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

THIRD SECTION

CASE OF LUKENDA v. SLOVENIA

(Application no. 23032/02)

JUDGMENT

STRASBOURG

6 October 2005

FINAL

06/01/2006

In the case of Lukenda v. Slovenia,

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

Mr J. HEDIGAN, *President*,
Mr B. ZUPANČIČ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVÍD THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 23032/02) 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 Franjo Lukenda ("the applicant"), on 30 May 2002.

2. The applicant was represented by the Verstovšek lawyers. The Slovenian Government ("the Government") were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he had been a party had been excessive. In substance, he also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 7 September 2004 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Slovenia.

6. On 6 January 1994 the applicant was injured at work in a lignite mine.

Since then, he has been disabled and in receipt of disability benefits. His employer had taken out accident insurance for him with an insurance company, T. ("ZT"). His disability was assessed at 13%. In the years 1994, 1995 and 1996 ZT paid partial disability benefits.

7. On 30 December 1998 the applicant instituted civil proceedings in the Celje Local Court (*Okrajno sodišče v Celju*) against ZT claiming a 7% increase in his disability benefits on the basis of an expert medical opinion. He also sought an exemption from court fees.

On 26 August 1999 the applicant lodged pleadings and additional evidence and requested the court to assign an independent medical expert to determine the extent of his disability. He submitted additional documents and pleadings on 13 October 1999, 16 November 2000, 27 February, 9 and 17 April and 30 May 2002.

On 7 November 2000 a hearing was held to consider the applicant's request for the appointment of a medical expert. Although the request was granted, the appointment was not made.

On 23 November 2000 the applicant submitted documents and requested the court to issue the order appointing the medical expert.

On 28 November 2000 the court appointed a medical expert to determine the extent of the applicant's disability. He submitted his report on 26 April 2001.

On 25 May 2001 the applicant filed pleadings and increased his claim by 2.5%.

On 10 July 2001 the applicant filed pleadings and requested that an additional opinion be sought from the appointed expert.

On 16 October 2001 a hearing was held and the court decided that additional clarifications were required from the expert.

On 23 November 2001 the court reappointed the same expert with instructions to submit an additional opinion.

On 11 February 2002 the expert submitted an additional opinion, which was served on the parties.

On 9 April and 30 May 2002 the applicant made requests for a hearing.

On 25 September 2002 the court held a hearing and decided to deliver a written judgment.

On 30 December 2002 the applicant's lawyers received the judgment, which upheld the applicant's claim in part.

8. On 31 December 2002 the applicant appealed. ZT cross-appealed.

On 19 February 2004 the Celje Higher Court (*Višje sodišče v Celju*) allowed the applicant's appeal in part. It increased the level of his disability benefits and awarded the applicant costs and expenses. The decision became final the same day.

On 8 April 2004 the judgment was served on the applicant's lawyers.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1991 Constitution

9. The relevant provisions of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) read as follows:

Article 23

"Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. ..."

Article 26

"Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a State or local authority or as a holder of public office. ..."

Article 157

"A court with jurisdiction to review administrative decisions shall [have jurisdiction to] determine the legality of final individual decisions by State or local authorities or holders of public office concerning the rights or obligations or legal entitlement of individuals and organisations, if no other legal protection is specifically provided.

If no other legal protection is provided, the court with jurisdiction to review administrative decisions shall also [have jurisdiction to] determine the legality of individual acts and decisions which encroach upon the constitutional rights of the individual."

Article 160

"The Constitutional Court shall hear:

... constitutional appeals in which specific acts are alleged to have infringed a human right or fundamental freedom;

...

Unless otherwise provided by law, the Constitutional Court shall hear a constitutional appeal only if legal remedies have been exhausted. The Constitutional Court shall decide whether a constitutional appeal is admissible for adjudication on the basis of statutory criteria and procedures."

