

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Lacko v. Slovakia

Communication No. 11/1998

9 August 2001

CERD/C/59/D/11/1998

VIEWS

Submitted by: Miroslav Lacko.

Alleged victim: The petitioner

State party concerned: Slovak Republic

Date of communication: 21 October 1998

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 9 August 2001,

Adopts the following:

OPINION

1. The petitioner is Miroslav Lacko, a Slovak citizen of Romany ethnicity. He claims to be a victim of violations by the Slovak Republic of articles 2, 3, 4, 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by the European Roma Rights Center, a non-governmental organization based in Budapest, acting as legal counsel.

The facts as submitted by the petitioner

2.1 On 24 April 1997 the petitioner, accompanied by other persons of Romany ethnicity, went to the Railway Station Restaurant located in the main railway station in Kosice, Slovakia, to have a drink. Shortly after entering the restaurant the applicant and his company were told by a waitress to leave the restaurant. The waitress explained that she was acting in accordance with an order given by the owner of the restaurant not to serve Roma. After requesting to speak with her supervisor, the

petitioner was directed to a man who explained that the restaurant was not serving Roma, because several Roma had previously destroyed equipment in the restaurant. When the petitioner related that neither he nor his company had damaged any equipment, the person in charge repeated that only polite Roma would be served.

2.2 On 7 May 1997, the petitioner filed a complaint with the General Prosecutor's Office in Bratislava, requesting an investigation to determine whether an offence had been committed. The case was assigned to the County Prosecutor's Office in Kosice who referred the matter to the Railway Police. In the meantime the applicant also sought remedy from the Slovak Inspectorate of Commerce, responsible for overseeing the lawful operation of commercial enterprises. In a letter to the petitioner, dated 12 September 1997, the Inspectorate reported that it had conducted an investigation into the complaint during the course of which it had been observed that Roma women had been served at the restaurant and that the owner had arranged that there would be no other discrimination of any polite customers, Roma included.

2.3 By resolution dated 8 April 1998, the Railway Police Department in Kosice reported that it had conducted an investigation into the case and found no evidence that an offence had been committed. The petitioner appealed to the County Prosecutor who, in a resolution dated 24 April 1998, ruled that the decision of the Railway Police Department was valid and indicated that there was no further legal remedy available.

The complaint

3.1 Counsel states that the failure to remedy the discrimination in the instant case reflects the absence of any Slovak legislation, which expressly and effectively outlaws racial discrimination in access to public accommodations. Mr. Lacko has been forced to live with continuing uncertainty - dependent on the restaurant owner's racially motivated whim - as to whether he will be admitted to the restaurant on any given day. If the owner determines that on one day 'polite' Roma will be served, then the applicant may be served if he is deemed sufficiently polite. If, however, the owner decides that no Roma will be served that day or that the applicant is not sufficiently polite, he will be denied service.

3.2 Counsel claims that a number of rights secured to the petitioner under the Convention have been violated, including article 2, paragraph 1 (d) taken together with article 5 (f); and articles 2, paragraph 2; 3; 4 (c); and article 6 of the Convention.

3.3 Counsel claims that Slovak criminal law has no provision applicable to the violation at issue in the instant case as required by article 2, paragraph 1 taken together with article 5 (f) of the Convention. The petitioner was denied equality before the law in that he and his Romany company suffered discrimination in access to service in the restaurant on grounds of race and/or ethnicity.

3.4 Counsel claims that by being refused service in the restaurant and told to leave solely for racial reasons, and then being told that only polite Roma would be admitted, the petitioner was subjected to policies of racial segregation. The State party's failure to provide any remedies and the absence of any legal norm expressly prohibiting non-discrimination in access to public accommodations constitute failure to comply with its obligation under article 3 of the Convention.

3.5 The State party's failure to sanction or remedy the restaurant's racially-motivated discrimination against the petitioner and his Romany colleagues, in fact, promoted racial discrimination in violation of article 4 (c) of the Convention. In addition, the continued leasing of space to the restaurant by the main railway station, a public institution, further constitutes promotion by public institutions of racial discrimination.

