



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

THIRD SECTION

CASE OF RIBIČ v. SLOVENIA

(Application no. 20965/03)

JUDGMENT

STRASBOURG

19 October 2010

FINAL

19/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ribič v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 20965/03) 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 a Slovenian national, Mr Matija Ribič (“the applicant”), on 24 June 2003.

2. The applicant was represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Mr Lucijan Bembič, State Attorney-General.

3. The applicant alleged under Article 6 § 1 of the Convention that his right to a fair trial had been infringed by the excessive length of the civil proceedings. In substance, he also complained under Article 13 of the Convention of the lack of an effective domestic remedy in this respect.

4. On 23 May 2007 the President of the Third Section decided to inform the Government of the application and to request them to submit information under Rule 54 § 2 (a) of the Rules of Court. Further to receipt of the information requested, the President, on 23 October 2008, decided to invite the Government to submit written observations on the admissibility and merits of the case (Rule 54 § 2(b) of the Rules). It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Frankolovo.

6. On 7 March 1997 the applicant was injured in an accident at work. The applicant's employer had taken out insurance with the insurance company ZM.

A. The main proceedings

7. On 3 September 1998 the applicant instituted civil proceedings against ZM in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages for the injuries sustained. He also sought an exemption from paying court fees.

8. Between 27 December 1999 and 28 February 2001 the applicant lodged preliminary written submissions and adduced evidence four times.

9. The first hearing was held on 27 September 2000.

10. On 27 October 2000 the court appointed a medical expert. On 18 December 2000 the appointed expert submitted his report.

11. On 4 April 2001 the court held another hearing and decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 25 October 2001.

12. On 7 November 2001 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). He also requested the first-instance court to rectify its judgment.

13. On 9 November 2001 the first-instance court rectified the judgment of 4 April 2001.

14. On 14 May 2003 the Celje Higher Court upheld the applicant's appeal in part and modified the first-instance court's judgment accordingly. That decision was served on the applicant on 5 June 2003.

15. On 20 June 2003 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*), which was rejected on 1 April 2004 as the value of the claim fell below the statutory threshold. That decision was served on the applicant on 23 April 2004.

B. The proceedings under the 2006 Act

16. On 23 May 2007 the respondent Government were given notice of the application. The Government was asked to provide information as to whether section 25 of the 2006 Act applied in respect of the present case, which would enable the applicant to avail himself of domestic settlement

proceedings before the State Attorney's Office (see Relevant domestic law below).

17. Subsequently, on 12 October 2007, the Government submitted that section 25 of the 2006 Act was not applicable in the present case since the applicant's right to a trial within a reasonable time had not been infringed in the impugned domestic proceedings. Therefore, the Government refused to offer the applicant a settlement proposal under section 25 of the 2006 Act.

18. The applicant did not comment on this issue.

II. RELEVANT DOMESTIC LAW

19. The Act on the Protection of the Right to a Trial without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006 – “the 2006 Act”) became operational on 1 January 2007.

Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within four months at the latest...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months of the date on which the party filed its proposal, the party may bring an action before the court with jurisdiction under this Act. The party may bring an action within six months of receipt of the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND 13 OF THE CONVENTION

20. The applicant complained that the proceedings to which he was a party had been excessively long. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

21. In substance, the applicant further complained that the remedies available for excessively long proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

22. The Government argued that the applicant can no longer be considered a “victim”, within the meaning of Article 34 of the Convention. In this connection, the Government referred to the settlement reached between the State Attorney's Office and the applicant in another applicant's case (no. 21147/03) struck out by the Court on 1 April 2008, in which the applicant also complained about the excessive length of proceedings. According to the Government, the proceedings in the case no. 21147/03 and the proceedings in the present case relate to the same factual background and the two sets of proceedings were mostly conducted in parallel. As a result, the Government argued that the applicant could not have suffered double prejudice and had therefore already been awarded a sufficient amount in respect of both sets of proceedings. The Government thus invited the Court to reject the application as incompatible *ratione personae* with the provisions of the Convention.

23. The Court takes note of the settlement reached between the applicant and the State Attorney's Office in the context of case no. 21147/03, in which the State Attorney's Office acknowledged a violation of the right to a trial within a reasonable time and offered to pay compensation to the applicant for non-pecuniary damage. The Court does not find it necessary to consider whether the compensation paid to the applicant in respect of case no. 21147/03 could also cover damages incurred in the present case, as it is clear that by the above-mentioned settlement the State did not acknowledge, either expressly or in substance, any violation of the right to a

trial within a reasonable time as far as the present case is concerned. On the contrary, the Government instead argued that the length of the domestic proceedings in the present case had not been excessive (see paragraph 25 below). The Court therefore finds that the applicant may claim to be a “victim” for the purposes of Article 34 of the Convention, and dismisses the Government's objection in this respect.

