



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

FIFTH SECTION

CASE OF JAMA v. SLOVENIA

(Application no. 48163/08)

JUDGMENT

STRASBOURG

19 July 2012

FINAL

19/10/2012

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

In the case of Jama v. Slovenia,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power-Forde,

Angelika Nußberger,

André Potocki, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 48163/08) 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 Vinko Jama (“the applicant”), on 18 September 2008. In the course of the proceedings, the applicant died. His daughter, Marija Preželj, declared that she wished to pursue his application before the Court.

2. The applicant was represented by Mr Z. Korenčan, a lawyer practising in Ljubljana. The Slovenian Government (“the Government”) were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

3. On 7 April 2011 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1914 and lived in Ljubljana. He died in 2008.

5. On 1 September 1970 a decision by which the applicant’s house was expropriated in favour of the Municipality of Ljubljana became final.

6. In 1971, the municipality instituted non-contentious court proceedings to determine the amount of compensation due for the expropriated property. The applicant was a party to those proceedings.

7. By 1988, the first-instance court had ruled on the matter four times due to three remittals of the case by the second-instance court. The last judgment of the first-instance court, issued on 15 July 1988, was quashed by the Ljubljana Higher Court on 2 March 1989. The latter found that the facts had been insufficiently established. It ordered a re-examination of the case by the first-instance court.

8. In 1989 the proceedings were suspended pending the outcome of another set of proceedings in which the applicant challenged the validity of the expropriation. After a series of hearings cancelled at the request of the applicant, who maintained that other related sets of proceedings were still pending, the court again suspended the present set of proceedings. At a hearing on 5 April 2004 the applicant's daughter, who was representing the applicant in the proceedings, informed the court that the denationalisation proceedings no. UE 351-307/93 concerning the real estate, apparently comprising the house in question and the land on which it was situated, were still ongoing. In September 2004 a hearing was cancelled as the case was being transferred to another judge. The latter took over the case in December 2005.

9. Hearings were held on 30 March and 20 April 2006. At a hearing of 8 June 2006 the applicant submitted, *inter alia*, that his claim for compensation with respect to the denationalisation of the same property was still pending before the Administrative Court.

10. On 7 June 2006 the applicant lodged an application with the Court, complaining of a violation of his right to trial within a reasonable time. On 11 December 2007 the Court declared the application inadmissible, finding that the applicant had failed to exhaust the remedies available under the Act on the Protection of the Right to a Trial without Undue Delay (*Jama v. Slovenia* (dec.), no. 29978/06).

11. In the meantime, at the hearing of 14 November 2007, the Ljubljana Local Court established that the proceedings concerning compensation with respect to the denationalisation of the property were pending before the Supreme Court. On 25 February 2008 the latter proceedings were terminated with a decision by which the applicant received compensation comprising state certificates for the nationalised land. His request for denationalisation of the house situated on that land was rejected.

12. On 21 February 2008 the applicant lodged a supervisory appeal with the Ljubljana Local Court. On 13 March 2008 the court informed the applicant that a hearing had been scheduled in his case.

13. At the hearing of 10 April 2008 the court established that the termination of the denationalisation proceedings had made it possible to continue the present set of proceedings concerning compensation for the expropriated house. The court appointed an expert in construction to prepare a report on the matter.

14. On 19 September 2008 the court issued a decision setting out the questions which the expert was requested to examine.

15. In the meantime, on 29 July 2008, the applicant lodged a supervisory appeal asking the court to inform him of the date on which the proceedings would be terminated. On 22 August 2008 the court explained to the applicant that an expert had been appointed in order to prepare a report in the case.

16. On 1 September 2008 the applicant lodged a motion for a deadline.

17. On 19 October 2008 the applicant died at the age of 94. Subsequently, his daughter, Mrs M. Preželj, expressed the wish to continue the proceedings before the Court initiated by him.

18. The expert, who had been hospitalised and had undergone heart surgery in the meantime, submitted his report on 25 March 2010.

