



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

FIFTH SECTION

CASE OF RASIEWICZ v. SLOVENIA

(Application no. 40445/06)

JUDGMENT

STRASBOURG

18 October 2012

FINAL

11/02/2013

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

In the case of Rasiewicz 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. 40445/06) 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, Mr Janus Rasiewicz (“the applicant”), on 12 September 2006.

2. The applicant was represented by Mr M. Klep, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent.

3. On 27 May 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 communicate the application under Rule 54 § 2 (b) of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Žalec.

A. First set of proceedings

5. On 21 May 1997 the applicant, employed as a teacher in a music school, instituted proceedings before the Celje Labour Court seeking the annulment of a decision on the classification in a pay grade.

6. On 1 February 2000 the first hearing was held.

7. After two more hearings, on 24 March 2000 the first-instance court delivered a judgment rejecting the applicant's request. He appealed.

8. On 7 December 2001 the Higher Labour and Social Court upheld his appeal and remitted the case for re-examination.

9. On 11 June 2002 the first-instance court delivered a judgment rejecting his request. He appealed.

10. On 26 February 2004 the second instance court rejected his appeal. He lodged an appeal on points of law.

11. On 11 January 2005 the Supreme Court rejected the appeal. He lodged a constitutional complaint.

12. On 17 March 2006 the Constitutional Court rejected the complaint as unsubstantiated. The decision was served on the applicant on 21 March 2006.

B. Second set of proceedings

13. On 7 September 2001 the applicant instituted proceedings before the Celje Labour Court seeking the annulment of a decision on the classification in a pay grade and requesting for the two proceedings to be joined.

14. On 10 December 2002 the first hearing was held. The first-instance court rejected the request for joining the proceedings and delivered a judgment rejecting the applicant's claim. He appealed.

15. On 15 April 2004 the Higher Labour and Social Court rejected his appeal. The judgment was served on the applicant on 28 May 2004.

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 ARTICLE 6 § 1 and 13 OF THE CONVENTION

17. 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 ...”

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. As to the second set of proceedings the Court notes that the proceedings lasted for two years and eight months at two levels of jurisdiction (see paragraphs 13-15 above), which cannot be considered as excessive. The Court considers that complaint concerning the length of the second set of 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 within the meaning of Article 35 §§ 3 and 4 of the Convention.

20. As to the first set of proceedings the Court notes that this part 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 2006 Act, implemented on 1 January 2007. The case is thus similar to the case *Ribič v. Slovenia* (see paragraph 16 above). In that case the Court found that the legal remedies at the applicant’s disposal were ineffective (ibid. §§ 37-42).

21. The Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish this set of proceedings from the above mentioned case.

22. The Court further notes that this complaint 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 21 May 1997 and ended on 21 March 2006, when the Constitutional Court's decision was served on the applicant. It therefore lasted for seven years and ten months at four 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 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).

25. Having examined all the material submitted to it, and having regard to its case-law on the subject (see *Hrustelj v. Slovenia*, no. 75628/01, §§ 18-20, 30 March 2006; *Rogelj v. Slovenia*, no. 21415/02, §§ 63-70, 3 March 2009) the Court considers that 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).

28. The Court recalls the case of *Ribič v. Slovenia* (see paragraphs 16 and 20 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 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

29. The applicant complained under Article 6 of the Convention that the principal of the school classified him in the wrong pay grade. He also

complained that by upholding the principal's decision the domestic courts were biased and the proceedings unfair. He further complained that as a consequence his rights under Article 1 of Protocol No. 1 have been breached since his pension will be lower.

30. Having examined the above complaints, the Court finds, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, that 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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.”

32. The applicant did not submit any claim for just satisfaction although invited to do so. In these circumstances, the Court holds that there is no reason to award any sum under Article 41 of the Convention (see *Ciucci v. Italy*, no. 68345/01, § 33, 1 June 2006).

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the excessive length of the first set of proceedings and lack of an effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Articles 6 § 1 and 13 of the Convention.

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.