3.6 Counsel further states that the objective of the communication is a recommendation by the Committee that: 1) the State party provide compensation for the humiliation and degradation the applicant has suffered in being subjected to racial discrimination in his access to the restaurant; 2) the State party take effective measures to ensure that racial discrimination is no longer practised at the restaurant; and 3) the State party adopt legislation expressly prohibiting, and providing effective remedies for, racial discrimination in places or services intended for use by the general public.

Observations by the State party on admissibility

4.1 By submission of 23 June 1999 the State party challenges the admissibility of the communication on grounds of non-exhaustion of domestic remedies. In accordance with section 30, paragraph 2, of Act No. 314/1996 on the Prosecution Authority the applicant had the possibility to file an application for review of the lawfulness of the Resolution with the Regional Prosecution Office in Kosice. A decision by the Regional Prosecution Office could have a substantial impact and result in new proceedings by the District Prosecution Office and the Railway Police.

4.2 Furthermore, the petitioner had the possibility of initiating a civil action under Section 11 of the Civil Code, which states that natural persons shall have the right to the protection of their honour, human dignity, privacy, name and manifestations of personal nature. Belonging to a particular national minority or ethnic group is also one of the attributes of personality, therefore, the injured person may claim the protection of his/her personality in civil proceedings and ask the competent court to be given adequate satisfaction or granted compensation of immaterial injury. The resolution of the District Prosecution Office indicated in this respect that it was without prejudice on the entitlement of the injured party to damages that might be claimed in civil proceedings before a competent court.

4.3 Furthermore, the petitioner could have filed a complaint against the procedure and the result of the investigation carried out by the Inspectorate of Commerce, with the Central Inspectorate of the Slovak Inspectorate of Commerce or with the Ministry of Economy, to which the Slovak Inspectorate of Commerce reports. He could also have filed a complaint with the Office of the Government of the Slovak Republic, which, under section 2 of Act No. 10/1996 Coll. on the inspection in state administration, reviews the processing of petitions, complaints, communications and applications. He also failed to file a petition with the competent Trade Licence Office, in accordance with section 1 of Act No. 71/1967 Coll. on administrative procedure (the Rules of Administrative Procedure). Indeed, the District Prosecutor informed him on 3 July 1997 that he could file petitions with the above professional bodies.

4.4 The State party further submits that the communication does not make it clear which rights of the petitioner guaranteed under national law were violated, which domestic remedies were claimed and when the alleged violations took place. In his complaint with the General Prosecutor the

petitioner alleged a crime of support and promotion of movements aiming at suppressing the rights and freedoms of citizens under section 260 of the Criminal Code. The Railway police suspended the examination of the case in view of the fact that it did not find grounds for such a crime and that the petitioner and his colleagues were served in the bar. In his appeal against the decision of the Railway police the petitioner did not object to the police conclusion regarding the alleged crime, but rather he claimed a violation of Act No. 634/1992 Coll. on consumer protection. Moreover, in his complaint to the Inspectorate of Commerce the petitioner sought investigation into the violation of a non-existent law on the protection of integrity. None of the complaints made it clear which violation of Act No. 634/1992 Coll. on consumer protection the petitioner claimed and what kind of remedy he sought.

4.5 According to the State party, staff from the Inspectorate of Commerce, as communicated to the petitioner by letter dated 12 September 1997, visited the restaurant accompanied by several Roma women who were duly served and in no way discriminated against. The Inspectorate carried out other subsequent visits to the restaurant but did not find any irregularity of the kind pointed out by the petitioner in his communication, nor did it receive complaints similar to Mr. Lacko's.

Counsel's comments

5.1 In a submission dated 2 August 1999 counsel objects to the State party's argument regarding the exhaustion of domestic remedies. He states that, according to international human rights jurisprudence, the local remedies rule requires the exhaustion of remedies that are available, effective and sufficient.

