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

FIRST SECTION

DECISION

Application no. 1400/22
Anita STOPAR against Slovenia
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 9 July 2024 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the applications against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to give notice of the complaints under Article 6 § 1 of the Convention, and under Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 14 of the Convention, to the Slovenian Government ("the Government"), represented by their Agent, Ms V. Klemenc, Senior State Attorney;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the reimbursement of the applicants' expenses for medical treatment they received in the United States of America.

2. In 2014 the Slovenian Health Insurance Institute (hereinafter "the Institute") decided that the applicants, minors at the time of the treatment, were entitled to undergo a selective dorsal rhizotomy procedure and orthopaedic surgery to lengthen the tendons of the tibia in a specific hospital in the United States and to have the treatment, as well as associated costs,

paid for by the Institute, because such treatment was not available in Slovenia. The relevant provisions of the Healthcare and Health Insurance Act allowed for two options: (i) the Institute could pay the expenses directly, in advance or after the treatment; or (ii) the patient could pay the expenses and be reimbursed by the Institute.

3. In the present case, the applicants' parents started collecting funds via charitable organisations, which opened dedicated bank accounts to that end. The donations were made by relatives and friends, as well as by the general public and local businesses. The organisations paid for the applicants' treatment in advance. The first applicant (Ms Stopar) underwent the surgery in October 2014, and the second applicant (Mr Kotar) in November and December 2014.

4. The first applicant's subsequent request for reimbursement of costs in the amount of approximately 16,000 euros (EUR) was rejected by the Institute, because it had not been the applicant but rather the charitable organisation that had paid for the treatment. On the same grounds, the Institute rejected the second applicant's request for reimbursement of costs in the amount of approximately EUR 43,000 and refused to reimburse him for his flights, noting that he had bought plane tickets with the money he had received from one of the above-mentioned organisations. Furthermore, the second applicant was requested to repay the sum of approximately EUR 34,000 which the Institute had previously transferred to him in relation to the treatment, because the treatment had in fact been paid for by the charitable organisation.

5. The applicants challenged the Institute's decisions in the Ljubljana Labour and Social Court. That court and the Higher Labour and Social Court both decided in favour of the applicants, taking the position that the right to have the expenses in question reimbursed had stemmed from their health insurance, and that the corresponding obligation of the Institute to reimburse the applicants such expenses had not ceased to exist simply because those expenses had been paid in advance by a third party.

6. Following the Higher Labour and Social Court's judgments, the Institute reimbursed the applicants the expenses claimed.

7. Meanwhile, the Institute brought proceedings against the second applicant in order to claim back the money it had "erroneously" transferred to him. The Labour and Social Court and, on appeal, the Higher Labour and Social Court both decided against the Institute.

8. On 2 February 2021 the Supreme Court quashed the lower courts' judgments. Like the lower courts, it referred to section 44.a of the Healthcare and Health Insurance Act, which provided, *inter alia*, that in the case of approved medical treatment abroad, the Institute should reimburse the insured person the sum corresponding to the actual expenses incurred for the medical services in the country concerned (*v višini dejanskih stroškov teh storitev*). The Supreme Court found, however, that no actual expenses had been

incurred by the applicants. It pointed out in the judgment concerning the second applicant that he would have been entitled to the reimbursement of the expenses only if his payment of the expenses had resulted in a reduction in his assets. The reimbursement requested by the second applicant would have resulted in his being paid for expenses he had not incurred, which would contravene the purpose of the law. It ordered the second applicant to return the sum of approximately EUR 34,000 to the Institute. The Supreme Court also explained in the judgment concerning the first applicant that the payments by the charitable organisation had not been made as a loan, in which event the costs would ultimately still have been borne by her.

9. Subsequently, the Institute re-examined the cases and issued new decisions demanding the return of the funds that the applicants had received from it following the Higher Labour and Social Court's judgments (see paragraph 6 above). The applicants challenged those decisions in the Labour and Social Court. The proceedings appear to be still pending.

10. In the meantime, the Constitutional Court decided not to accept for consideration constitutional complaints by the applicants against the Supreme Court's judgments (see paragraph 8 above).

