



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

FIFTH SECTION

CASE OF MEŽNARIČ v. SLOVENIA

(Application no. 41416/06)

JUDGMENT

*This version was rectified on 5 July 2013
under Rule 81 of the Rules of Court.*

STRASBOURG

18 April 2013

FINAL

18/07/2013

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

In the case of Mežnarič v. Slovenia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 41416/06) 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 Marijan Mežnarič (“the applicant”), on 21 September 2006.

2. 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. 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 14 March 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Šmarje pri Jelšah.

6. On 13 June 1995 the Žiri Municipality instituted enforcement proceedings against the company KODA SPAAR d.o.o. before the Kranj Basic Court.

7. On 28 June 1995 the writ of execution was issued. The company lodged an objection.

8. On 5 September 1995 the first-instance court issued a decision annulling the writ of execution.

9. On 6 November 1995 the case was referred to the Kranj District Court and was to be decided in the framework of contentious proceedings.

10. On 21 November 1999 the court issued a decision that it had no jurisdiction and the case was referred to Škofja Loka Local Court.

11. On 25 November 1999 the Škofja Loka Local Court initiated a jurisdictional dispute.

12. On 30 August 2000 the Ljubljana Higher Court assigned the case to the Kranj District Court.

13. On 17 October 2000 the first-instance court received an extract from the Register of Companies stating that the company KODA SPAAR d.o.o. had been struck out from the Register pursuant to Article 580 § 5 and 6 of the Companies Act.

14. On 8 January 2001 the creditor requested the continuation of the proceedings against the applicant, since he had been the founder and owner of the company.

15. On 27 August 2001 the first-instance court issued a decision on continuation of proceedings against the applicant.

16. On 10 September 2001 the applicant lodged an appeal and a request for an exemption from court fees.

17. On 24 October 2001 the Ljubljana Higher Court rejected the appeal.

18. On 20 December 2001 the applicant lodged a request for protection of legality, which was rejected.

19. On 27 August 2002 the Kranj District Court issued a decision staying the proceeding pending the decision of the Constitutional Court concerning the suspension of implementation of a chapter of the Financial Operations of Companies Act.

20. On 17 January 2003 the proceedings resumed.

21. On 17 December 2003 a hearing concerning the possibility of a settlement was held. The applicant lodged a request for legal aid, an exemption from court fees and a counterclaim seeking compensation for damages.

22. On 11 February 2004 a hearing was held and the first-instance court rendered a judgment annulling the writ of execution of 28 June 1995. An appeal was lodged.

23. On 16 February 2005 the Ljubljana Higher Court remitted the case for re-examination.

24. On 31 August 2005 a hearing was held and the first-instance court issued a judgment upholding the writ of execution. The applicant appealed.

25. On 21 June 2006 the Ljubljana Higher Court upheld the appeal and annulled the writ of execution.

26. On 4 September 2006 the applicant lodged a request claiming reimbursement of legal costs. His request was rejected on 10 October 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Act on the Protection of the Right to a Trial without Undue Delay

27. The Act on the Protection of the Right to a Trial without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006 – “the 2006 Act”) became operational on 1 January 2007.

Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney’s Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney’s Office within two months of the date of receipt of the proposal of the State Attorney’s Office. The State Attorney’s Office shall decide on the proposal as soon as possible and within four months at the latest...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney’s Office and the party fail to negotiate an agreement within four months of the date on which the party filed its proposal, the party may bring an action before the court with jurisdiction under this Act. The party may bring an action within six months of receipt of the State Attorney’s Office reply that the party’s proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney’s Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

B. The Companies Act

28. The relevant provision of the Companies Act (*Zakon o gospodarskih družbah*, Official Gazette no. 30/93, 29/94, 20/98, 84/98, 6/99 and 45/01) as in force at the relevant time reads as follows:

Article 580 § 5 and 6

“...

(5) The existing companies and other organisational forms of undertakings that fail to bring their operation in line with this Act within the deadlines set in the first, second and fourth paragraph of this Article shall be liquidated and struck out from the Register of Companies; the liquidation will be conducted by the courts *ex officio*.