19. On 13 January 2011 the court held a hearing and decided to appoint a new expert. At that hearing the court also requested the applicant's representative to inform the court of the applicant's successors. On 24 February 2011 the representative submitted the requested documents. The inheritance decision of 7 May 2010 showed that the applicant's daughter, M. Preželj, had been named by the applicant as the only person to manage his estate and inherit his property after his death. She was also appointed as an executor of the will and requested to take over all the applicant's pending proceedings concerning the denationalization of and compensation for the expropriated house. Three remaining next-of-kin were given a certain share in accordance with inheritance law. The applicant's representative was now his daughter's representative in the proceedings.

20. On 6 June 2011 the applicant's daughter's representative lodged a supervisory appeal complaining about the delays in the proceedings and pointing out that he had received no reply to the motion for a deadline.

21. On 8 June 2011 the applicant's daughter's representative submitted pleadings in which he argued that there had been no reason for the other successors to enter the proceedings, as the power of attorney given to him by the applicant had not been contested by any of them. In addition, he argued that by virtue of the inheritance decision the applicant's daughter was authorised to take part in the pending proceedings concerning the applicant's property and to bring them to an end.

22. On 1 July 2011 the President of the Ljubljana Local Court sent the applicant's daughter's representative a report outlining the major events that had occurred in the proceedings. It was noted in the report that the judge in the case had instructed her assistant lawyer to appoint a new expert.

23. On 9 September 2011 the President of the Ljubljana Higher Court sent a letter to the applicant's daughter's representative in which he noted that the motion for a deadline of 1 September 2008 had been referred to him only three days earlier. He further informed him that the motion had been granted and that the first-instance judge had been instructed to treat this case with priority and to provide him with a progress report every three months.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed for a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

25. Section 3 of the 2006 Act provides for two remedies to expedite pending proceedings – a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) – and, after the case has been finally resolved, for a claim for just satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*). The “final resolution” of the case in principle refers to the final decision against which no ordinary appeal lies; that would normally be the first, or if an appeal has been lodged, a second-instance court’s decision. Moreover, the amount which can be awarded for non-pecuniary damage sustained as a result of the excessive length of the proceedings in each finally resolved case cannot exceed 5,000 euros (EUR).

26. For a more detailed presentation of the relevant domestic law see *Žunič v. Slovenia*, (dec.) no. 24342/04, §§ 16-26, 18 October 2007, and *Žurej v. Slovenia* (dec.), no. 10386/03, 16 march 2010.

THE LAW

I. AS TO THE *LOCUS STANDI* OF MRS M. PREŽELJ

27. The Court notes at the outset that the applicant died on 19 October 2008, after the lodging of his application, while the case was pending before the court. His daughter, Mrs M Preželj, who is also his heir, informed the Court that she wished to pursue his application.

28. The Court points out that in various cases where applicants have died in the course of the proceedings it has taken into account the wishes of their heirs or close members of their families to pursue the proceedings before the Court (see, for example, *X. v. France*, Series A no. 234-C, p. 89, § 26, and *Kveder v. Slovenia*, no. 55062/00, §§ 59-64, 9 March 2006). It sees no reason to reach a different conclusion in the present case and therefore accepts that the applicant’s daughter, Mrs M Preželj, can pursue the application initially brought by him.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in 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 ...”

A. Admissibility

30. The Government raised an objection, arguing that the applicant had not exhausted the domestic remedies available to him. The Court considers that the question whether the requirement that an applicant must exhaust domestic remedies has been satisfied in the instant case is closely linked to the complaint concerning the existence of an effective remedy within the meaning of Article 13 of the Convention. It therefore considers that this objection raised by the Government under Article 6 § 1 of the Convention should be joined to the merits of the complaint under Article 13 of the Convention. It further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The applicant’s daughter, who after his death took over the proceedings, argued that none of the facts concerning the applicant’s behaviour referred to by the Government had contributed to the length of the proceedings in any significant way. She also argued that the fact that there were other proceedings simultaneously pending should not justify the delays, as there was nothing preventing the domestic court from deciding on the compensation to be awarded for the expropriated house.

32. The Government argued that the proceedings had been delayed until May 2004 at the applicant’s request. The Government furthermore argued that in the non-contentious proceedings the court had not been in a position to decide on the applicant’s claim until the proceedings concerning the denationalisation of the same real-estate had been terminated. As soon as the latter proceedings had been terminated, the court, without receiving any notification from the applicant, had scheduled a hearing for 10 April 2008.

