



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

FIRST SECTION

CASE OF MAJARIČ v. SLOVENIA

(Application no. 28400/95)

JUDGMENT

STRASBOURG

8 February 2000

In the case of Majarič v. Slovenia,

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

Mrs E. PALM, *President*,

Mr J. CASADEVALL,

Mr L. FERRARI BRAVO,

Mr Gaukur JÖRUNDSSON,

Mr R. TÜRMEŖ,

Mrs W. THOMASSEN,

Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 January 2000,

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

PROCEDURE

1. The case was referred to the Court by a Slovenian national, Mr Ljubo Majarič ("the applicant") on 21 January 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedom ("the Convention"). It originated in an application (no. 28400/95) against Slovenia lodged by Mr Majarič with the European Commission of Human Rights ("the Commission") under former Article 25 on 13 December 1994.

Before the Court the applicant is represented by Mr E. Dokič, a lawyer practising in Piran. The Slovenian Government ("the Government") are represented by their Agent, Mr L. Bembič, the Attorney-General.

2. In accordance with Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 22 April 1999 that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court, Mr L. Wildhaber, assigned the case to the First Section. The Chamber constituted within the Section included *ex officio* Mr B. Zupančič, the judge elected in respect of Slovenia, and Mrs E. Palm, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr L. Ferrari Bravo, Mr Gaukur Jörundsson, Mr R. Türmen, Mr T. Panțiru and Mr R. Maruste (Rule 26 § 1 (b)).

On 13 October 1999 the President exempted Mr B. Zupančič from sitting after his withdrawal from the case on the ground that he had participated in its examination as a judge of the Constitutional Court of Slovenia (Rule 28 § 3). On 9 November 1999 the Government notified the Registry that they would not appoint an *ad hoc* judge. The President subsequently designated Mr J. Casadevall to complete the Chamber. Later Mrs W. Thomassen replaced Mr Panțiru, who was unable to take part in the further consideration of the case (Rule 26 § 1 (c)).

3. On 26 April 1999 the President invited the parties to submit memorials on the issues arising in the case (Rule 59 § 3). The applicant was further invited to submit his claim for just satisfaction under Article 41 of the Convention (Rule 60 § 1). The Government submitted their memorial on 21 June 1999. The applicant replied on 10 and 12 August 1999.

4. After consulting the Agent of the Government and the applicant's lawyer, the Chamber decided that it was not necessary to hold a hearing.

AS TO THE FACTS

5. On 6 December 1991 the applicant was charged with sexual assault of a minor and abduction of minors. He was remanded in custody. On 30 April 1992 the applicant was released.

6. On 5 June 1992 the applicant's trial started before the Nova Gorica District Court (*Okrožno sodišče* – "the District Court"). On the same day the case was adjourned.

7. On 16 June 1992 the District Court ordered the redetention of the applicant.

8. On 28 August 1992 a number of witnesses were heard and on 3 September 1992 the District Court again adjourned the applicant's trial due to the applicant's illness.

9. By decision of the District Court dated 17 September 1992, the applicant was again released.

10. A hearing scheduled for 28 September 1992 had to be adjourned *sine die* as the applicant was ill.

11. On 21 July 1992 the applicant was accused of another sexual assault of a minor. An indictment was filed on 18 January 1993. The applicant entered a plea against the indictment which was rejected on 15 February 1993. On 17 March 1993 the District Court joined the two sets of proceedings.

12. On 2 June 1993 the public prosecutor requested further investigations on the ground that there was reasonable suspicion that the applicant had also criminally neglected and ill-treated a minor within the meaning of Article 96 §§ 1 and 2 of the Criminal Code.

13. On 21 October 1993 a preliminary charge was filed in respect of the aforesaid acts. On 28 March 1995 the District Court decided to deal with all charges against the applicant in a single set of proceedings.

14. In the period from 18 February 1997 to 9 July 1997 the District Court held several hearings.

15. On 9 July 1997 the District Court convicted the applicant of sexual offences on several counts. A combined prison sentence of two years and eight months was imposed on the applicant. Both the applicant and the public prosecutor appealed.

16. On 12 February 1998 the Koper High Court (*Višje sodišče*) rejected the applicant's appeal and increased the sentence to three years' imprisonment.

17. On 26 March 1998 the applicant lodged a plea of nullity (*zahteva za varstvo zakonitosti*). The District Court transmitted it to the Supreme Court (*Vrhovno sodišče*), together with the file, on 5 June 1998. The Supreme Court dismissed this complaint on 17 September 1998.

18. On 24 March 1998 the applicant lodged a constitutional complaint against the Koper High Court's judgment of 12 February 1998. It was dismissed by the Constitutional Court (*Ustavno sodišče*) on 15 June 1998.

19. On 12 October 1998 the applicant filed a further constitutional complaint concerning the Supreme Court's decision of 17 September 1998 (see paragraph 17 above). He alleged, *inter alia*, a violation of Article 6 § 3 of the Convention in the criminal proceedings against him.

20. On 1 December 1998 the Constitutional Court refused to send the case back to the lower courts for a new examination as it found no violation of the applicant's right to a fair hearing.

PROCEEDINGS BEFORE THE COMMISSION

21. Mr Majarič applied to the Commission on 13 December 1994. He complained about his detention on remand and that the criminal proceedings against him were unfair and lasted unreasonably long. He alleged a violation of Articles 5 § 1 and 6 § 1 of the Convention.