24. The Court further notes that the application is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. Article 6 § 1

25. The Government submitted that the complaint under Article 6 § 1 of the Convention was unsubstantiated, as the impugned proceedings had lasted only five years and seven months at three levels of jurisdiction, and must therefore be declared inadmissible.

26. The applicant contested that argument.

(a) Period to be taken into consideration

27. The period to be taken into consideration began on 3 September 1998, the date on which the applicant instituted proceedings in Celje District Court, and ended on 5 June 2003, when the Celje Higher Court decision was served on the applicant (see paragraph 14 above). It is true that the applicant subsequently lodged an appeal on points of law with the Supreme Court. However, the time elapsed for the proceedings before the Supreme Court could arguably not be taken into consideration, as that appeal was rejected on procedural grounds and was thus without any prospect of success. The Court's view is that the applicant could not have been unaware that his claim was below the statutory threshold, in particular as he had been represented by a lawyer (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 36, 15 June 2006). Accordingly, the proceedings lasted four years and nine months, and two levels of jurisdiction were involved.

(b) The reasonableness of the length of proceedings

28. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

29. The Court considers that the subject matter did not of itself present special difficulties with regard to the facts or the law and finds that the issue at stake in the proceedings could, in principle, be regarded as of importance for the applicant.

30. As to the applicant's conduct, it does not appear that the applicant caused any significant delays in the proceedings.

31. With respect to the conduct of the domestic courts, the Court notes in particular that the first hearing was scheduled only on 27 September 2000; which was more than two years after the date the applicant instituted the proceedings (see paragraphs 7 and 9 above) and that it took the domestic authorities more than six months to serve the first-instance decision on the applicant (see paragraph 11 above).

32. In the circumstances of the present case and in the light of the criteria laid down in its case-law (see, for example, *Vidovič v. Slovenia*, no. 77512/01, §§ 16-18, 9 March 2006; *Cvetrežnik v. Slovenia*, no. 75653/01, §§ 16-18, 30 March 2006; *Pažon v. Slovenia*, no. 17337/02, §§ 16-18, 6 April 2006) the Court considers that length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

33. There has accordingly been a breach of Article 6 § 1.

2. Article 13

34. Article 13 of the Convention guarantees an “effective remedy before a national authority” to everyone who claims that his rights and freedoms under the Convention have been violated (see *Klass and Others v. Germany*, 6 September 1978, § 64, Series A no. 28). However, Article 13 requires a remedy in domestic law only in respect of an alleged grievance which is an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). Thus the effect of this provision is to require the existence of an effective remedy to deal with the substance of an “arguable complaint” and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

35. In the Government's view, the applicant had no arguable claim for the purposes of Article 13 as his complaint under Article 6 § 1 was unsubstantiated (see paragraph 25 above).

36. In this connection, the Court recalls that it found a violation of Article 6 § 1 in respect of the length of proceedings (see paragraph 33 above). Hence, the applicant had an “arguable complaint” of a violation of Article 6 § 1 and should therefore have had an effective domestic remedy in that respect.

37. The Court further observes that the transitional provision of the 2006 Act, namely section 25, provides for the procedure to be followed in respect of applications where the violation of the “reasonable time” requirement has already ceased to exist and which were lodged with the Court before 1 January 2007.

38. Pursuant to that provision the State Attorney's Office shall offer an applicant a settlement proposal in respect of just satisfaction within four months of notification of the application to the Government. Within two months of receipt of the State Attorney's Office's proposal, the applicant shall submit his or her proposal in reply. The State Attorney's Office has then four months to state its position regarding the settlement.

39. If the applicant's proposal for settlement is not acceded to or the State Attorney's Office and the applicant fail to negotiate an agreement within four months of the date on which the applicant submitted his or her proposal, the applicant may bring a civil claim, namely a "just satisfaction claim", before the competent court as provided by the 2006 Act. The claim must be lodged within six months of the State Attorney's Office's refusal to accept the applicant's proposal or of the expiry of the period within which the State Attorney's Office should decide on the settlement.

