the admissibility of an appeal were to be applied to cases already pending before the Constitutional Court. The Court, however, does not find it unusual for a change in the admissibility criteria to be applicable immediately to proceedings that were already under way and has no doubt that the legislative changes in question pursued the legitimate aim of improving the efficiency of the Constitutional Court (see, *mutatis mutandis*, *Brualla Gómez de la Torre v. Spain*, 19 December 1997, §§ 35-39, *Reports of Judgments and Decisions* 1997-VIII).

It further notes that, for a constitutional appeal to be admissible prior to the Amendment, it had to either concern an issue with significant consequences for the appellant or raise an important legal question. The

Amendment only specified the categories of cases which were judged as not having significant consequences for the appellant, but it still allowed an appeal to be considered if it raised an important constitutional question extending beyond the specific case.

The Court observes, moreover, that there is no indication that after the entry into force of the Amendment to the Constitutional Court Act which had been published in the Official Gazette, the applicant was not given the opportunity to add further arguments in support of his appeal if he felt this would be helpful.

Having regard to the above, to the special nature of the Constitutional Court's role and to the proceedings as a whole, the Court considers that the Amendment and the way in which it was applied to the applicant's case did not impair the very essence of the applicant's right to a court within the meaning of Article 6 § 1.

As to the complaint of a breach of fair trial guarantees in proceedings concerning the imposition of imprisonment for non-payment of a fine, the Court does not find it necessary to determine whether Article 6 applies to the proceedings for conversion of a fine into a prison sentence, as in his objection to the domestic court the applicant merely disputed the legitimacy of the police procedure concerning the charge of speeding - an issue entirely unrelated to the imposition of a prison sentence for non-payment of a fine. The Court finds that there is no indication in the file that the applicant was denied an opportunity to submit to the domestic court any arguments relevant to the issue of imprisonment, which could have led it to hold a hearing.

In view of the above, the Court finds that the above-mentioned complaints concerning the retroactive effect of the Amendment to the Constitutional Court Act and the proceedings concerning the imposition of a prison sentence for non-payment of a fine are unsubstantiated. They should therefore be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

As regards the remaining complaints, the Court finds, in the light of all the material in its possession and in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the Articles relied on by the applicant. 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.

Claudia Westerdiek
Registrar

Mark Villiger
President