22. On 3 December 1997 the Commission declared the application (no. 28400/95) admissible as regards the complaint concerning the length of the criminal proceedings. It noted the following in respect of the Government's written observations of 21 June 1996:

"The Government state that the only remedy the applicant had at his disposal to accelerate the criminal proceedings was the 'supervisory appeal' in accordance with Article 72 of the Law on Courts. In the case of 'supervisory appeal' the president of the court or the Ministry do not issue any decision, but merely report to the party on their findings. The Government noted that the applicant filed such an appeal several times, last on 27 May 1994.

The Government conclude that, in the case of delay of proceedings, it is not possible to lodge a constitutional complaint."

23. In its report of 21 October 1998 (former Article 31 of the Convention) the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1¹.

1. Note by the Registry. A copy of the Commission's report is obtainable from the Registry.

FINAL SUBMISSIONS TO THE COURT

24. In his memorials the applicant requested the Court to hold that there had been a violation of Article 6 § 1 of the Convention and to award him just satisfaction.

25. The Government contended that the applicant had failed to exhaust domestic remedies. With regard to the merits, the Government asked the Court to find that there had been no violation of Article 6 § 1 of the Convention.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. The Government argued that the applicant had not exhausted domestic remedies as he had not sought redress by means of an administrative appeal and, ultimately, by means of a constitutional complaint to the Constitutional Court.

27. The Court observes that the Government's objection was not raised, as it could have been, when the admissibility of the application was being considered by the Commission (see paragraph 22 above). There is therefore estoppel (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, § 44).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant complained about the length of the criminal proceedings against him. He alleged a violation of Article 6 § 1 of the Convention, which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

29. In the applicant's view, the “reasonable time” requirement was not respected in his case.

30. The Government contended that the applicant's case was complex and that additional charges were brought which the District Court decided to deal with in a single set of proceedings. In their view, the applicant contributed to the length of the proceedings in that, in particular, he did not attend the hearings before the District Court scheduled for 3 and 28 September 1992. Finally, the Government maintained that any delays imputable to the domestic authorities were to be considered in the context of radical changes in the legal and economic system in Slovenia at the relevant period which brought about an increase of the courts' workload.

A. Period to be taken into consideration

31. The criminal proceedings against the applicant were instituted on 6 December 1991. However, the relevant period began only on 28 June 1994, when Slovenia ratified the Convention and recognised the right of individual petition pursuant to former Article 25. The proceedings ended with the Constitutional Court's decision of 1 December 1998. Accordingly, the period to be taken into consideration lasted four years and more than five months.

32. In order to determine the reasonableness of the time that elapsed after 28 June 1994, the Court must take account of the state of the proceedings at that time (see *Matter v. Slovakia*, no. 31534/96, 5 July 1999, § 53, and the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

B. Reasonableness of the length of the proceedings

33. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, 25 March 1999, § 67, and the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

34. The Court considers that the case was of some complexity due to the fact that additional charges had been brought against the applicant in the course of the proceedings at first instance. However, this cannot, as such, justify the length of the proceedings.

35. As to the applicant's conduct, it has before it no information which would indicate that during the period under consideration he contributed to the length of the proceedings.

36. In respect of the conduct of the Slovenian authorities, it is noted that by 28 June 1994 the case had been pending at first instance for two years and almost seven months. The District Court took a procedural decision to deal with the additional charges filed in 1993 in a single set of proceedings on 28 March 1995, i.e. nine months after the entry into force of the Convention in respect of Slovenia.

37. Moreover, the District Court started to deal with the case on 18 February 1997, i.e. after another year and more than ten months. Furthermore, the District Court took more than two months to transmit the applicant's complaint of 26 March 1998 to the Supreme Court.

38. In these circumstances, the Court considers that the delays in the proceedings are mainly imputable to the conduct of the domestic courts.

39. As to the reference by the Government to the heavy workload of the domestic courts resulting from the economic and legislative reforms in Slovenia, it is recalled that Article 6 § 1 imposes on Contracting States the

duty to organise their judicial system in such a way that their courts can meet each of its requirements (see *Ledonne v. Italy (no. 2)*, no. 38414/97, 12 May 1999, § 23, with further reference). The Court has before it no information which would indicate that the difficulties encountered in Slovenia during the relevant period were such as to deprive the applicant of his entitlement to a judicial determination within “a reasonable time”. Furthermore, the respondent State has not indicated any measures it has taken to reduce the workload of the courts (see, *mutatis mutandis*, *G.S. v. Austria*, no. 26297/95, 21 December 1999, § 35).

40. There has accordingly been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. The applicant claimed just satisfaction under Article 41 of the Convention which 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

42. The applicant claimed 450,000 Austrian schillings as compensation for the violation of his right to a hearing within a reasonable time.

43. The Government made no comments.

44. Taking into account the circumstances of the case and making its assessment on an equitable basis as required by Article 41, the Court awards the applicant 300,000 Slovenian tolar in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not make any claims in respect of costs and expenses.

46. The Court, having regard to the above, does not consider it appropriate to make an award in this respect of its own initiative.

C. Request for retrial

47. The applicant requested the Court to order his retrial in Slovenia.

48. The Court observes that it has no jurisdiction under the Convention to order such a measure (see, *mutatis mutandis*, *Polat v. Turkey*, no. 23500/94, 18 July 1999, § 66, and the *Lauko v. Slovakia* judgment of 2 September 1998, *Reports* 1998-VI, p. 2508, § 77). This claim must therefore be dismissed.

D. Default interest

49. According to the information available to the Court, the statutory rate of interest applicable in Slovenia at the date of adoption of the present judgment is 22.98% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the respondent State is to pay the applicant, within three months, 300,000 (three hundred thousand) Slovenian tolar in respect of non-pecuniary damage and that simple interest at an annual rate of 22.98% shall be payable on this sum from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 8 February 2000 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President