CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 47244/99
by Tibor NOVOTKA
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 4 November 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 11 February 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, Mr Tibor Novotka, is a Slovakian national, who was born in 1963 and lives in Pezinok. The respondent Government were represented by their Agent, Mr P. Vršanský, succeeded by Mr P. Kresák as from 1 April 2003.

A. The circumstances of the case

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

The applicant submits that on 8 August 1995 he waited for a visitor in front of a house in which his flat was situated. Two policemen approached him and asked for his citizen's card („*občiansky preukaz*"). The applicant replied that the term citizen's card used by the police was incorrect and that in accordance with Section 18(1) of the Police Corps Act they should have asked him for a document permitting his identification („*doklad totožnosti*"). The applicant further stated to the police that they should respect Section 9(1) of the Police Corps Act. The policemen informed the applicant that he would be brought („*predvedený*") to a police station and called a police car. The applicant submits that prior to the arrival of the car he spoke with two neighbours one of whom had indicated to the policemen who the applicant was.

The applicant was transported to a police station where he was searched and placed in a cell. He was released approximately one hour later after his identity had been checked.

A police report established on the same day indicates that the police on duty spotted a man who moved among parked cars and then crossed the street at 6.15 p.m. As they considered his behaviour to be suspicious, the police decided to check his identity. The man informed the police that he was standing in front of the house in which he lived and that he had no document on him permitting to show his identity. He told the police that they had no right to control him and that he would file a complaint about them. The police then called a police car and informed the man that he would be brought to a police station in accordance with the Police Corps Act. Upon the arrival at the police station the man was searched for security reasons. According to the report, the police checked the applicant's identity in the relevant register and released him on 7.10 p.m.

On 7 February 1996 the applicant complained about the incident to the Bratislava City Prosecutor's Office. He alleged, in particular, that the police had proceeded unlawfully, and that he had been subjected to degrading treatment in that he had been searched and placed in a cell. The applicant further expressed the view that his apprehension related to the fact that the Prime Minister had filed a criminal complaint against him in 1994. That

criminal complaint concerned the alleged applicant's attempt on the Prime Minister's life.

On 12 June 1996 the Inspection Department of the Police Corps dismissed the applicant's complaint as being unsubstantiated. The letter stated that the policemen had committed no offence and that there was no reason for taking any further action on the applicant's complaint.

On 22 August 1996 the applicant filed a complaint with the Bratislava I District Prosecutor's Office. On 21 October 1996 the latter sent the case back to the Inspection Department of the Police Corps with the instruction to carry out further investigation into the case.

According to a police report, on 6 May 1997 a police officer asked eleven persons living in the same house, including the next door neighbour of the applicant, whether they knew the latter. No one admitted knowing the applicant.

On 12 May 1997 the Inspection Department of the Police Corps informed the applicant that no criminal offence had been committed in the context of his transport to a police station on 8 August 1995, and that any minor offence which might have been committed on that occasion had become statute-barred.

On 4 August 1997 a public prosecutor of the Bratislava I District Prosecutor's Office dismissed the applicant's complaint of 22 August 1996 on the ground that the applicant lacked standing to file it. The decision stated that the public prosecutor had nevertheless examined the facts of the case and concluded that the Inspection Department of the Police Corps had acted in accordance with the law.

On 13 September 1997 the applicant challenged this conclusion before the Bratislava Regional Prosecutor's Office.

On 7 November 1997 the latter dismissed the complaint. The letter stated, with reference to the documents included in the case file, that two policemen had asked the applicant to prove his identity, on 8 August 1995 at 6.15 p.m., while he was standing in the street in front of the entry of a house. The public prosecutor further established that the applicant had refused to comply with the request and that he had indicated to the policemen that they had no right to do so. The policemen therefore transported the applicant to a police station with a view to establishing his identity.

The public prosecutor's letter further indicates that the police were entitled to check the applicant's identity in accordance with Section 18(1) of the Police Corps Act, and that the two policemen did so as they considered that the applicant had moved in a suspicious manner in the vicinity of parked cars and because he wore torn jeans. As the applicant had refused to establish his identity, the policemen had brought him to a police station in accordance with Section 18(3) of the Police Corps Act. The applicant was released on the same day at 7.10 p.m., after his identity had been

established. The public prosecutor further found unsubstantiated the applicant's allegation that his neighbours had informed the two policemen who the applicant was.

The public prosecutor's letter of 7 November 1997 also indicates that the police subsequently contacted the applicant's neighbours and that the latter denied knowing the applicant. As to the search of the applicant, it was in conformity with Section 22(1) of the Police Corps Act. There was no indication that there was a link between the applicant's above apprehension and the activities of the Prime Minister or of the secret service as alleged by the applicant.

