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

FOURTH SECTION

DECISION

Application no. 59522/10
Janko PIBERNIK
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 10 October 2017 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Georges Ravarani,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 October 2010,

Having regard to the declaration submitted by the respondent Government on 23 June 2017 requesting the Court to strike the application out of the list of cases and the applicant's widow's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Janko Pibernik, is a Slovenian national, who was born in 1927 and lived in Krško. He was represented before the Court by Mr B. Klakočar, a lawyer practising in Krško.

2. The Slovenian Government ("the Government") were represented by their Agent, Ms A. Grum, State attorney.

3. The applicant complained that the circumstances in which his son, S.P., had died following an asthma attack during a police operation had not been investigated in an independent and effective manner.

4. On 9 January 2012 the application was communicated to the Government under the procedural limbs of Articles 2 and 3 taken alone and in conjunction with Article 13 of the Convention.

5. On 16 December 2012 the applicant died. On 20 September 2013 Ms Slavka Pibernik, the applicant's widow, expressed her wish to pursue the application.

The circumstances of the case

6. On 3 April 2000 several mobile crime unit officers of the Ljubljana Police Directorate entered the apartment building in which the applicant's son, S.P., lived in an attempt to catch him in the act of trading in drugs. At a disputed time between 12.00 and 12.30 a number of officers followed an alleged buyer into the building and intercepted S.P. in the hallway leading to his apartment. They restrained him, using force. S.P. subsequently suffered an asthma attack while being subdued, and died in the hands of the police. S.P.'s wife, M.P., was also handcuffed and pushed to the floor, where she remained until she was allowed to approach S.P. to give him an asthma inhaler. As S.P. did not respond, M.P. and one of the officers tried to revive him, but to no avail. The police then called for medical assistance. Following the arrival of the ambulance at 13.00, S.P. was pronounced dead.

7. Following the rejection of their criminal complaint, on 16 February 2001, the applicant and M.P., in the capacity of subsidiary prosecutors, lodged a request for an investigation alleging, *inter alia*, criminal offences of negligent manslaughter of S.P. and violation of S.P.'s dignity by abuse of power. The request was refused by the court. Having been informed only about the report of the police inquiry and being unable to obtain a judicial investigation into the case, the applicant and M.P. appealed to the Constitutional Court.

8. On 6 July 2006 the Constitutional Court rendered a decision. It established that Article 15 § 4 of the Constitution (judicial protection of human rights) should be interpreted to include a right to an independent investigation into the circumstances of an incident where a person was allegedly subjected to torture or inhuman or degrading treatment by the police or where he or she lost his or her life during a police operation. The aforementioned right included effective access of the aggrieved parties to such an investigation. In this connection, the Constitutional Court referred to the Court's case-law, including the principles set out in *Selmouni v. France* ([GC], no. 25803/94, § 87, ECHR 1999-V), and *Ribitsch v. Austria* (4 December 1995, §§ 34 and 38, Series A no. 336), and the findings in *Rehbock v. Slovenia* (no. 29462/95, ECHR 2000-XII). The Constitutional Court found that the police inquiry into S.P.'s death did not meet the criteria which were established by the European Court of Human Rights. Nevertheless, noting that an independent investigation of a person's death in the course of a police operation did not necessarily entail criminal or even judicial proceedings, the Constitutional Court decided not to quash

the impugned judicial decisions, and instead stated that its finding was of a declaratory nature.

9. The applicant and M.P. then tried to obtain a re-opening of the proceedings concerning their request for a judicial investigation but were unsuccessful. Therefore they lodged another constitutional complaint, which was rejected by the Constitutional Court, finding that it was not in a position to come to any different conclusion than in its first decision, namely that there had been a violation of S.P.'s constitutional rights. The Constitutional Court also noted that since its previous decision and the Court's judgment in *Matko v. Slovenia* (no. 43393/98, 2 November 2006), legislation had been adopted which allowed for a special group of public prosecutors to be set up with a view to investigating criminal offences committed by police. These changes in the legislation were aimed at ensuring that the special public prosecutors would be able to conduct independent inquiry. Lastly, the Constitutional Court noted that these changes, however, had no effect on the applicant's situation. The decision was served on the applicant on 7 April 2010.

10. Alongside the efforts made by the applicant and M.P. to ensure an effective criminal investigation into S.P.'s death, in 2000 the applicant, his wife, M.P. and the deceased's children brought a civil action for damages before the Ljubljana District Court against the State and the five police officers involved in the operation which had resulted in S.P.'s death.

11. Further to the remittal of the case by the Higher Court and after exhausting other remedies the plaintiffs challenged the judgment rejecting their claim before the Constitutional Court. On 16 October 2014 the Constitutional Court quashed the lower courts' judgments, finding the opinion of the lower courts that the plaintiffs had failed to prove unlawfulness of the police officers' conduct unacceptable. In the Constitutional Court's view, the burden was on the State to prove that its agents had acted in accordance with the law and, in particular, that the police officers had used the minimum necessary force and had properly planned their actions to avoid putting the life and health of the individuals concerned at risk.