B. The Constitutional Court Act 1994

10. The relevant provisions of the Constitutional Court Act (*Zakon o Ustavnem sodišču*) read as follows:

Section 1

"The Constitutional Court is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms ...

Decisions of the Constitutional Court are legally binding."

Section 50

"Anyone who believes that his or her human rights and basic freedoms have been infringed by a particular act of a State body, local body or statutory authority may lodge a constitutional appeal with the Constitutional Court, subject to compliance with the conditions laid down by this Act. ..."

Section 51

"A constitutional appeal may be lodged only after all legal remedies have been exhausted.

Before all special legal remedies have been exhausted, the Constitutional Court may exceptionally hear a constitutional appeal if a violation is probable and the appellant will suffer irreparable consequences as a result of a particular act."

C. Case-law of the Constitutional Court

11. In a decision of 7 November 1996 (no. Up 277/96), the Constitutional Court (*Ustavno sodišče*) ruled that constitutional appeals under Article 160 of the Slovenian Constitution were admissible in length of proceedings cases where the proceedings were still pending. However, it further stated that, in order to ensure the right to due process of law in the Slovenian legal system, the only proper judicial protection available was through an action in the administrative courts. A constitutional appeal was, as a rule, admissible only after recourse to that legal remedy.

12. In a decision of 7 December 2000 (no. Up 73/97), the Constitutional Court ruled that, once the court proceedings had been concluded, an individual could no longer bring an action in the administrative courts complaining about the length of proceedings. Therefore, since there was no longer any violation to be remedied, it was no longer possible to lodge a constitutional appeal.

13. In a decision of 17 December 2003 (no. Up 85/03-12), the

Constitutional Court held that where, because the substantive proceedings had ended, an action to complain of the length of proceedings could no longer be brought in the administrative courts, it was still open to the alleged victim to seek compensation in civil proceedings.

D. The Administrative Disputes Act 1997

14. The Administrative Disputes Act 1997 (*Zakon o upravnem sporu*) provides for the protection of the constitutional right to a trial within a reasonable time through administrative proceedings in the administrative court and, on appeal, in the Supreme Court (*Vrhovno sodišče*). Under section 2(1) and (2) the court has a broad discretion to adapt its decision to the nature of the violated constitutional right, to order adequate redress, and to decide the applicant's claim for damages. Under section 62 it is possible to seek a declaration that there has been a violation of a right guaranteed by Article 23 of the Constitution and compensation for any loss. In addition, under section 69, a temporary injunction may be sought to prevent serious harm or to guard against an imminent threat of violence.

E. Case-law of the administrative courts

15. In case no. U 836/98, the Administrative Court (*Upravno sodišče*) found on 7 March 2000 that the right to a trial within a reasonable time had been violated in a case which had been pending before the Labour and Social Court for twenty-three months. However, on 18 December 2002 the Supreme Court quashed the judgment on appeal, as the proceedings had terminated by the time of the appeal. On 17 December 2003 the Constitutional Court dismissed the constitutional appeal (no. Up 85/03-12) because the proceedings in question had ended and the alleged victim could seek compensation in civil proceedings.

16. Similarly, in case no. U 148/2002-19, the Administrative Court rejected on 21 January 2003 a complaint concerning the length of the proceedings because the proceedings in question had ended shortly after the complaint had been lodged. On 28 May 2003 the Supreme Court upheld the judgment on appeal.

17. In case no. U 148/2002-19, the Administrative Court dismissed on 21 January 2003 a claim alleging a violation of the right to a trial within a reasonable time that had been lodged on 18 July 2002. This decision was upheld on appeal on 28 May 2003. The proceedings before two levels of jurisdiction had lasted ten months and ten days.

18. In case no. U 459/2003-23, the Administrative Court held on 7 December 2004, in proceedings that had started on 8 December 2003, that there had been a violation of the right to due process. The proceedings had lasted less than a year before one level of jurisdiction.