11. The applicants complained under Article 6 § 1 of the Convention that the Supreme Court's judgments had been unfair and arbitrary. In their view, the Supreme Court had failed to give any consideration to the argument that the funds collected by the charitable organisations had been donated to the applicants and were thus their property. Its finding had no basis in the applicable legislation. Furthermore, the applicants complained under Article 1 of Protocol No. 1 to the Convention and under Article 14 of the Convention that the Supreme Court's judgments had amounted to an unforeseeable and unreasonable interpretation of the relevant legislation, as a result of which they had been unable to receive reimbursement of the medical expenses due to them on the basis of their health insurance. They argued in that connection that they had been unable to make an advance payment themselves and had thus been discriminated against because of their financial situation.

THE COURT'S ASSESSMENT

A. Joinder of the applications

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Preliminary objection

13. The Government argued that the first applicant had failed to exhaust the domestic remedies available to her. The Court does not find it necessary

to rule on this objection since her application is in any event inadmissible for the following reasons.

C. Complaint under Article 6 § 1 of the Convention

14. The Court observes at the outset that the applicants' right to have medical expenses reimbursed had stemmed from their health insurance. However, the applicants had a private arrangement with the charitable organisations which covered the costs of their medical treatment abroad. The applicants did not argue that they had been under an obligation to return the money to the charitable organisations or the benefactors if the expenses were to be reimbursed to them by the Institute. They also did not show that they or their family members had themselves covered any of the costs at issue. The Court notes that it is not called upon to assess the appropriateness of the private arrangement between the applicants and the charitable organisations. Furthermore, its jurisdiction in determining whether the proceedings were fair in their substantive aspect is very limited (see *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 78, 22 June 2021).

15. The Court finds that the applicants had the opportunity to fully present their arguments in the proceedings before the Institute and before the domestic courts at three levels of jurisdiction. The Supreme Court interpreted the relevant provisions of law (see paragraph 8 above) for the first time, taking into account the purpose of the law and, while its decision differed from that of the lower courts, it was not arbitrary or unreasonable. Many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, *mutatis mutandis*, *Centro Europa 7 S.r.l. and Di Stefano* [GC], no. 38433/09, § 141, ECHR 2012, and *Lekić v. Slovenia* [GC], no. 36480/07, §§ 95 and 97, 11 December 2018). Furthermore, case-law development is not, in itself, contrary to the proper administration of justice and it is precisely the role of a supreme court to resolve divergences in case-law (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, §§ 116 and 123, 29 November 2016).

16. In view of the above, the Court concludes that while the applicants disagreed with the outcome of the proceedings, there is nothing to indicate that the proceedings in question were unfair within the meaning of Article 6 § 1 of the Convention or that the Supreme Court's judgments were in any way arbitrary or unreasonable. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4.

D. Complaints under Article 1 of Protocol No. 1 and Article 14 of the Convention

17. The Court reiterates that where a proprietary interest is in the nature of a claim, it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX). It notes in this connection that the Supreme Court found in the proceedings that section 44.a of the Healthcare and Health Insurance Act did not give the applicants an entitlement to reimbursement of the costs of the treatment in question as they had not actually incurred any costs (see paragraph 8 above). No other legal basis has been shown to exist for such a claim to be regarded as an "asset". The complaint under Article 1 of Protocol No. 1 is thus inadmissible as being incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 §§ 3 and 4 of the Convention.

18. As regards the complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, the Court notes that the applicants complained of discrimination with reference to their financial situation. They argued that their requests for reimbursement of medical expenses had been dismissed, because they had been unable to pay for the treatment in advance by themselves.

19. The Court notes that the domestic healthcare system provided for a possibility to have costs for medical treatment abroad reimbursed. In such situation it must ensure that is done in a manner which is compatible with Article 14 (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2005-X). In this respect, it is clear from the relevant domestic provisions that the applicants had the possibility of making a request in due time for the Institute to cover the treatment costs in advance. They failed to demonstrate that they had done so or that this would for any reason not have been possible in their particular case (see paragraphs 2 and 3 above). It follows that domestic law ensured that there was no difference in treatment in the right to this particular benefit between patients who were able to make advance payments themselves and those who could not.

20. This complaint should accordingly be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 12 September 2024.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President

Appendix

List of cases:

No.	Application no.	Lodged on	Applicant Year of birth Nationality	Place of residence	Represented by
1.	1400/22	20/12/2021	Anita STOPAR 2003 Slovenian	Braslovče	Domen KRIŠTOF
2.	18047/22	04/04/2022	Nejc KOTAR 2008 Slovenian	Kočevje	Samo VIDMAR
3.	18056/22	04/04/2022	Nejc KOTAR 2008 Slovenian	Kočevje	Samo VIDMAR