



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

FIFTH SECTION

CASE OF ZABOVNIK v. SLOVENIA

(Applications nos. 17596/06 and 17608/06)

JUDGMENT

STRASBOURG

18 October 2012

FINAL

18/03/2013

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

In the case of Zabovnik 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 two applications (nos. 17596/06 and 17608/06) 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 Helena Zabovnik and Mr Božidar Zabovnik (“the applicants”), on 23 March 2006.

2. The applicants were represented by Mr Z. Lipej, a lawyer practising in Medvode. 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 parties was excessive. They also complained under Article 13 of the Convention of the lack of an effective domestic remedy in this respect.

4. On 12 May 2010 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1946 and 1940 respectively. They are husband and wife and live in Velenje.

6. On 26 January 2001 the applicants instituted proceedings before the Ljubljana District Court seeking compensation for damages sustained in a car accident.

7. Between 6 May 2003 and 5 May 2005 three hearings were held and one expert appointed. At the last hearing the first-instance court rendered a judgment rejecting the applicants' request. They appealed.

8. On 15 February 2006 the Ljubljana Higher Court rejected the appeal. The applicants lodged an appeal on points of law.

9. On 6 November 2008 the Supreme Court rendered a decision and remitted the case for re-examination before the first-instance. The decision was served on the applicants' representative on 5 December 2008.

10. On 19 December 2008 a notice of the forthcoming hearing was sent to the applicants.

11. The hearing was held on 2 February 2009 and the first-instance court rendered a judgment on the same day. The judgment was served on the applicants on 13 March 2009.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. JOINDER

13. Having regard to the fact that the application concern the same set of proceedings, the Court finds it appropriate to join them.

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

14. The applicants complained that the proceedings to which they were a party had been excessively long. 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 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

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

17. The applicants contested those arguments.

18. The Court observes that on 1 January 2007, when the Act on the Protection of the Right to a Trial without Undue Delay (“the 2006 Act”) became operational, the proceedings were pending before the Supreme Court. The Supreme Court issued a decision on 6 November 2008 and remitted the case for re-examination before the first-instance court. The decision was served on the applicants on 15 November 2008. The proceedings terminated on 2 February 2009, when the first-instance court rendered a judgment.

19. The Court notes that unlike in the case of *Lesjak Robert v. Slovenia* (no. 33946/03, 21 October 2009) the proceedings in the present case were finally resolved on 2 February 2009. After that, the applicants could have claimed compensation for the overall length of proceedings, provided that they had used the acceleratory remedies at first-instance, namely a supervisory appeal and a motion for deadline, in accordance with the procedural rules laid down in the 2006 Act.

20. However, considering that after the remittal by the Supreme Court, the proceedings on first-instance lasted for only two months (see paragraphs 9-11 above) the question that arises in the present case is whether the applicants had a real opportunity to properly exhaust acceleratory remedies in order to be able to claim compensation for the violation of the reasonable time requirement after the final resolution of the proceedings (see *Nezirović v. Slovenia* (dec.), no. 16400/06, § 41, 25 November 2008).

21. In this connection the Court reiterates the judgment in the case of *Maksimovič v. Slovenia* (no. 28662/05, 22 June 2010, §§ 21-23) where it found that the period of three months was not enough for the applicant to have been realistically expected to exhaust the acceleratory remedies.

22. Finding no reason to reach a different conclusion in the present case, the Government’s objection concerning non-exhaustion of domestic remedies should be dismissed.

23. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6

24. The period to be taken into consideration began on 26 January 2001, the day the applicants instituted proceedings before the Ljubljana District Court, and ended on 13 March 2009, the day the Ljubljana District Court's judgment of 2 February 2009 was served on the applicants. It therefore lasted eight years and one month at three levels of jurisdiction.

25. 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).

26. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Kumer v. Slovenia*, no. 77542/01, §§ 17-19, 9 March 2006; *Krašovec v. Slovenia*, no. 77541/01, §§ 17-19, 9 March 2006; *Videmšek v. Slovenia*, no. 75701/01, §§ 17-19, 30 March 2006), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

2. Article 13

28. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In view of its findings in the case *Maksimovič v. Slovenia* (cited above, §§ 29–30), 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

29. 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

30. The applicants claimed 12,518.78 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested the claim.

32. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 3,200 under that head.

B. Costs and expenses

33. The applicants also claimed EUR 2,086.46 for the costs and expenses incurred before the Court.

34. The Court notes that although the applicants' representative 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 these claims. The Court therefore makes no award under this head.

C. Default interest

35. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months EUR 3,200 (three thousand and two hundred 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;

5. *Dismisses* the remainder of the applicants' 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