



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

THIRD SECTION

CASE OF SIMONČIČ v. SLOVENIA

(Application no. 7351/04)

JUDGMENT

STRASBOURG

18 January 2011

FINAL

18/04/2011

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

In the case of Simončič 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 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 7351/04) 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 two Slovenian nationals, Ms Silvana Simončič and Ms Petra Simončič (“the applicants”), on 4 February 2004.

2. The applicants were represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent.

3. The applicants alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which they were a party was excessive. In substance, they also complained that there was no effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 23 February 2009 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Under the provisions of Article 29 § 1 of the Convention it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicants were born in 1956 and 1982 and live in Maribor.

6. On 10 March 1997 the applicants instituted civil proceedings before the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 8,202.697 Slovenian tolars (SIT, approximately 34,000 euros) for the death of a family member in a car accident.

7. Between 25 August 1997 and 6 March 2000 the applicants lodged fourteen preliminary written submissions and requests that a date be set for a hearing.

8. On 7 April 2000 a hearing was held and the first-instance court delivered a partial judgement. All three defending parties appealed.

9. On 27 September 2001 the Celje Higher Court (*Višje sodišče v Celju*) delivered a judgment upholding the appeal in part. An appeal on points of law was lodged against the rejected part of the appeal by one of the defending parties.

10. On 16 December 2004 the Supreme Court (*Vrhovno sodišče*) rejected the appeal on points of law and the proceedings continued before the first-instance court.

11. On 19 September 2005 the Celje District Court delivered a judgment upholding the applicants' claim in part. An appeal was lodged.

12. On 7 February 2007 the Celje Higher Court issued a judgment upholding the appeal in part. An appeal on points of law was lodged.

13. On 7 June 2007 the Supreme Court upheld the appeal on points of law in part and changed the second-instance judgment. The judgment was served on the applicants on 29 June 2007.

THE LAW

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

14. The applicants complained about the excessive length of the proceedings. They 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...”

15. In substance, the applicants further complained that the remedies available for excessively lengthy legal 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

16. The Government pleaded non-exhaustion of domestic remedies.

17. The applicants contested that argument, claiming that the remedies available were not effective.

18. The Court notes that the present case concerns proceedings which were “finally resolved” within less than two months after 1 January 2007, when the new legislation providing remedies for the length of proceedings (“the 2006 Act”) became operational, and have continued before the Supreme Court.

19. As far as the part of the proceedings before the second-instance court is concerned, the Court notes that the second-instance judgment was delivered on 7 February 2007 (see paragraph 12 above). The present application is in this part thus similar to the case of *Maksimovič v. Slovenia* (no. 28662/05, 22 June 2010). In that case the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicants' disposal were ineffective (*ibid.*, §§ 21–24).

20. As regards the proceedings before the Supreme Court, the Court found in *Lesjak v. Slovenia* (no. 33946/03, 21 July 2009, §§ 45–46 and § 55) that the remedies under the 2006 Act before the Supreme Court were insufficient.

21. The Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish the present case from the above mentioned cases.

22. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

23. The period to be taken into consideration began on 10 March 1997, the day the applicants instituted proceedings before the Celje District Court, and ended on 29 June 2007, the day the Supreme Court judgment was served on the applicants. It therefore lasted ten years and three months at three levels of jurisdiction.

24. The Court reiterates that 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

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

2. *Article 13*

27. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 for a case to be heard within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In view of its findings concerning the exhaustion of domestic remedies (see paragraphs 21-23 above) and having regard to the fact that the arguments put forward by the Government have already been rejected in the cases of *Maksimovič v. Slovenia* (cited above, §§ 29–30), and *Lesjak*, (cited above, §§ 66-67), the Court finds 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 applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed 14,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested the claim.

31. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it finally awards them jointly EUR 6,400 under that head.

B. Costs and expenses

32. The applicants also claimed EUR 1,364 for costs and expenses incurred in the proceedings before the Court.

33. The Government did not comment on the applicants' claim.

34. 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. The Court considers it reasonable to award the applicants jointly the sum of EUR 1,000 under this head.

C. Default interest

35. 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 UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay jointly to the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) EUR 6,400 (six thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, 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* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President