On 5 December 1997 the applicant filed a complaint to the General Prosecutor's Office. He alleged, *inter alia*, that he had been identified by a neighbour at the moment of his apprehension. The applicant further stated that he had thus offered assistance to the police with a view to establishing his identity. He requested that the neighbour be heard and maintained that his deprivation of liberty had been contrary to Article 5 of the Convention in that, in particular, the police had deprived him of liberty without any relevant legal ground.

The complaint was transferred to the Regional Prosecutor's Office which informed the applicant, on 18 December 1997, that his further submissions would not be dealt with unless they contained relevant new information.

On 28 May 1998 the applicant filed a constitutional petition pursuant to Article 130 of the Constitution. He claimed that his constitutional right to freedom of movement and his rights under Article 5 of the Convention had been violated as a result of the above incident of 8 August 1995. The applicant proposed that the Constitutional Court hear two persons who had witnessed his apprehension on 8 August 1995.

On 12 August 1998 the Constitutional Court dismissed the applicant's complaint as being manifestly ill-founded. The relevant part of the decision states:

> "... the fact that the police availed themselves of their statutory right (Section 18 of the Police Corps Act of 1993) to ask a person to prove his identity where it is necessary for carrying out their statutory duties cannot result in a violation of Article 5 of the Convention."

B. Relevant domestic law

1. Constitutional provisions and Constitutional Court's practice

Pursuant to Article 130(3) of the Constitution, as in force until 30 June 2001, the Constitutional Court could commence proceedings upon the petition („*podnet*") presented by any individual or a corporation claiming that their rights had been violated.

According to its case-law under Article 130(3) of the Constitution, the Constitutional Court lacked jurisdiction to draw legal consequences from a violation of a petitioner's rights. It could neither grant damages to the person concerned nor quash the relevant decision or impose a sanction on the public authority liable for the violation found. In the Constitutional Court's view, it was therefore for the authority concerned to provide redress to the person whose rights were violated.

2. The Police Corps Act of 1993

Under Section 2(1) and (3), the duties of the police comprise, *inter alia*, the protection of the security of persons and of property and identification of criminal offences and of minor offences as well as of their perpetrators. The police shall also take preventive action within the limits of their competence as defined by the Police Corps Act.

Section 9 provides that the police shall act within the limits specified in the Police Corps Act when an offence or a minor offence is being committed or when there is a justified suspicion that an offence or a minor offence will be committed.

Under Section 18(1), the police are entitled to ask a person to prove his or her identity by means of a relevant document („*doklad totožnosti"*) when it is necessary for the fulfilment of their duties under the Police Corps Act.

Paragraph 3 of Section 18 provides that a person who refuses to prove his or her identity by means of a relevant document may be brought to the police premises with a view to establishing his or her identity.

Pursuant to paragraph 4 of Section 18, the police are also entitled to proceed in accordance with Section 18(3) when the person concerned is unable to prove his or her identity by means of a relevant document, and when such a person is unable to reliably indicate his or her name, date of birth and place of residence despite the fact that he or she was given an opportunity to do so. The police shall assess whether an indication of the name, date of birth and place of residence of the person concerned is reliable in the light of the reasons for which the identity of such a person is to be checked.

Paragraph 9 of Section 18 provides that the police shall draw up a report when a person is brought to their premises with a view to establishing his or her identity.

Under Section 22(1) the police are entitled to check whether a person who is about to be brought to their premises or who was apprehended or arrested carries a weapon.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that he had been apprehended and searched by the police and placed in a cell at a police station.

2. Under Article 5 § 1 of the Convention the applicant complained that he had been brought to the police station arbitrarily and contrary to the law.

3. The applicant complained under Article 6 § 1 of the Convention that his right to a fair and public hearing had been violated in the proceedings before the Constitutional Court.

4. Under Article 6 § 3 (d) of the Convention the applicant complained that the authorities dealing with the case had refused to hear the persons who had witnessed his apprehension.

THE LAW

1. The applicant complained that the police had subjected him to degrading treatment in that he had been apprehended in the vicinity of his home and also searched and placed in a cell at a police station. He relied on Article 3 of the Convention which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that, in order to fall within the scope of Article 3, the alleged treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

In the present case there is no indication that the treatment complained of reached the threshold of severity required to bring the matter within the ambit of Article 3 of the Convention.

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

2. The applicant complained that he had been brought to the police station arbitrarily and contrary to the law. He alleged a violation of Article 5 § 1 of the Convention which in its relevant part provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;"

The Government maintained that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention as he had neither claimed compensation for the alleged violation of his right to liberty and security pursuant to Section 18 of the State Liability Act of 1969 nor had he sought protection of his personality rights pursuant to Article 11 et seq. of the Civil Code.

The applicant submitted that he had no effective remedy at his disposal.

The Court has found earlier that the remedies invoked by the Government are not effective and need not be exhausted in cases concerning alleged violation of Article 5 § 1 of the Convention (see *Tám v. Slovakia* (dec.), no. 50213/99, 1 July 2003). It sees no reason for reaching a different conclusion in the present case. Accordingly, the Government's objection relating to the applicant's failure to exhaust domestic remedies must be rejected.

