



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

FIRST SECTION

**CASE OF PETRÍKOVÁ v. SLOVAKIA**

*(Application no. 42149/17)*

JUDGMENT

STRASBOURG

25 November 2021

*This judgment is final but it may be subject to editorial revision.*



**In the case of Petríková v. Slovakia,**

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

Krzysztof Wojtyczek, *President*,

Erik Wennerström,

Lorraine Schembri Orland, *judges*,

and Attila Teplán, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 42149/17) 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”) by a Slovak national, Ms Viera Petríková (“the applicant”), on 6 June 2017;

the decision to give notice to the Slovak Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 2 November 2021,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The application concerns the alleged lack of impartiality of a judge of the Constitutional Court, who was a long-standing friend of the applicant’s opponent in a dispute before the general courts.

## THE FACTS

2. The applicant was born in 1957 and lives in Vranov nad Topľou. She was represented by Mr M. Mandzák, a lawyer practising in Bratislava.

3. The Government were represented by their Co-Agent, Ms M. Bálintová, of the Ministry of Justice.

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

5. The applicant, a former Minister of Justice and currently a judge of the Supreme Court, was sued by another judge, Mr X, for the protection of the latter’s personal integrity. After losing before the courts at two levels of jurisdiction, she turned to the Supreme Court. On 26 February 2015 the Supreme Court quashed the impugned decisions and ordered the first-instance court to review the issue of bias on the part of the first-instance judge who had ruled on the case. On 7 July 2015 the second-instance court decided not to exclude the judge from the case, taking the view that she had been unbiased.

6. On 1 June 2015 Mr X challenged the Supreme Court decision before the Constitutional Court, alleging that it had breached his right to a lawful judge because the issue of bias on the part of the judge in question had already been dealt with previously.

7. On 22 September 2015 the applicant also lodged a constitutional complaint which she directed against the second-instance decision of 7 July 2015, relying on her right to a fair trial.

8. Both Mr X's and the applicant's constitutional complaints were assigned to the same chamber of the Constitutional Court, which included Judge Y.

9. In an application lodged on 30 November 2015, the applicant sought the exclusion of Judge Y from both sets of proceedings concerning her and Mr X's respective constitutional complaints, on account of Judge Y's bias stemming from her long-standing friendship with Mr X, which was a publicly known fact. Although the applicant conceded that she was not a party to the proceedings concerning Mr X's constitutional complaint, she asserted that those proceedings nevertheless also related to her rights.

10. On 10 December 2015 Judge Y informed the President of the Constitutional Court that Mr X, as a former judge of the Constitutional Court, was a former colleague of hers with whom (along with his wife) she remained in personal contact. In her view, those facts could give rise to an objective appearance of bias as regards the proceedings concerning Mr X's constitutional complaint.

11. In response to the applicant's application, Judge Y reiterated, on 19 January 2016, that between 2000 and 2007 Mr X had been a former colleague of hers at the Constitutional Court, that they had studied law together, that she was still in contact with him and his wife, and that they enjoyed good relations. Therefore, Judge Y asked to be excluded from dealing with Mr X's case and, if need be (*případne*), also the applicant's case, although it was not entirely clear to her what the reasons might be for the applicant's objection of bias on her part in relation to the applicant's case.

12. By Constitutional Court's decision no. III. ÚS 35/2016 of 19 January 2016, taken by a chamber of three judges not including Judge Y, the latter was excluded from sitting in Mr X's case on the basis of her above-mentioned statement. According to the Constitutional Court, it appeared from that statement that Judge Y remained in personal contact with the complainant and his wife, although she had not explicitly declared herself biased within the meaning of section 28(4) of the Constitutional Court Act. Referring to its own case-law, as well as that of the Court, the Constitutional Court observed that objective impartiality was based on external manifestations of a judge's link to the case in issue or on his or her relationship with the (intervening) parties to proceedings.

13. By decision no. III. ÚS 36/2016, given by the same chamber on the same day, the Constitutional Court ruled that Judge Y was not excluded from sitting in the applicant's case. It held that the applicant had focused on the reasons pointing to Judge Y's bias in relation to Mr X's case. However, the connection between the proceedings concerning the two constitutional complaints, implicitly stemming from the parties' positions in the proceedings before the general courts, was not a relevant basis for its taking a decision on the objection of bias in the applicant's case.

14. By decision no. II. ÚS 898/2016 of 14 December 2016, the applicant's constitutional complaint was dismissed as manifestly ill-founded by a chamber of three judges, including Judge Y.

## RELEVANT LEGAL FRAMEWORK

### CONSTITUTIONAL COURT ACT 1993

15. Under section 27(1) of the Constitutional Court Act 1993 (Law no. 38/1993), as in force at the material time, a judge of the Constitutional Court was excluded from dealing with a case where there could be doubts about his or her impartiality in view of his or her links to the subject matter of the proceedings, the parties or their representatives. The judge concerned had to inform the President of the Constitutional Court of the reasons for his or her exclusion without delay (section 27(2)).

