



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

FIFTH SECTION

CASE OF BARIŠIČ v. SLOVENIA

(Application no. 32600/05)

JUDGMENT

*This version was rectified under Rule 81 of the Rules of Court
on 21 March 2013*

STRASBOURG

18 October 2012

FINAL

18/01/2013

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

In the case of Barišič 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 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 32600/05) 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 Bojan Barišič (“the applicant”), on 9 September 2005.

2. The applicant was represented by Odvetniška Družba Čeferin, a law firm from Grosuplje. The Slovenian Government (“the Government”) were represented by their Agent.

3. The applicant complained, *inter alia*, under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he was a party was excessive. In substance, he 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 7 May 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant was born in 1950 and lives in Sežana.

6. The applicant, a retired captain, worked for International Shipping and Chartering Ltd. (*Splošna plovba p.o.*), a State-owned company, from 1971 until 1974 and from 1981 until 12 September 1992. On 13 September 1992 the applicant concluded a temporary contract of work, renewed several times until 11 February 1999, with the Genshipping Corporation, Monrovia, Liberia, one of the parent companies of International Shipping and Chartering Ltd. In 2000 the applicant retired due to his disability and back pain.

B. First set of proceedings (Pd 364/2003)

7. On 13 August 2001 the applicant instituted proceedings before the Koper Labour Court against International Shipping and Chartering Ltd. and the Genshipping Corporation, seeking recognition of his permanent work status since 12 September 1992, his reinstatement and a pecuniary award, *inter alia*, for the loss of wages.

8. After two hearings, on 9 December 2002 the Koper Labour Court dismissed the applicant's claim. Both parties appealed.

9. On 27 November 2003 the Higher Labour and Social Court upheld both appeals in part and remitted the case for re-examination. The applicant lodged an appeal on points of law against the rejected part of the appeal.

10. On 1 February 2005 the Supreme Court dismissed the applicant's appeal on points of law. He lodged a constitutional complaint.

11. In the framework of the remitted proceedings, on 9 September 2005 the Koper Labour Court dismissed the applicant's claim. He lodged an appeal.

12. On 31 August 2006 the second-instance court upheld the applicant's appeal in part and amended the first-instance decision. He lodged an appeal on points of law.

13. On 9 January 2007 the Supreme Court rendered a decision rejecting the applicant's appeal. He lodged a constitutional complaint.

14. On 27 March 2007 the Constitutional Court dismissed the applicant's constitutional complaint (see paragraph 10 above).

15. On 4 December 2007 the Constitutional Court dismissed the second constitutional complaint (see paragraph 13 above).

C. Second set of proceedings (Pd 126/2003)

16. On 14 April 2003 the applicant instituted proceedings against the Genshipping Corporation and against International Shipping and Chartering Ltd., seeking a declaration of employment since 2003, social cover and payment of salaries due since 2002. He also requested an interlocutory injunction.

17. On 22 April 2003 the Koper Labour Court dismissed the applicant's request for an interlocutory injunction concerning the termination of his contract and social cover. He lodged an appeal against this decision which was rejected on 15 May 2003.

18. After three hearings, on 26 October 2005 the Koper Labour Court dismissed his claim. He lodged an appeal.

19. On 11 January 2007 the second-instance court rejected his appeal. He lodged an appeal on points of law.

20. On 8 November 2008 the Supreme Court rejected the appeal. He lodged a constitutional complaint on 9 February 2009 and the proceedings appear to be still pending.

D. Third set of proceedings (Ps 495/2001)

21. On 8 May 2001 the applicant instituted proceedings before the Ljubljana Labour and Social Court against a decision of the Pension and Invalidity Insurance Fund.

22. Between 14 July 2003 and 13 July 2006 six hearings were held and two experts appointed.

23. At the last hearing the first-instance court delivered a judgment upholding the applicant's claim in part. The defendant appealed.

24. On 6 March 2007 the Higher Labour and Social Court upheld the applicant's appeal in part and amended the first-instance judgment.

E. Fourth set of proceedings (Ps 1417/2001)

25. On 25 October 2001 the applicant instituted proceedings before the Ljubljana Labour and Social Court challenging a decision of the Medical Insurance Fund issued on 20 September 2001.

26. On 30 October 2001 the applicant amended his claim by also challenging a decision of the Medical Insurance Fund issued on 24 September 2001.

27. On 8 November 2005 the first-instance court decided that the proceedings should be separated (reference number of the new set of proceedings Ps 2973/2005).

28. On 8 March 2007 the first-instance judgment was rendered and his request was upheld in part. The applicant appealed.

29. On 18 November 2007 the Ljubljana Higher Labour and Social Court upheld his appeal in part and modified the first-instance judgment.

F. Fifth set of proceedings (Ps 2973/2005)

30. Following the decision of 8 November 2005 (see paragraph 27 above) the Ljubljana Labour and Social Court issued a judgment on 7 May 2008. The applicant's request was upheld in part and the remainder remitted for re-examination before the Medical Insurance Fund. The defending party appealed.