F. The Code of Obligations 2001

19. If a court is responsible for undue delay in the proceedings and an individual has sustained damage as a result, he or she may claim compensation from the State under the Code of Obligations 2001 (*Obligacijski zakonik*). The person seeking compensation will thus have to prove, firstly, that there has been a delay in the proceedings, secondly, that damage has occurred, and, thirdly, that there is a causal link between the conduct of the court and the damage sustained. However, the Code does not provide specifically for compensation for non-pecuniary damage in such cases.

G. Case-law of the civil courts

20. In a judgment of 22 January 2001 of the Ljubljana District Court (*Okrožno sodišče v Ljubljani*), the damages awarded amounted to nearly 6,700 euros (EUR), but were reduced on appeal on 16 December 2002 by the Ljubljana Higher Court to less than EUR 850.

21. In a judgment of 18 April 2001 of the Ljubljana District Court, which was upheld on appeal on 12 February 2003 by the Ljubljana Higher Court, a sum of approximately EUR 3,350 was awarded.

H. The Judicature Act 1994

22. Section 3(4) of the Judicature Act (*Zakon o sodiščih*) provides that judges shall determine rights and obligations and criminal charges independently and impartially and without undue delay.

23. Section 38 of the Act provides that, when determining the number of judges to be appointed to a specific court, the Judicial Council (*sodni svet*) shall have regard to the criteria laid down by the Minister of Justice, the average number of cases dealt with by the court in the preceding three years, any anticipated changes that may affect that number, and the average number of new actions brought in the court in the preceding three years. Under the Act, the Minister of Justice is empowered to vary the criteria in the light of the complexity of the cases and changes in the manner in which they are being processed.

24. Section 72 provides that in the event of a delay in the proceedings any party may lodge a request for supervision (*nadzorstvena pritožba*) with the president of the court. The president of the court may request the presiding judge to report on progress in the proceedings, and is required to indicate in writing to the presiding judge any irregularities he finds. He may put the case on the priority list or set deadlines for procedural measures. If the delay has been caused by a heavy caseload, he may order the case concerned or other cases to be transferred to another judge. He may also

propose measures under the provisions of the Judicial Service Act.

25. If the request for supervision is lodged with the Ministry of Justice or the president of a higher court, they will refer it to the president of the relevant court and may request a report on the measures undertaken to expedite the proceedings.

26. The Minister of Justice or the Judicial Council may request the president of the court to submit a report on all requests for supervision lodged within a certain period and the measures undertaken to resolve the issues.

27. In accordance with section 73, the president of a higher court may, of his own motion or at the request of the Minister of Justice, a disciplinary prosecutor or a disciplinary court, request an examination of the functioning of the court and submit the findings to the Ministry.

III. RESOLUTION RES(2004)3 OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

28. As part of a package of measures to guarantee the effectiveness of the Convention machinery, the Committee of Ministers of the Council of Europe adopted a resolution on 12 May 2004 (Res(2004)3) on judgments revealing an underlying systemic problem. After emphasising the interest in helping the State concerned to identify the underlying problems and the necessary execution measures (paragraph 7 of the preamble), it invited the Court "to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments" (paragraph I of the resolution). This resolution has to be seen in the context of the growth in the Court's caseload, particularly as a result of series of cases deriving from the same structural or systemic cause.

THE LAW

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

29. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement provided 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 ..."

A. Admissibility

1. The parties' submissions

(a) The Government

30. The Government pleaded a failure to exhaust domestic remedies with regard to the complaint under Article 6 § 1 of the Convention, arguing that the applicant had not availed himself of the remedies at his disposal for the purpose of expediting the judicial proceedings and/or claiming compensation.

31. The Slovenian legal system provided adequate and effective preventive domestic remedies while the proceedings were still pending, namely an action in the administrative courts and/or a request for supervision (*nadzorstvena pritožba*), backed up by a civil action for compensation after the proceedings had terminated. In addition, the applicant also had the possibility of lodging a constitutional appeal. Those remedies were available both in theory and in practice, and were accessible to the applicant.