12. Following the abovementioned decision of the Constitutional Court, the Ljubljana District Court again examined the case and heard some of the witnesses. After a hearing held on 13 April 2015, the court delivered a judgment dismissing the claim. It dismissed the allegations that S.P. had been mistreated as false. Based on medical and other evidence produced during the trial, the court found that S.P. had suffered a serious asthma attack which had been triggered by his physical resistance to arrest. It further found that even assuming that the police officers had not immediately recognised the signs of asthma and accordingly failed to take some measures, there was no causal link between this and S.P.'s death which had occurred before any assistance could have possibly been

administered. It would appear that the plaintiffs had not appealed against this judgment as it became final on 3 July 2015.

COMPLAINTS

13. The applicant complained that there had been no independent investigation into the cause and circumstances of his son's death during a police operation. He further complained that the Constitutional Court had failed to remedy the situation and that he had consequently not been in a position to claim successfully compensation for damages.

THE LAW

A. The standing of Ms Slavka Pibernik

14. Following the applicant's death, his widow, Ms Slavka Pibernik, expressed her intention to pursue the proceeding in his stead (see paragraph 5 above). The Government maintained in their submissions of 12 September 2016 that they did "not oppose to Ms Slavka Pibernik entering the case as the applicant in the place of her deceased husband".

15. Having regard to the foregoing and to the Court's case-law on the subject-matter (see *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 1999, with further references), the Court accepts that the applicant's wife, who is also the mother of S.P. whose death is alleged to engage the responsibility of the respondent Government, has a legitimate interest in pursuing the present application. It will therefore continue dealing with the case at her request.

B. As regards the part of the application concerning the procedural limb of Article 2 taken alone and in conjunction with Article 13 of the Convention

16. After the failure of attempts to reach a friendly settlement, by a letter of 23 June 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "1. Hereby, the Government of the Republic of Slovenia acknowledge that the domestic investigation regarding the circumstances of the death of S.P. did not

comply with the procedural requirements of Article 2 of the Convention, as well as the applicant did not have an effective civil remedy for obtaining compensation in respect of S.P.'s death as guaranteed by Article 13 of the Convention.

2. The Slovenian Government are ready to pay the applicant a sum of EUR 16,017.21 (EUR 14,500 for non-pecuniary damage and EUR 1,517.21 for the cost of proceedings).

3. The sum referred above, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court. In the event of failure to pay this sum within the said there-month period, the Government undertake to pay simple interests on it, from expiry of that period until settlement, at rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

4. The Slovenian Government therefore propose the Court to accept the unilateral declaration in present case as "any other reason" justifying and strike the present case out of the list of cases pursuant to Article 37 § 1 (c) of the Convention."

17. The Court has already accepted that the applicant's widow Ms Slavka Pibernik could pursue the present proceeding in his stead (see paragraph 15 above). Therefore and having regard to the Government's agreement on this issue (see paragraph 14 above), the Court considers that the sums indicated in the unilateral declaration were proposed to be paid to Ms Slavka Pibernik. By a letter of 28 August 2017, she indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the sums proposed were insufficient.

18. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

19. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

20. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

21. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court

considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

22. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic (see *Volk v. Slovenia*, no. 62120/09, §§ 97-106, 13 December 2012, and *Trubnikov v. Russia*, no. 49790/99, §§ 85-88 and 90, 5 July 2005), the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

23. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

24. In view of the above, it is appropriate to strike the case out of the list as regards the complaint concerning the procedural limb of Article 2 taken alone and in conjunction with Article 13 of the Convention.

C. As regards the part of the application concerning the procedural limb of Article 3 taken alone and in conjunction with Article 13 of the Convention

25. The Court notes that the case was communicated also with respect to the procedural aspect of Article 3 taken alone and in conjunction with Article 13 of the Convention. Since the issue of possible ill-treatment was examined as part of the circumstances of S.P.'s death, the Court finds that this aspect of the case is absorbed by the issues raised under Articles 2 and 13 in respect of which the Government acknowledged breaches of the Convention in their unilateral declaration (see paragraph 16 above).

26. Therefore the Court considers that it is not justified to continue a separate examination of the complaint under Article 3 taken alone and together with Article 13 (see, *mutatis mutandis*, *Kutsevych v. Ukraine* (dec.) [Committee], no. 23195/11, 12 May 2015, and *Luluyev and Others v. Russia*, no. 69480/01, § 107, ECHR 2006-XIII (extracts)), which moreover was not pursued by the applicant and/or by Ms Slavka Pibernik as an independent or a separate issue.

27. The Court is also satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*). Accordingly, this aspect of the case should likewise be struck out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Articles 2 and 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 2 November 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President