5.2 Counsel argues that a petition with the Regional Prosecution Office cannot be considered an effective remedy. Having filed a criminal complaint and waited for almost a year for the completion of the criminal investigation, having then timely appealed the conclusion of the police and having finally had his appeal rejected, the petitioner was under no obligation to pursue any further criminal remedy, especially insofar as he was expressly told that no further complaint was admissible.

5.3 Counsel states that the State party has pointed to no law or facts to suggest that a second petition would have met with any more favourable response than the criminal complaint initially filed; repeated petitions are not 'effective remedies' for the purpose of admissibility requirements. Since the Resolution of the District Prosecution Office was issued on 24 April 1998, no new facts, which might have justified a renewed petition have arisen.

5.4 Counsel indicates that the petitioner was not required to seek any criminal remedy for the racial discrimination to which he was subjected, because, as a matter of law, there are no effective criminal remedies for racial discrimination in the State party. The State party has not pointed to a single criminal code provision, which expressly punishes discrimination on the grounds of race or ethnicity in access to public accommodations. The only articles of the criminal code, which address racism relate to racist speech and racially motivated violence.

5.5 Counsel objects to the State party's argument regarding the petitioner's failure to initiate civil action. It is stated that there are no effective civil or administrative remedies for racial discrimination available under Slovak law. Article 11 of the Civil Code is directed against acts of defamation or

breach of privacy and makes no mention of discrimination on the grounds of race or ethnicity. Nor do any consumer protection laws contain a specific anti-discrimination provision with respect to race, which would make it possible to consider the instant case under the terms of the Convention.

5.6 The only remedies the Trade Licensing Board and the Slovak Inspectorate of Commerce could have afforded to the applicant, had they found his rights violated, would be to impose a fine on the restaurant and/or revoke its licence. These remedies are not effective or sufficient and are no substitute for the promulgation of legal norms capable of ensuring that individuals are not subjected to acts of racial discrimination.

5.7 Counsel contends that even when a given legal framework provides for a number of remedies capable of redressing the violation alleged, an individual is not required to pursue more than one. Where there is a choice of effective and sufficient remedies, it is up to the applicant to select one.

5.8 Counsel points out that the European Court has made clear that government actions to terminate a violation of the European Convention, once one has occurred, do not in themselves erase the initial fact of the violation or render an application to the Strasbourg organs inadmissible. On the basis of that jurisprudence counsel contends that any subsequent termination of the refusal to serve the petitioner on the grounds of race in no way redresses the initial violation to which he was subjected or deprives him of victim status for the purpose of the present communication.

5.9 Finally, with respect to the State party's assertion that other Roma have been served at the Restaurant, counsel argues that such facts would in no way remedy the discrimination to which the petitioner was subjected. The fact that such rights may be arbitrarily afforded to others does not mitigate their arbitrary and discriminatory denial to the petitioner.

The Committee's decision on admissibility

6.1 At its 55th session in August 1999, the Committee considered the admissibility of the communication.

6.2 The Committee noted the State party's claims that the petitioner had failed to exhaust domestic remedies available to him. The Committee recalled that article 14, paragraph 7 (a), of the Convention provides that the Committee shall not consider any communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee has held in its previous jurisprudence that a petitioner is only required to exhaust remedies that are effective in the circumstances of the particular case.(1)

6.3 The Committee has noted that the decision of the District Prosecutor was a final decision as far as the criminal procedure was concerned. The State party failed to demonstrate that a petition for review, which would be a remedy against the legality of the decision, could in the present case lead to a new examination of the complaint. Furthermore, the Committee finds that the facts of the claim were of such a nature that only criminal remedies could constitute an adequate avenue of redress. The objectives pursued through a criminal investigation could not be achieved by means of civil or administrative remedies of the kind proposed by the State party. Therefore, the Committee found that no other effective remedies were available to the petitioner.

6.4 The Committee found that it lacked sufficient information to assess whether, as the petitioner stated, there was legislation in the State party guaranteeing for everyone the right of access to any place or service intended for use by the general public without distinction as to race, colour, or national or ethnic origin.