40. The Court observes that it transpires from the text of section 25, subsection 2 of the 2006 Act, that the opportunity to lodge a "just satisfaction claim" is given only to dissatisfied applicants upon receipt of a settlement proposal. As regards the present case, the Court notes that the applicant has never been offered a settlement proposal from the State Attorney's Office because the latter considered that his right to a trial without undue delay had not been breached.

41. Having regard to the above, the Court is not persuaded that the applicant had access to the "just satisfaction claim" and finds the remedies of the 2006 Act ineffective in these particular circumstances. As regards the remedies available already prior to the implementation of the 2006 Act, the Court sees no reason to take a different approach to that taken in earlier cases in which those remedies were considered ineffective (see *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

42. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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."

A. Damage

44. The applicant claimed EUR 24,000 in respect of non-pecuniary damage.

45. The Government contested the claim.

46. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,000 under that head.

B. Costs and expenses

47. The applicant also claimed EUR 1,130 for the costs and expenses incurred before the Court. This claim was supported by itemised list of expenses similar to the lists normally submitted to the courts in domestic proceedings.

48. The Government did not comment on the claim.

49. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was represented by the lawyer, the full sum claimed under this head, namely EUR 1,130.

C. Default interest

50. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* by a majority the application admissible;
2. *Holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by five votes to two that there has been a violation of Article 13 of the Convention;

4. *Holds* by five votes to two:

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,130 (one thousand one hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Myjer and López Guerra is annexed to this judgment.

J.C.M.
S.Q.

JOINT DISSENTING OPINION OF JUDGES MYJER AND LÓPEZ GUERRA

Unlike the majority we do not consider that there has been a violation of Article 6 in this case, and therefore not of Article 13 either.

We accept that the total period to be taken into account is five years, seven months and twenty days, as the Slovenian Government submitted. During that time three levels of jurisdiction were involved.

It was the applicant himself who on 20 June 2003 lodged an appeal on points of law with the Supreme Court. The fact that the Supreme Court on 1 April 2004 rejected the appeal on the ground that the value of the claim fell below the statutory threshold does not, in our opinion, justify the finding of the majority in paragraph 27 of the judgment, namely that the time that elapsed in the proceedings before the Supreme Court ought not to be taken into consideration as that appeal was rejected on procedural grounds and thus lacked any prospect of success. The underlying aim of the reasonable-time requirement is that parties to proceedings should not be left in a state of uncertainty about the outcome of their case for too long. If a party is dissatisfied with the judgments of the domestic court at first instance or at an intermediate level and burdens the higher national court with an appeal, that party should not in addition have the benefit of reasoning by our Court baldly stating that it will not take into account the last period and the extra level of jurisdiction involved. In the personal perception of the applicant he apparently had to wait for the final outcome of his case at national level from the day he started the civil proceedings until the day the decision of the Supreme Court was served on him. So it should come as no surprise to him that our Court should take that whole period into account when deciding whether or not the applicant was left in a state of uncertainty for too long.

The position may be different if, and only if, an applicant wishes to pursue further domestic remedies but has genuine reason to doubt their effectiveness. In such a case it is not unacceptable for the applicant – in order not to run the risk that his application will be rejected under the six-month rule or under the rule on non-exhaustion of domestic remedies – to lodge an application before embarking on the further national remedy, as long as he informs our Court accordingly. In this particular case the appeal was lodged on 20 June 2003, whereas the application to the Court was brought four days later, on 24 June 2003.

We are fully aware that, according to our case-law, an applicant who brings an unnecessary or inappropriate appeal and then waits until the final decision before lodging an application with the Court faces the danger that his application will be declared inadmissible as out of time. But that is a different matter. In the case at hand the applicant brought an appeal at national level and at (almost) the same time he lodged an application with

the Court. That made his case admissible as far as the six-month rule is concerned. On a substantive level, however, we cannot help feeling that the applicant wants to have it both ways: that is, proceedings before the Court running in parallel with the domestic proceedings. We consider that, in assessing the length of the proceedings for the purposes of Article 6 of the Convention, the total length of the proceedings at all domestic levels of jurisdiction should be taken into account in such a case.

As far as the reasonableness of the total length of proceedings is concerned, we are not convinced that in the particular circumstances of the case – even taking into account the interests at stake – a total period of five years, seven months and twenty days at three levels of jurisdiction is excessive. Moreover, it does not appear that it is only the respondent State which can be blamed for the time that elapsed. One may query whether the applicant, who, before the actual hearing could take place, filed preliminary submissions in which he modified his claim as regards interest, and on one occasion reduced his claim, had sufficiently prepared his case when he went to court in the first place.