



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

FIFTH SECTION

CASE OF STOJC v. SLOVENIA

(Application no. 20159/06)

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 Stojc 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. 20159/06) 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 a Slovenian national, Ms Ana Stojc (“the applicant”), on 3 May 2006.

2. The applicant was represented by Ms J. Jazbinšek - Goričan, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive. In substance, she 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 11 February 2009 the President of the 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, on 4 October 2010, the President decided to invite the Government to submit, if they so wish, written observations on the admissibility and merits of the case (Rule 54 § 2 (b) of the Rules).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1930 and lives in Ljubečna.

6. On 14 February 2000 the applicant instituted civil proceedings against her brother before the Ljubljana District Court seeking the reimbursement of costs for taking care of their mother, which in accordance with a signed agreement was a shared responsibility of both.

7. On 8 July 2000 the first-instance court held an opening hearing.

8. On 3 October 2002 a hearing was held and a judgment delivered. The applicant's request was rejected. She appealed.

9. On 22 January 2003 the Ljubljana Higher Court delivered a judgment and remitted the case for re-examination.

10. On 29 May 2003 a hearing was cancelled on the request of the applicant.

11. Between 16 June 2003 and 6 October 2003 two hearings were held. At the last hearing the first-instance court delivered a judgment upholding the applicant's request in part. An appeal was lodged.

12. On 2 March 2005 the Ljubljana Higher Court delivered a judgment upholding the first-instance judgment in part and remitting the question on the amount of interests for re-examination.

13. On 5 July 2005 a hearing was cancelled on the request of the applicant, since the defendant had paid the amount due.

14. On 12 July 2005 the first-instance court issued a decision on partial withdrawal of the claim and on the amount of costs of proceedings. An appeal was lodged.

15. On 6 October 2005 the Ljubljana Higher Court upheld the appeal. The decision was served on the applicant on 10 November 2005.

II. RELEVANT DOMESTIC LAW

16. For relevant domestic law see judgment *Ribič v. Slovenia* (no. 20965/03, 19 October 2010, §19).

THE LAW

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

17. The applicant complained that the proceedings to which she was a party had been excessively long. She 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 ...”

18. 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

19. The Court notes that the present case concerns proceedings that were terminated before the 2006 Act came into force and the effectiveness of remedies, in particular of the “just satisfaction claim” provided by section 25 of the Act on the Protection of the Right to a Trial without undue Delay (“the 2006 Act”), implemented on 1 January 2007. The case is thus similar to the case *Ribič v. Slovenia* (no. 20965/03, 19 October 2010). In that case the Court found that the legal remedies at the applicant’s disposal were ineffective (*ibid.*, §§ 37-42).

20. 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 case.

21. 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

22. The period to be taken into consideration began on 14 February 2000 and ended on 10 November 2005, when the second-instance court’s decision was served on the applicant.

23. 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).

24. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Bastič v. Slovenia*, no. 75809/01, §§ 16-18, 6 April 2006; *Bizjak Jagodič v. Slovenia*, no. 42274/02, §§ 16-18, 6 April 2006 and *Rodič v. Slovenia*, no. 38528/02, §§ 18-20, 27 April 2006) the Court considers that the length of the proceedings, which lasted more than five years and eight months at two levels of jurisdiction was excessive and failed to meet the “reasonable time” requirement.

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

2. Article 13

26. 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).

27. The Court recalls the case of *Ribič v. Slovenia* (see paragraph 19 above) and notes that the Government have not submitted any convincing arguments which would require it to distinguish the present application from the aforementioned case. The Court therefore 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 her right to have her 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 applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested the claim.

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

B. Costs and expenses

32. The applicant also claimed EUR 1,902.72 for costs and expenses incurred in the proceedings before the Court. This claim was supported by itemised list of expenses similar to the lists normally submitted to the courts in domestic proceedings.

33. The Government did not comment on the applicant's 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. 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 a lawyer, the full sum claimed under this head, namely EUR 1,900.

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

1. *Declares* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;
4. *Holds* by six votes to one
 - (a) that the respondent State is to pay within three months, the following amounts:
 - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,900 (one thousand nine hundred 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 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'. In my separate opinion in *Barišič v. Slovenia* (32600/05) I have set out the reasons why I cannot accept the Court's current 'broad brush' approach to 'length of proceedings' claims.

For the reasons set out therein and 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.