6.5 The Committee observed that the requirements for admissibility established under rule 91 of its Rules of Procedure had been met and decided that the communication was admissible. It requested the State party and the petitioner to provide information about domestic legislation and remedies intended to protect one's right of access to any place or service intended for use by the general public without distinction as to race, colour or national or ethnic origin, as contemplated in article 5(f) of the Convention.

State party's observations on the merits

7.1 In submissions dated 25 November 1999 and 8 January 2001, the State party provides information on domestic legislation and remedies for the protection of individuals against racial discrimination in the criminal, civil and administrative fields.

7.2 The State party submits that fundamental rights are guaranteed to every person without discrimination in article 12, paragraph 2, of the Constitution. Protection of those rights can be enforced through administrative, civil and criminal procedures. Anyone is entitled to compensation of damage caused by an unlawful decision of a court, another state body or a public administration body on the basis of Act No.58/1969 Coll.

7.3 The State party further submits that administrative proceedings against the decision of a state organ commence with a complaint in which an individual or a legal entity claim to have their rights breached and request the court to review the lawfulness of the decision. The decision of the court is binding. The court can also rule on decisions of administrative bodies, which are not yet final. The State party admits that the Inspectorate of Commerce did not comply with the administrative procedure under which it is obliged to deal with the merits of the case. However, the petitioner could have filed a complaint with the Ministry of Economy, which is the central body of state administration in the field of consumer protection. He could also have filed a complaint under Act No. 58/1968 Coll. on State's liability for the unlawful decision of a state body. If the petitioner had used all the possibilities contemplated in the Slovak legal order, the restaurant owner could have been sanctioned.

7.4 Sections 11 to 17 of the Civil Code regulate the protection of personal integrity. Under section 13, a natural person has the right to have arbitrary or unlawful interference with his/her integrity stopped, the consequences of such interference removed and to be given appropriate satisfaction. If the moral satisfaction would seem insufficient because the dignity or respect enjoyed in society by the natural person was significantly harmed, this natural person is also entitled to compensation for non-pecuniary damage. The amount of compensation shall be determined by the court taking into account the magnitude of the damage and the circumstances under which the violation occurred. Part III, chapter V of the Code of Civil Procedure regulates the proceedings in matters concerning the protection of personal integrity. The system of civil remedies also distinguishes between regular remedies (appeal) and extraordinary remedies (renewal of proceedings and recourse).

7.5 The petitioner also had the option to seek the protection of his rights pursuant to Sections 74, 75 and 102 of the Code of Civil Procedure, according to which a court may order preliminary measures in case it is necessary to have the situation of the parties regulated temporarily or if there is concern that the enforcement of the court decision might be endangered. Furthermore, on the basis of articles 1, 2, 12, 13, 17, 19 and 20 of the Constitution, Sections 11 and 13 of the Civil Code should be interpreted as guaranteeing the protection of personal integrity against acts of racial discrimination.

7.6 The legal order of the Slovak Republic also contains legal provisions on consumer protection, in particular Act No. 634/1992 Coll. Section 6 of this law prohibits discrimination explicitly. According to it, the seller may in no way discriminate against consumers, except when the consumer does not satisfy conditions set up under special rules, such as Act No. 219/1996 Coll. on the protection against abuse of alcoholic drinks. Public administration bodies can impose a sanction of up to 500 thousand crowns for breaching these provisions. Repeated violation of the prohibition on consumer discrimination may be sanctioned with a fine up to 1 million crowns.

7.7 The Penal Code regulates protection against racial discrimination. In his criminal complaint the petitioner claimed that the acts alleged fell under Section 260 of the Penal Code (support and promotion of movements aiming at suppressing the rights and freedoms of citizens). He did not invoke Section 121 of the Penal Code (causing harm to a consumer) or misdemeanour under Section 24 of Act No. 372/1990. Section 196 para. 2 stipulates that everyone who uses violence against a group of citizens or individuals or threatens them with death, damage to their health and causing a serious damage because of their political conviction, nationality, race, confession or for having no confession shall be punished.