16. Section 28(1) entitled a party to the proceedings to challenge a judge for bias. Pursuant to section 28(3), where the Constitutional Court was to determine a case in a chamber, the decision on a judge's exclusion for bias was to be taken by another chamber. Section 28(4) made similar provisions for a situation where a judge declared himself or herself biased.

17. Section 51(2) provided that if the constitutional complaint was admissible and the circumstances so required, any individual who was or had been a party to the proceedings which had led to a final decision which was being challenged before the Constitutional Court had to be informed of the constitutional complaint and given the right to comment on it.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained that one of the Constitutional Court's judges who had ruled on her constitutional complaint had not been impartial. She relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...”

## **A. Admissibility**

19. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

20. The applicant pointed out that in its decision no. III ÚS 36/2016, dismissing her challenge for bias, the Constitutional Court had omitted to subject the impartiality of Judge Y with regard to Mr X to the subjective and objective tests, as required by domestic law. She emphasised in that context that section 27(1) of the Constitutional Court Act as in force at the relevant time (see paragraph 15 above) enabled the impartiality of a judge to be challenged only on account of the latter's links with the subject matter of the proceedings, the parties or their representatives, and not on account of his or her relationship towards the interested or intervening parties within the meaning of section 51(2) of the Constitutional Court Act 1993 (see paragraph 17 above).

21. The applicant asserted that, although the Government acknowledged that relations with such interested parties could put the judge's impartiality into doubt, the possibility of challenging the judge for bias on that account had only been introduced by the new Constitutional Court Act, that is, Law no. 314/2018, which had entered into force on 1 March 2019 and was thus not relevant to the present case. As a consequence, in its decision no. III. ÚS 36/2016 the Constitutional Court had not dealt with the reasons supporting the applicant's challenge for bias against Judge Y and had dismissed it solely on formal grounds. That decision could thus not be considered to have been duly reasoned.

22. Furthermore, the applicant drew attention to the fact that the same chamber of the Constitutional Court had given two different decisions on essentially the same matter. In the applicant's view, it was unacceptable that Judge Y had been excluded only from dealing with Mr X's case and not from the applicant's own case, despite the fact that Mr X was an interested party in the latter. The Constitutional Court should have considered the grounds of her challenge for bias against Judge Y, instead of formally rejecting the challenge by applying the law in force.

23. The Government pointed to a recent decision (no. IV. ÚS 311/2020), in which the Slovak Constitutional Court had analysed the relevant principles concerning the subjective and objective impartiality of a judge,

which were based on section 49(1) of the new Constitutional Court Act (Law no. 314/2018). Under that Act, the impartiality of a judge could be challenged, in decreasing order of importance, on account of his or her links to the subject matter of the proceedings, to the parties, to the interested parties or to their representatives. While the judge's link to the subject matter of the proceedings should in principle always lead to his or her exclusion from the case, a link with the parties or the interested parties did not necessarily result in such a consequence, and only in exceptional circumstances should the judge be excluded on account of his or her links to the representative of any of the parties. Where there was an allegation of bias on the part of a judge of the Constitutional Court, the latter's capacity to determine the case in the event of the exclusion of some of its judges should also be taken into account.

24. In the light of the above principles, the Government noted that, in terms of the subjective approach, it followed from Judge Y's statement (see paragraph 11 *in fine*) that she herself did not consider it necessary to be excluded from dealing with the applicant's case. In terms of the objective approach, Judge Y had had no link to the subject matter of the proceedings, and Mr X – with whom she was friends – had not been a party to the proceedings concerning the applicant's constitutional complaint; besides, Judge Y's friendship with Mr X did not automatically mean that she would be unfavourable to the applicant. Moreover, Mr X and the applicant had complained about two different decisions and the two sets of proceedings had not been connected. Unlike in *Harabin v. Slovakia* (no. 58688/11, 20 November 2012), Judge Y had not decided on, or been excluded from, any previous constitutional complaint by the applicant. The Constitutional Court's decision by which Judge Y had not been excluded from the applicant's case was fully substantiated and free from arbitrariness; it had also safeguarded the applicant's right to a lawful judge.

## 2. *The Court's assessment*

25. In assessing whether Judge Y, as a judge of the Constitutional Court, was impartial as required under Article 6 § 1 of the Convention, the Court will consider the following principles as they appear in its settled case-law.