32. The right to a trial within a reasonable time was guaranteed by Article 23 of the Constitution. However, while the proceedings were pending the applicant had failed to assert this right, on the basis of Article 157 § 2 of the Constitution, by bringing an application under the Administrative Disputes Act 1997, which provided for judicial protection of the constitutional right to a trial within a reasonable time. Claimants in administrative proceedings could also seek damages. Proceedings in the administrative courts were within the jurisdiction of the administrative court at first instance and of the Supreme Court on appeal.

33. In their observations, the Government cited in support of their arguments the new case-law of the administrative courts (see paragraphs 15-18 above).

34. The Government further submitted that, as far as proceedings that had ended were concerned, Article 26 of the Constitution guaranteed the right to compensation for damage caused by the unlawful acts of a person when performing a function or engaged in an activity on behalf of a State authority. As the proceedings had ended, the applicant could have brought civil proceedings against the State. Besides that, he could have claimed compensation directly from the person or body responsible.

35. The Government submitted that a number of claims in tort were currently under consideration. So far, damages for unduly lengthy proceedings had been paid in two cases (see paragraphs 20-21 above).

36. Furthermore, referring to the Commission's decision that the request for supervision could not be regarded as an effective legal remedy within the meaning of the Convention (see *Majarič v. Slovenia*, no. 28400/95,

Commission decision of 3 December 1997, unreported), the Government submitted that further to the amendments that had been made to the Judicature Act 1994 and which had come into force in 2000, the request for supervision had now attained the required level of effectiveness.

37. Moreover, the Government pointed out that the applicant had not lodged a constitutional appeal with the Constitutional Court under Article 160 of the Constitution after the exhaustion of domestic remedies. A constitutional appeal could, in principle, be lodged only after the termination of administrative proceedings or civil proceedings.

38. Referring to *Silver and Others v. the United Kingdom* (judgment of 25 March 1983, Series A no. 61, p. 42, § 113), the Government argued that, although no single remedy might itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law might do so. The aggregate of legal remedies available to the applicant should therefore be considered effective.

39. The Government finally argued that, by failing to avail himself of any of the above-mentioned legal avenues, the applicant had not exhausted the domestic remedies as required by Article 35 of the Convention.

(b) The applicant

40. The applicant's lawyers, who are also representing other applicants in nearly 400 length of proceedings cases currently pending before the Court, disputed the Government's arguments. They submitted some examples of cases in which parties to judicial proceedings had made use of all the available legal remedies, namely a request for supervision, an action in the administrative courts, a claim for damages and a constitutional appeal alleging a violation of their right to due process. They argued that the length of the proceedings had been excessive in all the cases concerned (for instance, in one case civil proceedings had lasted nearly nine years for two levels of jurisdiction) and that the legal remedies available had been of no avail because the claims were dismissed or no violation was found. Furthermore, they claimed that the majority of proceedings in the Slovenian courts were excessively long, including all the judicial proceedings the Government claimed were effective legal remedies.

2. The Court's assessment

(a) General considerations

41. The Court reiterates, firstly, that by virtue of Article 1 (which provides: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention”) the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The

machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is reflected in Articles 13 and 35 § 1 of the Convention.

42. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

43. Under Article 35, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

44. It is incumbent on the Government pleading non-exhaustion to demonstrate to the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 68). Although each of the available remedies may not prove to be effective, the aggregate of the available remedies may satisfy the criteria set forth by the Convention (see *Silver and Others*, cited above, p. 42, § 113, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145). Once this burden of proof has been discharged, it falls to the applicant to establish that the remedies or the aggregate remedies advanced by the Government were in fact exhausted or were for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Horvat v. Croatia*, no. 51585/99, § 39, ECHR 2001-VIII).

45. Finally, the Court has previously held that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34).

46. In the case at hand the Court has to determine whether or not an administrative action, a claim for damages in civil proceedings, a request for supervision and a constitutional appeal, taken separately or together, can be considered effective legal remedies within the meaning of Article 35 of the

Convention.