7.8 The State party submitted that the General Prosecution Authority of the Slovak Republic asked the Regional Prosecution Office of Kosice to examine the present communication. The latter reviewed the lawfulness of the procedure applied and the decision reached by the Railway Police and the District Prosecution Office in order to determine whether the head of the restaurant had committed a crime of supporting and propagating movements leading to the suppression of civil rights and freedoms under Section 260 of the Criminal Code or any other crime. After reviewing the relevant files the Regional Prosecution Office concluded that the ban issued by the head of the restaurant to serve people of Romany ethnicity justified suspicion of the crime of inciting to national or racial hatred under Section 198a para 1 of the Penal Code. However, in its opinion the acts in question did not entail a degree of dangerousness for the society to be considered a crime. They nevertheless satisfied the criteria to be considered a misdemeanour under Section 49 para 1 letter a) of Act No. 372/1990 Coll. on misdemeanours. It also considered that a criminal sanction against the head of the restaurant was foreclosed by the amnesty of 3 March 1998. This opinion was communicated by the Regional Prosecution Office to the petitioner in a letter dated 15 June 1999.

7.9 After reviewing the files concerned, the Prosecutor General disagreed with the legal opinion of the Regional Prosecution Office concerning the degree of dangerousness of the act. It considered that the Regional Prosecution Office had manifestly overestimated the immediate rectification by the head of the restaurant after a discussion with the petitioner. In a written instruction to the Regional Prosecution Office the Prosecutor General stated that the results of the review sufficiently justified the suspicion that the head of the restaurant had committed a crime of instigation to national

and racial hatred under Section 198a para 1 of the Penal Code and instructed the subordinate prosecution office accordingly.

7.10 On 19 April 2000, the Kosice District Prosecutor indicted Mr. J. T. On 28 April 2000, the court declared Mr. J. T. guilty of the crime described in article 198a, sec.1 of the Penal Code and sentenced him to pay a fine of SKK 5000 or, alternatively, to serve a term of three months' imprisonment. The sentence became effective on 25 July 2000.

Counsel's comments

8.1 In a submission dated 17 February 2000, counsel addresses the issues raised by the State party repeating the arguments of previous submissions, including the exhaustion of civil and administrative remedies, the existing criminal remedies against discrimination in access to public accommodations, the date on which the racial discrimination at issue took place, and the petitioner's failure to invoke relevant domestic law provisions before the domestic authorities.

8.2 Counsel submits that the European Commission Against Racism and Intolerance (ECRI) has repeatedly stated that in Slovakia there are no criminal remedies for acts of discrimination as opposed to those for racist speech, thereby implicitly holding that the crime of incitement to ethnic or racial hatred itself cannot be considered as an applicable remedy for the violations at issue in the instant case. ECRI has also been unable to find any relevant case law that would suggest that any of the provisions of the Slovak Criminal Code would apply to cases of discrimination in access to public accommodations.

8.3 Counsel argues that a remedy delayed too long cannot be considered to be an effective remedy. It took almost three and a half years since the incident at issue and a communication filed with the Committee for the Slovak authorities only to indict the person responsible. This in itself, and regardless of the outcome of the proceedings at issue, amounts to a violation of article 6 of the Convention.

Considerations of the merits by the Committee

9. Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered all the information submitted by the petitioner and the State party.

10. In the view of the Committee, the condemnation of Mr. J. T. and the penalty imposed, even though after a long period of time following the events, constitutes sanctions compatible with the obligations of the State party. Taking due account of this condemnation, even if delayed, the Committee makes no finding of a violation of the Convention by the State party.

11. Acting under article 14, paragraph 7 (b), of the Convention, the Committee recommends to the State party that it complete its legislation in order to guarantee the right of access to public places in conformity with article 5 (f) of the Convention and to sanction the refusal of access to such places for reason of racial discrimination. The Committee also recommends to the State party to take the necessary measures to ensure that the procedure for the investigation of violations is not unduly

prolonged.

Notes

1. Cf. Anna Koptova v Slovak Republic, Communication No. 013/1998, paragraph 6.4.