31. On 27 May 2009 the Ljubljana Higher Labour and Social Court upheld the appeal and remitted the case for re-examination before the first-instance. The proceedings appear to be still pending.

G. Sixth set of proceedings

32. On 24 December 2004 the applicant instituted proceedings before the Ljubljana Labour and Social Court challenging a decision concerning his unemployment benefits and payment of social security.

33. On 8 May 2005 the latter rendered a judgment, dismissing the applicant's request. This decision was served on the applicant on 7 June 2006. He did not appeal.

H. Seventh set of proceedings

34. On 4 April 2006 the applicant started proceedings against the Pension and Invalidity Insurance Fund challenging a decision on payment of his salaries.

35. On 12 May 2006 the Labour and Social Court rejected the applicant's claim. This decision was served on the applicant on 20 June 2006. He did not appeal.

II. RELEVANT DOMESTIC LAW

36. For relevant domestic law see *Nežirović v. Slovenia* ((dec.) no. 16400/06, 25 November 2008).

THE LAW

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

37. 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 ...”

38. 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

1. First, second, fourth, fifth, sixth and seventh set of proceedings

39. As to the first set of proceedings the Court notes that the period to be taken into consideration started on 13 August 2001 and ended on 4 December 2007 (see paragraphs 7-15 above). It therefore lasted for six years and four months at four levels of jurisdiction, which cannot be considered as excessive (see *Gavranič v. Slovenia*, no. 33573/02, 23 November 2006).

40. As to the second set of proceedings the Court notes that the period to be taken into consideration started on 14 April 2003. In 2009, when the application was communicated to the Government, the proceedings were pending before the Constitutional Court (see paragraphs 16-20). The Court finds that seven years at four levels of jurisdiction can still be considered as reasonable (*ibid.*).

41. As to the sixth and seventh set of proceedings the Court notes that the proceedings lasted for less than two years at one level of jurisdiction in both cases (see paragraphs 32-35 above). Noting that no excessive delay incurred in the proceedings, the Court considers that their length was not unreasonable.

42. The Court considers that complaints concerning the length of the above mentioned sets of the proceedings is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the

Convention. As to the complaint under Article 13 the Court finds that the applicant did not have an arguable claim that his right to an effective remedy within the meaning of Article 13 was violated. Accordingly, this complaint is manifestly ill-founded and must be declared inadmissible in the meaning of Article 35 §§ 3 and 4 of the Convention.

43. As to the fourth and fifth set of proceedings (see paragraphs 25-31 above) the Court notes that the applicant failed to exhaust the available domestic remedies under the Act on the Protection of the Right to a Trial without undue Delay (“the 2006 Act”). Following the Court’s findings in the cases *Grzinčič v. Slovenia* (no. 26867/02, § 110, 3 May 2007) and *Nezirovič v. Slovenia* (no. 16400/06, (dec.), 18 November 2008 §§ 27-42) the complaints under Articles 6 and 13 must be declared inadmissible in accordance with Article 35 §§ 1 and Article 35 §§ 3 and 4 of the Convention, respectively.

2. Third set of proceedings

44. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor they are inadmissible on any other grounds (see *Maksimovič v. Slovenia*, no. 28662/05, 22 June 2010, §§ 21-23). They must therefore be declared admissible.

B. Merits

1. Article 6

45. As to the third set of proceedings the period to be taken in consideration started on 8 May 2001 and ended on 6 March 2007 (see paragraphs 21-24 above). It therefore lasted for five years and ten months at two levels of jurisdiction.

46. 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).

47. Having regard to the circumstances of the case and the Court’s case-law on the subject (see for example *Bastič v. Slovenia*, no. 75809/01, 6 April 2006, §§ 16-18), the Court considers that the length of these proceedings was excessive and failed to meet the “reasonable time” requirement.

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

2. Article 13

48. 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).

49. In view of its findings in the case *Maksimovič v. Slovenia* (see paragraph 44 above, §§ 29–30), the Court finds that in the present set of proceedings 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant complained under Article 6 of the Convention that the courts wrongly established the elements of facts and that adequate judicial protection was not afforded to him. He further complained that as a consequence his rights under Article 1 of Protocol No. 1 have been breached since his pension rights had been diminished.

51. As to the first set of labour proceedings the Court finds that, having examined the above complaints in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the Articles relied on by the applicants. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

52. As to the complaints concerning the remaining sets of proceedings the Court notes that the applicant either did not lodge constitutional complaints or the Constitutional Court has not yet decided on the complaint. This part of the application must therefore be declared inadmissible for non-exhaustion of domestic remedies and rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 16,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government contested the claim.

56. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

57. The applicant also claimed EUR 6,000 for the costs and expenses incurred before the domestic courts.

58. The Court notes that although the applicant was reminded by the Court of the requirements concerning just satisfaction claims set out in Rule 60 of the Rules of the Court, he had not itemised or substantiated his claims (see *S.I. v. Slovenia*, no. 45082/05, 13 October 2011, § 87). The Court therefore makes no award under this head.

