



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

FIFTH SECTION

CASE OF DANIJEL PEČNIK v. SLOVENIA

(Application no. 44135/06)

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 Danijel Pečnik 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. 44135/06) 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 Danijel Pečnik (“the applicant”), on 27 September 2006.

2. The applicant was represented by Ms M. Končan Verstovšek, 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 he was a party was excessive. He also complained under Article 13 of the Convention of the lack of an effective domestic remedy in this respect.

4. On 17 January 2011 the application was communicated to the Government under Rule 54 § 2 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Mozirje.

6. On 2 December 2002 the applicant instituted proceedings before the Ljubljana Labour and Social Court challenging a decision rejecting his claim for disability insurance.

7. On 9 June 2005 the first hearing was held and the court delivered a judgment, rejecting the applicant's request in whole. He appealed.

8. On 23 March 2006 the Higher Labour and Social Court upheld the appeal and remitted the case for re-examination.

9. Between 15 June 2006 and 19 October 2006 three hearings were held and the court appointed one expert.

10. On 19 October 2006 the first-instance court delivered a judgment. The defendant appealed.

11. On 1 March 2007 the Higher Labour and Social Court upheld the appeal in part and modified the first-instance judgment. This decision was served on the applicant on 3 April 2007.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

13. 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 ...”

14. 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

15. The Court 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 (see *Maksimović v. Slovenia*,

no. 28662/05, 22 June 2010, §§ 21–24). It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

16. The period to be taken into consideration began on 2 December 2002, the day the applicant instituted proceedings before the Ljubljana Labour and Social Court, and ended on 3 April 2007, the day the Higher Labour and Social Court's judgment of 1 March 2007 was served on the applicant. It therefore lasted four years and four months at two levels of jurisdiction.

17. 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).

18. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Ribič v. Slovenia*, no. 20965/03, §§ 28-33, 19 October 2010; *Cvetrežnik v. Slovenia*, no. 75653/01, §§ 16-18, 30 March 2006; *Pažon v. Slovenia*, no. 17337/02, §§ 16-18, 6 April 2006), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13

20. 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). 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 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested the claim.

24. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,000 under that head.

B. Costs and expenses

25. The applicant also claimed EUR 2,825 for the costs and expenses incurred in the proceedings before the Court. This claim was supported by an itemized list of fees.

26. 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, the Court notes that the applicant’s representative charged EUR 2,380 for drafting the application submitted to the Court. The Court notes the representative doubled his fees due to the representation before an international court, which the Court finds rather unreasonable, since, for example, he was allowed to use the Slovene language before the Court. The Court considers it reasonable to award the applicant EUR 1,000 under that head, plus any tax that may be chargeable to the applicant.

C. Default interest

27. 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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.