(6) Notwithstanding the provision of the above paragraph, privately owned companies with share capital that fail to bring their operation in line with this Act within the deadlines set in the first, second and fourth paragraph of this Article shall be held liable for the obligations towards the creditors in the same way as shareholders of unlimited companies or as company owners.

...”

C. The Constitutional Court’s decision (no. U-I-135/00, 9 October 2002 § 61)

29. The Financial Operations of Companies Act provided that companies which had been inactive for a certain period of time, had not had any assets or had not aligned their operations with the then new legislation were to be struck out from the Register of Companies, and thus their shareholders would become personally liable for any outstanding debts of the company. The regulation was challenged before the Constitutional Court which, *inter alia*, decided that the former shareholders who assumed unlimited joint liability for the companies’ obligations were to be considered as universal successors to the dissolved companies.

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

30. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in 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 ...”

31. 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

32. The Government argued that the time to be taken into in consideration in the present case should be only as regards the part of the proceedings conducted against the applicant and not the company. In the Government’s view the continuation of the proceedings against an owner of a company constitutes “singular legal succession”. Taking into account the part of the proceedings against the company for the examination of the complaint brought by the applicant would therefore be in contravention of Article 34 of the Convention. According to the Government the duration of the part of the proceedings conducted against the applicant and not the company was not excessive (five years at two levels, see paragraph 15 et seq. above). The Government proposed that the Court should reject the application as manifestly ill-founded.

33. The Court notes that the enforcement proceedings against the company were suspended on the ground that it had been *ex-officio* struck out from the Register of Companies pursuant to Article 580 § 5 and 6 of the Companies Act, as in force at the material time, for having failed to align its operation with the then new legislation. As regards such companies, their former shareholders became personally liable for their debts and were, according to the Constitutional Court’s decision (cited above) considered as universal successors of the struck-out companies. Thus, in view of the fact that all assets, rights and obligations of the company were transferred to the applicant who accordingly replaced the company in the domestic proceedings, the Court is unable to accept the Government’s argument that the applicant cannot claim the status of victim for the part of the proceedings which lasted until 27 August 2001.

34. 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 (see *Ribič v. Slovenia*, no. 20965/03, §§ 37-42, 19 October 2010). It must therefore be declared admissible.

B. Merits

1. Article 6

35. The period to be taken into consideration began on 13 June 1995, when the enforcement proceedings were instituted. The proceedings continued as contentious proceedings (see paragraph 9 above) and ended on

10 October 2006, when the decision on legal costs was issued. The proceedings thus lasted eleven years and four months. The case was considered at first instance in enforcement proceedings (see paragraphs 7-8 above) and then in contentious proceedings twice at first instance and twice at second instance (see paragraphs 22-25 above). The proceedings thus lasted eleven years and four months.

36. 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).

37. In this connection the Court observes that the longest period of inactivity attributable to the State was four years (see paragraphs 9 and 10 above). The applicant on the other hand did not substantially contribute to the delays.

38. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Deželak v. Slovenia*, 1438/02, §§ 23-26, 6 April 2006; *Soleša v. Slovenia*, no. 21464/02, §§ 17-19, 13 April 2006; *Simončič v. Slovenia*, no. 7351/04, §§ 23-26, 18 January 2011), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13

40. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

41. The Court recalls the case of *Ribič v. Slovenia* (cited above, §§ 37-42) and notes that the Government have not submitted any 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and EUR 10,000 in respect of non-pecuniary damage.

44. The Government contested these claims.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant made no claim as regards the costs and expenses incurred before the Court. The Court therefore makes no award under this head.

C. Default interest

47. 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* by a majority the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 and Article 13 of the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,¹ EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

¹ Rectified on 5 July 2013: “from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,” has been inserted.

(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 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

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

M.V.
C.W.

DISSENTING OPINION OF JUDGE PEJCHAL

I disagree with the majority's finding of a violation of the applicant's right to a fair trial within "a reasonable time" for the reasons given already in my separate opinion in the case *Podbelšek Bračič v. Slovenia*, no. 42224/04.