33. 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 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).

34. It notes that the period to be taken into consideration began on 28 June 1994, when the Convention entered into force with respect to Slovenia. As regards the end of the relevant period, the Court notes that the applicant died on 19 October 2008. It is true that the proceedings continued after his death, with Mrs M. Preželj stepping in to replace him. However, the Court observes that Mrs M. Preželj has not introduced an autonomous complaint concerning a potential violation of her right to trial within a reasonable time with respect to the part of the proceedings in which she participated as successor to Mr Vinko Jama, but merely successfully requested to pursue the application lodged by the deceased (see paragraphs 27-28 above, and, *mutatis mutandis*, *Sophia Andreou v. Turkey* (just satisfaction), no. 18360/91, § 33, 22 June 2010). Under these circumstances, the Court cannot have regard to the length of the proceeding after the applicant's demise. The period in question therefore ended on 19 October 2008. It thus lasted fourteen years and five months. During the period under consideration the case was pending at one level of jurisdiction.

35. In assessing the reasonableness of the time that elapsed after the Convention came into force with respect to Slovenia, account must be taken of the state of proceedings at the time. The Court notes in this connection that at the relevant time the proceedings had already been pending for twenty-three years. The applicant, who died thirty-seven years after the start of the proceedings, did not see his claim for damages for his expropriated house determined by a final court decision.

36. The Court understands from the facts as submitted by the parties that the main reason for the delay in the proceedings during the period within the Court's jurisdiction *ratione temporis* was the fact that the domestic court was waiting for another set of proceedings which concerned denationalisation of the same real-estate, apparently comprising the land and the respective house, to be concluded. It is not the Court's task to assess whether the suspension of the impugned non-contentious court proceedings was in fact necessary. It will limit itself to observing that this obviously was the opinion of the domestic court (see paragraphs 13 and 32 above) as well as the Government and that the applicant did not object to it (see paragraph 8 above). Having said that, the Court notes that the Government have merely relied on the fact that the delay in the proceedings in question was due to their suspension. They have not shown that the denationalisation proceedings, which were allegedly decisive for the continuation of the impugned non-contentious proceedings and which seem to have lasted over at least fifteen years, were conducted diligently by the courts. It reiterates in this connection that it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of Article 6 § 1 (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, 26 September 1997, § 54, *Reports of Judgments and Decisions* 1997-VI) and finds that no convincing

arguments have been adduced by the Government to show that the length of the proceedings complained of was reasonable as required by Article 6 § 1 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained under Article 13 of the Convention that the remedies available to him failed to expedite the proceedings and that the 2006 Act was ineffective in practice.

Article 13 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

38. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

39. The applicant's daughter, who took over the proceedings, argued that all the available remedies, namely, the acceleratory remedies, were exhausted in the present case. A compensation claim, however, could not be lodged since there had been no final decision. In her submission, the authorities had not wished to terminate the proceedings, since this would have led to her entitlement to claim compensation for their undue length. Moreover, since there was a limit set for the compensation which could be awarded on account of the undue delays, namely, a maximum of EUR 5,000, after a certain point the authorities could no longer be penalised for their inactivity. The applicant's daughter also maintained that the applicant had actually been deprived of any remedy as the authorities had delayed the proceedings for so long that he had died in the meantime.

40. The Government argued that the applicant had effective remedies at his disposal. They maintained that the claim for just satisfaction under the 2006 Act would be available to the applicant through his successor after the termination of the proceedings. They pointed out that the rule which allowed for compensation to be claimed after a case had been finally

resolved was part of the successful system by which the State was combating the problem of unreasonable delays in court proceedings.

41. As regards the acceleratory remedies, the Government argued that there was no obligation on the judge dealing with the applicant's supervisory appeal to set a deadline for the termination of the proceedings. As regards the applicant's motion for a deadline, the Government regretted that it had not been promptly sent to the competent decision-making body, but also emphasized that this had no bearing on the applicant's access to a just satisfaction claim. Furthermore, the Government argued that the applicant had failed to urge the local court to send the motion when faced with no reply.