As to the merits, the Government contended that the applicant had not been deprived of liberty within the meaning of Article 5 § 1 of the Convention as his examination at the police station had been of short duration and its sole purpose had been the checking of his identity.

The applicant maintained that the interference with his right to liberty had been unlawful since he had not been suspected of any particular offence or minor offence within the meaning of Section 18(1) of the Police Corps Act. With reference to Section 9(1) of that Act, the applicant concluded that the police had not been entitled to check his identity and to restrict his liberty in that context. In his application the applicant also argued that he had not been given an opportunity to establish his identity as required by Section 18(4) of the Police Corps Act.

The Court considers that the interference complained of in the present case amounted to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention as the applicant was brought to a police station against his will and was held there in a cell. The relatively short duration of the interference does not affect the position (see *Järvinen v. Finland*, no. 30408/96, Commission decision of 15 January 1998). It has therefore to be established whether the applicant's deprivation of liberty was lawful for the purposes of that Article.

The expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. The "lawfulness" of detention under domestic law is the primary but not always a decisive element. The relevant domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. That emerges from the concept underlying the terms "lawful" and "in accordance with a procedure prescribed by law" – which is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and

should not be arbitrary (see, among other authorities, *Baranowski v. Poland* no. 28358/95, ECHR 2000-III, §§ 50-57 ; and the *Winterwerp v. the Netherlands* judgment of 24 October 1979, Series A no. 33, pp. 19-20,§§ 45 et seq.).

In the present case the police brought the applicant to a police station on the ground that he had refused to prove his identity by means of a relevant document. The obligation to prove his identity derived in the case of the applicant from Section 18(1) of the Police Corps Act under which the police were entitled to ask a person to prove his or her identity by means of a relevant document when it was necessary for the fulfilment of their duties under the Police Corps Act.

The Court does not accept the applicant's argument that the police exceeded their powers as the requirements for official action laid down in view of Section 9 of the Police Corps Act of 1993 were not met. In fact, under Section 2(1) and (3) of the Police Corps Act, the duties of the police comprise, *inter alia*, the protection of the security of persons and of property and the identification of criminal offences and of minor offences as well as of their perpetrators. Under those provisions, the police are also entitled to take preventive action within the limits of their competence as defined by the Police Corps Act.

The police report established on 8 August 1995 and the public prosecutor's letter of 7 November 1997 indicate that the applicant refused to prove his identity stating that he stood in front of a house in which he lived, that the police had no right to control him and that he would file a complaint about them. Bringing a person to a police station with a view to checking his or her identity was permissible in similar circumstances under Section 18(3) of the Police Corps Act.

As to the applicant's argument that the police should have given him an opportunity to establish his identity as required by Section 18(4) of the Police Corps Act, it does not appear from the documents available that the applicant indicated his name and date of birth to the police. In any event, it was within the discretionary power of the police to assess whether an indication of the name, date of birth and place of residence of the person concerned was reliable. In the light of the parties' submissions, the Court does not find it to be established that the police proceeded contrary to the relevant legal provisions.

The Court further finds that the detention complained of pursued the legitimate aim of securing the fulfilment of an obligation prescribed by law within the meaning of Article 5 § 1 (b) of the Convention and that there is no indication that it was arbitrary or otherwise contrary to Article 5 § 1 of the Convention.

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

3. The applicant complained that his right to a fair and public hearing had been violated in the proceedings before the Constitutional Court. He further complained that the authorities dealing with the case had refused to hear the persons who had witnessed his apprehension. He alleged a violation of Article 6 §§ 1 and 3 (d) of the Convention which, in so far as relevant, provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by a[n] ... tribunal...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"

a) To the extent that the applicant complained about the proceedings before the Constitutional Court, the Government contended that Article 6 § 1 of the Convention was not applicable as those proceedings concerned the determination neither of the applicant's civil rights and obligations nor of a criminal charge against him.

The applicant disagreed and alleged that the proceedings before the Constitutional Court had been unfair.

The Court notes that the proceedings complained of did not concern the determination of any criminal charge against the applicant. Even assuming that the proceedings concerned the applicant's civil rights or obligations within the meaning of Article 6 § 1, their outcome was not directly decisive for their determination as at the relevant time the Constitutional Court lacked jurisdiction to take any action with a view to remedying the violation found (see also *Süssmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 41-44). Article 6 § 1 is therefore not applicable.

It follows that this complaint is incompatible *ratione materiae* 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 complained that the prosecuting authorities had failed to hear the persons who had witnessed his apprehension, the Court notes that the alleged violation had occurred in the context of proceedings relating to the examination of the applicant' criminal complaint against the policemen concerned. Such proceedings do not, however, attract the guarantees of Article 6 of the Convention (see *Wedler v. Poland* (dec.), no. 44115/98, 27 May 2003).

It follows that also this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President