(b) Administrative action

47. The Court notes, firstly, that the Government's arguments concerning the effectiveness of an action under the 1997 Administrative Disputes Act have already been largely rejected (see *Belinger*, cited above). In dismissing the Government's plea of non-exhaustion of domestic remedies, the Court remarked on the significant backlog of cases before the relevant courts and queried whether preventive relief was truly available. It noted that, given the lack of relevant examples, uncertainty remained as to the effectiveness of the domestic remedies (ibid.).

48. In the Court's view, the case-law relied on by the Government still fails to provide a sound foundation on which to assess the effectiveness of this domestic remedy.

49. It is noted, however, that in two recent cases mentioned above (see paragraphs 17-18), the administrative courts reached a decision in a comparatively short space of time (just over ten months for two levels of jurisdiction in one case and less than a year before one level of jurisdiction in the other case), dismissing the claim in one case and finding a violation in the other. It was not specified whether or not in the latter case the ruling of the administrative court had any effect on the length of the original proceedings or merely awarded compensation for damage. These cases might be seen as a step in the right direction so far as proceedings that are still pending are concerned.

50. However, in two other cases cited by the Government, the first-instance judgments finding a breach of the right to due process and awarding compensation were subsequently overturned on appeal on the ground that the proceedings had ended by the time the judgments were delivered.

51. So far, the Government have failed to show clearly, to the Court's satisfaction, that the judgments and decisions of the administrative courts do in fact speed up unduly protracted proceedings or award reparation for violations of the right to a speedy trial that have already occurred.

52. Observing, further, that no significant changes have been made to the Administrative Disputes Act since the decision in *Belinger* and bearing in mind the backlog that has accumulated in the Slovenian courts, the Court sees no reason for the time being to depart from its conclusion in *Belinger* regarding the effectiveness of an action in the administrative courts.

53. The Slovenian case-law that has been produced does not suffice to alter the Court's view that, as matters stand, an action in the administrative courts does not provide effective redress in length of proceedings cases.

(c) Claim for damages

54. The Court also acknowledges that, once the proceedings had ended,

the applicant would have had the possibility of claiming damages for a violation of the right to a trial within a reasonable time under Article 26 of the Constitution.

55. However, as far as the admissibility of this application is concerned, the Court notes that the proceedings in question were still pending at the domestic level at the date the application was lodged with the Court. Therefore, the applicant would not have been able to bring an action in tort at that point (see, *mutatis mutandis*, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII,). Nonetheless, the Court will examine this domestic remedy in order to address the Government's arguments regarding the effectiveness of all existing remedies.

56. The Court reiterates that it has previously dismissed the Government's plea of non-exhaustion of domestic remedies concerning the effectiveness of an action in tort because of a lack of any examples (see *Predojević and Others* (dec.), nos. 43445/98, 49740/99, 49747/99 and 54217/00, 9 December 2004).

57. It is noted that the case-law submitted by the Government shows that in two cases compensation was awarded on the basis of Article 26 of the Constitution because of the excessive duration of proceedings that had ended.

58. However, under the Code of Obligations, an individual seeking compensation has to prove, firstly, that there has been a delay in the proceedings, secondly, that damage has occurred, and, thirdly, that there is a causal link between the damage and the conduct of the court.

59. Therefore, in an action in tort a court can in principle find that unduly long proceedings that have already been concluded are the cause of the damage sustained by the claimant and may accordingly award compensation. However, the Government have failed to indicate clearly whether or not compensation for non-pecuniary damage can be awarded in such proceedings. In any event, a claim in tort will have no effect on the length of proceedings that are still pending when the claim is lodged.

60. Although it notes signs of positive developments in the case-law submitted by the Government, the Court remains unconvinced that a claim in tort can in fact provide effective redress when the main proceedings have already ended.