2. *The Court's assessment*

(a) **Relevant principles and previous findings of the Court concerning effectiveness of remedies under the 2006 Act**

42. 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 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

43. The Court further reiterates that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (*ibid.*, § 159). The same is necessarily true of the concept of an "effective" remedy within the meaning of Article 35 § 1 (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

44. In the case of *Grzinčič v. Slovenia* (no. 26867/02, 3 May 2007), followed by the decision in *Korenjak v. Slovenia* ((dec.) no. 463/03, 15 May 2007), the Court, basing its conclusions on an assessment of the legislative provisions of the 2006 Act, found that the aggregate of remedies provided for in cases of excessively long proceedings pending at first and second instance was effective in the sense that the remedies were in principle capable both of preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred (*Grzinčič*, cited above, § 98).

45. In a subsequent case, *Žunič v. Slovenia*, (dec.) no. 24342/04, 18 October 2007), the Court specified that it was indispensable that the proceedings, which had already lasted a long time, were finally resolved particularly promptly following the exhaustion of the

accelerative remedies (ibid. § 50). Moreover, it emphasized that the national authorities should ensure that the aggrieved party had prompt access to the compensatory remedy once he or she has made use of the accelerative remedies. The Court declared the application in *Žunič* inadmissible for being premature, finding that no more than six months had elapsed since the applicant had exhausted the acceleratory remedies and that progress had been made in dealing with his claim. It however instructed the authorities to conclude the proceedings within no more than a year (ibid., §54).

(b) The present case

46. The Court observes that the applicant's first application, in which he complained of the excessive length of the same set of proceedings, was rejected as inadmissible by the Court in the decision of 11 December 2007. Noting that the proceedings had lasted, within the Court's jurisdiction *ratione temporis*, more than thirteen years by then and acknowledging that in view of the applicant's age the proceedings were of undeniable importance to him, the Court found that the applicant had failed to avail himself of a supervisory appeal, which had been at his immediate disposal since the implementation of the 2006 Act. The Court noted that if the applicant had availed himself of a supervisory appeal, he would either have had the proceedings accelerated or would have been able to lodge a motion for a deadline and, ultimately, a claim for just satisfaction.

47. Further to the above-mentioned decision by the Court the applicant lodged two supervisory appeals and a motion for a deadline. The Court is struck by the fact that despite the use of the acceleratory remedies provided by the 2006 Act, no significant progress was made in the case, which is still pending at first instance. The Court notes that as a consequence of the system provided by the 2006 Act, whereby access to a compensation claim is dependant on the termination of the proceedings, the applicant and now his successor have never been able to claim just satisfaction for the undue delay.

48. Lastly, the Court notes the applicant's daughter's argument concerning the statutory limitation on the amount of compensation which can be awarded for non-pecuniary damage sustained as a result of the excessive length of proceedings, that is, EUR 5,000. Indeed, in a situation where the proceedings have lasted a very long time and have moreover ground to a halt despite the use of acceleratory remedies, the compensatory remedy may not provide for a sufficient redress due to the aforementioned limitation.

49. In view of the above, the Court finds that both of the avenues referred to in its decision of 11 December 2007 have been shown not to have been effective in the present case and that the applicant and now his successor have not been afforded prompt access to the compensation claim with respect to the damages sustained due to the unreasonable length of the proceedings. Accordingly, the Court concludes that there has been a

violation of Article 13 of the Convention on account of the lack of an effective remedy. In view of this conclusion, it also rejects the Government's objection concerning the exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

52. The Government contested the claim.

53. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 12,000 under that head.

B. Costs and expenses

54. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court, consisting mostly of lawyer's fees.

55. The Government contested the claim, submitting that the applicant had failed to itemise and substantiate it.

56. 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 reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 77, Series A no. 316-B, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 98, ECHR 1999-IV). In the present case, however, the applicant did not justify his claim by reference to the statutory domestic scale nor did he submit any supporting documents or detailed information which would show that the costs claimed were actually and necessarily incurred (see *S.I. v. Slovenia*, no. 45082/05, § 87, 13 October 2011). The Court therefore rejects this claim.

C. Default interest

57. The Court considers it appropriate that the default interest rate 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. *Joins to the merits* the Government's objection concerning the exhaustion of domestic remedies and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President