C. Default interest

59. 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

1. *Declares* unanimously the complaint concerning the excessive length of the third¹ set of labour proceedings and the effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 and Article 13² of the Convention;

¹ Rectified on 21 March 2013 : the text was "second"

² The words “and Article 13” inserted through rectification of 21 March 2013

3. *Holds* by six votes to one
 - (a) that the respondent State is to pay within three months EUR 4,000 (four 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;
4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE

I disagree with the majority's finding of a violation of the applicant's right to a trial within 'reasonable time'. Although, increasingly, it has been the practice of this Court to find violations of Article 6 § 1 in cases involving length of proceedings that are similar to the instant one, it is a practice which I can neither condone nor endorse (see *Gheorghe and Maria Mihaela Dumitrescu v. Romania*, no. 6373, 29 July 2008; *Gouttard v. France*, no. 57435/08, 30 June 2011; *Yuryeva and Yuryev v. Ukraine*, no. 3431/03, 31 July 2012). That is not to say that I accept that delays are endemic in every legal system and have to be tolerated. I do not. To my mind, however, a stricter application of the principles already developed in the Court's case law is required.

The Court's earlier approach to such 'unreasonable time' claims was to conduct a careful and more rigorous analysis of what, precisely, had taken place as the litigation progressed through the domestic courts in order to see whether the responsibility lay with the respondent state for a violation of a 'fundamental' Convention right. This approach can be found in cases, such as, *Buchholz v. Germany*, 6 May 1981, Series A no. 42; *Malicka-Wasowska v. Poland* (dec.), no. 41413/98, 5 April 2001; and *Potas v. Poland* (dec.), no. 42615/98, 1 October 2002. On several occasions, after such analysis, complaints have been declared inadmissible notwithstanding that the duration involved was similar to or, at times, far greater than, the one at issue in the present case.

Latterly, there has been a growing tendency to take a 'broad brush' approach to 'length of proceedings' claims—to look at the overall period of proceedings and, with very little analysis of what, in fact, transpired at national level, to conclude that a given period was 'unreasonable'. Such an approach has been adopted in the instant case. One may argue that time and resources prevent this Court from conducting a closer scrutiny of every claim and that a summary approach to 'length of proceedings' claims is, therefore, justified. I disagree and am unable to accept this approach for several reasons.

Firstly, to find that a State has breached an international treaty is a serious matter. Every case stands alone and a prior and detailed examination of all the relevant events that occurred during the course of the litigation is an essential element in any judgment that censures a State for violating an individual's fundamental human right. The case law reiterates that the reasonableness of the length of proceedings must be assessed "in the light of the circumstances of the case". To my mind, the actual circumstances of a case which takes several years to litigate at national level, cannot, quite

frankly, be analysed or appreciated in a few short lines. Absent an actual examination of what transpired during the relevant years, I cannot conclude that the respondent State has violated Article 6 §1 of the Convention.

Secondly, delays or adjournments are not necessarily, in themselves, indicative of a system's failure. In assessing the reasonableness of the overall length of proceedings, the *cause* of each delay must be ascertained before laying responsibility therefore at the door of a respondent State. A witness may be unavailable, another may fail to appear; additional expert evidence might be required; preliminary or interlocutory motions may have to be heard; appeals may have to be lodged and remittal orders may be required; a judge may be unavailable because an earlier case exceeded its estimated time. All of these realities must be factored in to this Court's assessment and only where there is an obvious tolerance of unreasonable delays on the part of the State should a violation be found. It also has to be remembered that sometimes it suits a party to litigation to simply 'drag his heels' or to 'let matters lie'. I accept that a State is responsible for organising an effective and efficient judicial system. However, I also take the view that individuals are responsible for themselves and must bear the consequences of their own freely chosen action or inaction.

Thirdly, while the factors to which reference should be made when assessing the reasonableness of the length of proceedings are clear (see *Frydlender v. France* [GC], no. 30979/96, ECHR 2000-VII) a far stricter analysis of each factor should be conducted before a violation is found. The complexity of the matter, the conduct of the relevant parties and the importance for the applicant of the issue at stake should be weighed in the balance and considered, carefully. As an international body, this Court should be cautious in declaring that a case heard at national level was not complex. Such a matter is often difficult to assess when far removed from the 'cut and thrust' of litigation. The conduct of the parties should be scrutinized, strictly, and, to my mind, an applicant should, generally, have made at least some effort to advance the proceedings at national level. When it comes to what was 'at stake', the facts, to my mind, should disclose that the delay was such as to bring the matter 'within the zone' of procedural injustice from the applicant's perspective. The administration of justice is, at the end of the day, what courts are all about.

Applicants are entitled to have a trial within reasonable time, not within perfect time. Absent a detailed consideration of what, in fact, transpired at national level and in the light of such facts as can be ascertained from the judgment, I cannot agree that there has been any violation of the Convention.