(d) Request for supervision

61. The Court has also already dealt with the question of the effectiveness of the request for supervision under section 72 of the Judicature Act and found that it is a remedy in the framework of judicial administration and not within court proceedings (see *Majarič* and *Belinger*, both cited above).

62. Nonetheless, the Court acknowledges the changes to the supervisory appeal procedure made by the 2000 and 2004 amendments and finds that, in

theory at least, the revised supervisory procedure may contribute to expediting court proceedings.

63. Although the Government claimed that such a remedy was also effective in practice, they have failed to provide a single example of an applicant having succeeded in speeding up court proceedings by using the procedure. In addition, it appears that requests for supervision proceedings have no binding effect on the court concerned (see *Hartman v. the Czech Republic*, no. 53341/99, § 83, ECHR 2003-VIII). Moreover, since there is no right of appeal, this remedy cannot have any significant effect on expediting the proceedings as a whole (see, *mutatis mutandis*, *Holzinger v. Austria (no. 1)*, no. 23459/94, § 22, ECHR 2001-I).

64. Therefore, like an action in the administrative courts and a claim in tort, a request for supervision cannot be regarded as an effective remedy within the meaning of the Convention.

(e) Constitutional appeal

65. Finally, the Court reiterates that a constitutional appeal, in principle, can only be lodged after domestic remedies have been exhausted, that is, an action in the administrative courts or a claim in tort. In *Belinger*, cited above, the Court found that the efficiency of the constitutional appeal was already problematic in view of the probable length of the combined proceedings. Since the Government have not submitted any new material concerning constitutional appeals, the Court considers that, at present, it cannot be regarded as an effective remedy (see also *Hartman*, cited above, § 83).

(f) Conclusion

66. In the light of the foregoing, the Court must now consider whether or not the aggregate of these procedures constitutes an effective legal remedy requiring exhaustion under Article 35 § 1.

67. The Court acknowledges the Government's argument that, even if a single remedy does not by itself entirely satisfy the requirement of "effectiveness", the aggregate of remedies afforded by domestic law may do so. It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła*, cited above, § 158).

68. The Convention therefore offers an alternative: a remedy is effective if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud*, cited above, § 17, and *Hartman*, cited above, § 81).

69. As already stated, within the framework of domestic remedies relied

on by the Government, it is possible that a request for supervision lodged in conjunction with, or followed by, an action in the administrative courts, will not suffice to redress delays in the proceedings. In addition, as stated above, the Government have not shown that an action in tort can provide compensation for non-pecuniary damage, while a constitutional appeal can only be lodged after all other remedies have been exhausted. Lastly, the Government have failed to demonstrate how the combined use of the above-mentioned remedies would boost their effectiveness.

70. A further issue arises where an individual first brings an action in the administrative courts, which is subsequently dismissed on the ground that the original proceedings have ended, and is then required to lodge a claim in tort in order to obtain compensation. Over and above the fact that the claimant is required to institute two sets of proceedings, a more serious problem which may occur in such cases is the probable excessive duration of the combined proceedings. Particular attention should be paid to, among other things, the speediness of the remedial action itself, as the possibility that a remedy may be deemed inadequate because of its excessive duration cannot be excluded (see *Doran v. Ireland*, no. 50389/99, § 57, ECHR 2003-X). It would be putting an unreasonable burden on the applicant to require him to make use of both remedies.

Consequently, the Court concludes that to find the aggregate of the remedies effective in the circumstances of these cases would run counter to the principles and spirit of the Convention.

71. Accordingly, the Court is not satisfied that the aforementioned remedies or the aggregate remedies can amount to an effective legal remedy in the circumstances of the instant case, and the Government's preliminary objection must be dismissed.

B. Merits

72. The Government submitted that the proceedings had been complicated by the fact that it had been necessary to appoint a medical expert to determine the level of the applicant's disability. The courts had conducted the proceedings throughout in compliance with their statutory jurisdiction and, considering what was at stake – namely, a minor increase in disability benefits – the case had not required priority treatment.