26. First and foremost, it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused (see *Padovani v. Italy*, 26 February 1993, § 27, Series A no. 257-B). To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes absence of prejudice or bias. The question of whether a tribunal is impartial is analysed by applying two tests: a subjective test, seeking to determine the personal conviction and behaviour of a particular judge; and an objective test, seeking to ascertain whether the tribunal itself offered sufficient guarantees to exclude any legitimate doubt in respect of

its impartiality. In the first test, the impartiality of a judge or a tribunal must be presumed until there is proof to the contrary. Under the second test it must be determined whether there are ascertainable facts which may raise doubts as to the impartiality of a judge. In deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see, for example, *Morice v. France* [GC], no. 29369/10, §§ 73-78, ECHR 2015, and *Upīte v. Latvia*, no. 7636/08, § 30, 1 September 2016).

27. In the present case, the applicant's doubts about Judge Y's impartiality stemmed from the uncontested fact that the latter was a colleague of long standing, and a friend, of Mr X (see paragraph 9 above), who was the applicant's opponent in the proceedings before the general courts.

28. The Court is not persuaded that there is evidence that Judge Y displayed personal bias against the applicant. In the Court's view, the case must therefore be examined from the perspective of the test of objective impartiality, and more specifically it must address the question whether the applicant's doubts may be regarded as objectively justified in the circumstances of the case. In that regard, even appearances may be of a certain importance or, in other words, "justice must not only be done: it must also be seen to be done" (see *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86).

29. The Court notes, first, that Judge Y was not directly involved in the impugned proceedings prior to sitting on the Constitutional Court's bench. It observes, second, that she repeatedly acknowledged that she was friends with Mr X, which was, according to the applicant, a publicly known fact. Lastly, Judge Y herself proposed that she be excluded not only from Mr X's case but also from the applicant's case, although she did not give any specific reasons for that proposal (see paragraph 11 *in fine*, and compare *Olujčić v. Croatia*, no. 22330/05, § 63, 5 February 2009). In the Court's view, Judge Y thus sought to be excluded merely as a precautionary measure, in order to eliminate any suspicions as to her possible lack of impartiality (compare *Dragojević v. Croatia*, no. 68955/11, § 121, 15 January 2015, and *Alexandru Marian Iancu v. Romania*, no. 60858/15, § 69, 4 February 2020). Given the importance of appearances, the Court considers nevertheless that it is understandable that the above facts gave rise in the applicant's mind to doubts about the impartiality of Judge Y.

30. Furthermore, the question of whether there is a legitimate reason to fear that a particular judge lacks impartiality is to be assessed not only against the particular circumstances of each case, but also in the light of the sufficiency of safeguards offered by the national procedures for ensuring impartiality (see *Micallef v. Malta* [GC], no. 17056/06, § 99, ECHR 2009).



Rules regulating the withdrawal of judges are indicative of the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality, and so serve to promote the confidence which the courts must inspire in the public (see *Harabin*, § 132, and *Alexandru Marian Iancu*, § 62, both cited above).

31. In that connection the Court notes that specific provisions regarding the challenging of the Constitutional Court's judges were, at the relevant time, set out in section 27 of the Constitutional Court Act 1993 (see paragraph 15 above). The Court, like the applicant, cannot but observe that Slovak law as it stood at the time of the events to which the present case relates did not recognise as problematic – and therefore as a ground for challenge – a relationship between a judge and an interested party. Such regulation only appeared in the new Constitutional Court Act which entered into force on 1 March 2019.

32. Thus, although Mr X undeniably had an interest in the proceedings relating to the applicant's constitutional complaint, since he had been a party to the proceedings in which the decision of 7 July 2015, which was challenged by the applicant before the Constitutional Court, had been given, and although the Government admitted that such a link could have had some significance (see paragraph 23 above), Judge Y's relationship towards him was not subject to examination by the Constitutional Court in so far as the applicant's case was concerned. Indeed, by decision no. 36/2016 the applicant's application was dismissed in a rather formalistic manner, on the grounds that the connection between the proceedings concerning Mr X's constitutional complaint and those concerning the applicant's complaint did not form a relevant basis for the Constitutional Court to give a decision regarding the objection of bias.

33. In such circumstances, the Court is not convinced that the Constitutional Court duly examined the applicant's challenge to Judge Y and that it gave sufficient and relevant reasons for its decision. Given that Judge Y had been excluded from dealing with Mr X's constitutional complaint, doubts were likely to arise as to her impartiality in the case of the applicant, who was Mr X's opponent in the proceedings that formed the basis of her constitutional complaint. Convincing arguments should have thus been put forward to clearly indicate why the applicant's challenge to Judge Y could not be accepted in her case.

34. The Court therefore finds that the applicant's doubts regarding the impartiality of Judge Y could be seen as being objectively justified and that the domestic law and practice did not provide sufficient procedural safeguards for those doubts to be dissipated.

35. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

37. The applicant did not make a claim in respect of damage or costs and expenses. Accordingly, there is no call to make an award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 25 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Attila Teplán  
Acting Deputy Registrar

Krzysztof Wojtyczek  
President