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

FIRST SECTION

DECISION

Application no. 978/22
Viera NEVEDELOVÁ
against Slovakia

The European Court of Human Rights (First Section), sitting on 28 November 2023 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Ivana Jelić,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 978/22) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 December 2021 by a Slovak national, Ms Viera Nevedelová, who was born in 1963 and lives in Šenkvice ("the applicant") and was represented by Mr R. Procházka, a lawyer practising in Bratislava;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the lack of success of the applicant, a career judge, with her application to become a judge of a newly established court in the context of a reform of the organisation of the judiciary in Slovakia.

2. The applicant has been a judge since 1994. At the relevant time, she sat on the administrative law bench of the Supreme Court ("the SC") and was the President of one of its Chambers.

3. By a set of legislative measures which took effect on 1 January 2021, it was provided that a Supreme Administrative Court ("the SAC") would be established and that on 1 August 2021 it would commence its operation in the areas of jurisdiction assigned to it. While this essentially consisted of the jurisdiction exercised until then by the administrative law bench of the SC,

its judges were not directly transferred to the SAC and had to apply to become judges of that court like any other candidate.

4. Applications to the SAC were to be reviewed and the candidates interviewed by the Judicial Council ("the JC") of the Slovak Republic, the country's supreme body governing the judiciary. The candidates who successfully passed this stage of the process would then be considered for appointment by the President of the Slovak Republic.

5. The applicant applied and, along with other candidates, was interviewed by the JC between 7 and 14 April 2021. The interviews were public, broadcast online and a verbatim transcript was made.

6. By an unsigned communication dated 15 April 2021 the President of the JC informed the applicant that she had been unsuccessful in the hearing. Enclosed with the letter were the minutes of the JC's in camera deliberations of the same day, listing the successful and unsuccessful candidates, but indicating no reasons.

7. The applicant then turned to the Constitutional Court, alleging lack of criteria in the selection process and absence of reasons for the JC's decision. In her view, the decision had been arbitrary and violated her constitutional rights to legal protection and access to elected offices on equal terms.

8. On 14 October 2021 the Constitutional Court declared the complaint inadmissible. It noted the status of the JC and the specificity of the process of selection of candidates for constitutional posts. At the given stage of the applicant's selection process, the JC had acted as a selection commission, applying criteria pursuant to section 28(4) of the Judges and Assessor Judges Act (Law no. 385/2000 Coll., as applicable at that time), which had been specifically communicated to all the candidates. The assessment of the fulfilment of these criteria had been made by votes of the members of the JC and the Constitutional Court had no power to interfere with this prerogative. Nevertheless, the course of the applicant's hearing, the questions posed to her and the reactions of the members of the JC formed the basis for the decision not to select the applicant. Having taken part in the interview, the applicant had had an opportunity to address all such matters and to pose questions to the members of the JC. The interview had been public. In the circumstances, there could not have been any violation of the rights identified by the applicant.

9. From publicly available sources it transpires that the applicant continues to serve as a judge at the Supreme Court, on its civil-law bench, and has also been appointed the President of one of its Chambers.

10. The applicant complains under Article 6 § 1 and Article 8 of the Convention that she was arbitrarily prevented from continuing her career as a judge in the area of her expertise (administrative law), without knowing the applicable criteria and without being given the reasons. The Constitutional Court had failed to remedy the contested outcome, which had an impact on her career and professional reputation.

THE COURT'S ASSESSMENT

A. Article 6 of the Convention

11. The Court notes at the outset that the applicant has not been stripped of her judicial mandate, nor has she been demoted to a court of lower instance. Her position on the administrative-law bench of the Supreme Court ceased to exist as a result of the reform of the organisation of the judiciary in Slovakia, which as such is not contested by the present application.

12. The application rather focuses on the applicant's inability to continue serving as a judge in administrative law matters, which on the facts of this case is due to the lack of success of her application to become a judge of the SAC. This is manifested by the content of her objections raised both at the national level and before the Court. As to the former, as no copy of the applicant's constitutional complaint has been submitted to the Court, it makes its assessment on the basis of its summary in the Constitutional Court's decision.

13. Therefore, in so far as substantiated, this case does not amount to an instance of an interference with an actual right, but rather to a situation of being unable to acquire a right, in particular a right to serve as a judge on the newly established SAC. However, there cannot be any doubt that no such right is guaranteed under domestic law and under the Convention and that, accordingly, the proceedings in respect of it would fall outside the ambit of Article 6 of the Convention *ratione materiae* (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018).

14. Moreover, the Court observes that even if the applicant had been successful in the selection process before the JC, this would not automatically have made her an SAC judge, for which a nomination by the country's President was still needed. The outcome of the proceedings therefore cannot be said to have been directly decisive for her civil rights and obligations so as to bring the proceedings within the purview of Article 6 § 1 of the Convention *ratione materiae* (ibid.).

15. Moreover, and in any event, to the extent the applicant relies on the right under Article 30 § 4 of the Constitution of access to elected offices on equal terms (see *Majski v. Croatia (no. 2)*, no. 16924/08, §§ 7 and 50, 19 July 2011), the Court notes that, except for nominally invoking that right, the applicant has in fact not raised domestically or before the Court any considerations relevant to its existence, scope and application. In particular, in so far as substantiated, she has not alleged that she has been treated on unequal terms compared to any other person and no argument concerning that right has been excluded from the Constitutional Court's review by operation of the JC's discretion in selection procedures.

16. The applicant's arguments concerning the lack of criteria and the way they were applied concern the substance of her case. What remains is her discontent with the outcome of the proceedings, involving no more than questions of fourth-instance nature beyond the Court's remit (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

17. In sum, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant's rights under Article 6 § 1 of the Convention.

Accordingly, 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.

B. Article 8 of the Convention

18. The Court observes that it is open to doubt whether the applicant's lack of success in the selection process amounted at all to any measure that could at least in principle bring it within the scope of the right to respect for private life under Article 8 of the Convention. Irrespective of that, in so far as substantiated, its reasons (as the Constitutional Court noted, and as the content of her application to the Court indicates, these were known to her) had nothing to do with the applicant's exercise of that right and there is no evidence that it had such consequences on her exercise of that right as to render Article 8 of the Convention applicable (see *Denisov*, cited above, §§ 115-17). In addition to what has already been noted above (see paragraph 11), in so far as the applicant seeks to bring the notions of her career and professional reputation into play (see paragraph 10 above), her argument appears to be contradicted by the facts in that not only has she remained a Supreme Court judge, but has also been appointed president of Chamber on a different bench of that court (see paragraph 9 above).

19. Accordingly, Article 8 of the Convention has not been shown to apply to the present complaint. It is thus incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2024.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President