73. The proceedings began on 30 December 1998, when the applicant lodged his claim with the Celje Local Court, and ended on 8 April 2004, when the Celje Higher Court's decision was served on the applicant's lawyers. The total duration of the proceedings was thus five years, three months and nine days for two levels of jurisdiction, including four years and a day at first instance.

74. 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).

75. Although the opinion of a medical expert was required to decide the case, the Court finds that it was neither procedurally nor factually of exceptional complexity. Therefore, the Government's argument that the case was of some complexity cannot justify the proceedings at first instance taking four years and a day. Moreover, the Government's argument that the courts proceeded at all stages in accordance with the domestic law cannot be accepted as, for example, the proceedings came to a standstill for a period of more than one year and ten months between 30 December 1998, when the complaint was lodged, and 7 November 2000, when the first hearing was held.

76. As to the applicant's conduct, while there were some periods of delay that could be attributed to him, there is no evidence before the Court to suggest that the applicant contributed in any significant way to prolonging the proceedings.

77. It is, however, true that the amount at stake for the applicant was relatively small.

78. Having examined all the material before it, the Court considers that the Government have not put forward any fact or argument capable of persuading it that the case was heard within a reasonable time.

79. In the Court's view, the overall length of the proceedings in the instant case was excessive and failed to meet the "reasonable time" requirement. In particular, the duration of the proceedings before the first-instance court, which exceeded four years, is not compatible with the standards set by the Court's case-law (see, for example, *A.P. v. Italy* [GC], no. 35265/97, 28 July 1999).

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicant complained that the remedies available in Slovenia in length of proceedings cases were ineffective. In substance, he relied on Article 13 of the Convention, which provides:

> "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

81. The Court reiterates that in *Kudła* it decided that Article 13 of the Convention "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*, cited above, § 156).

82. The Court considers that this part of the application raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

83. No other ground for declaring the complaint inadmissible has been established.

B. Merits

84. The Government submitted that, under the Slovenian system of legal remedies in length of proceedings cases, it was possible not only to expedite the proceedings but also to make good any damage suffered (see paragraphs 30-39 above). Those remedies were and remained effective both in theory and in practice.

85. The applicant disputed that argument.

86. The Court reiterates that the standards of Article 13 require a party to the Convention to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant Convention complaint and to award appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal*, cited above, pp. 1869-70, § 145).

87. In the present case the Government have failed to establish that an administrative action, a claim in tort, a request for supervision or a constitutional appeal can be regarded as effective remedies (see paragraphs 47-65 above). For example, when an individual lodges an administrative action alleging a violation of his or her right to a trial within a reasonable time while the proceedings in question are still pending, he or she can reasonably expect the administrative court to deal with the substance of the complaint. However, if the main proceedings end before it has had time to do so, it dismisses the action. Finally, the Court also concluded that the aggregate of legal remedies in the circumstances of these cases is not an effective remedy (see paragraphs 69-71 above).

88. Accordingly, there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

89. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

90. The Court notes the applicant's allegation that judicial proceedings in the respondent State regularly fail to comply with the "reasonable time" requirement. The Court's concern is based on the observations it made in the decision in *Belinger* concerning delays in court proceedings in Slovenia (see paragraph 47 above).

91. In view of the persistent backlog in the Slovenian courts in general, as reported in the latest statistics published by the Ministry of Justice of the respondent State, it is clear that the length of judicial proceedings remains a major problem in Slovenia. In addition, the Government, with the aid of the Supreme Court, produced a document in 2002 in which it conceded that there were delays in judicial proceedings. The European Commission reached similar conclusions in its last report on the readiness of Slovenia to accede to the European Union published in November 2003. Furthermore, the Slovenian Human Rights Ombudsman observed in his report for the year 2004 that the most serious problem facing the Slovenian legal system was the length of court proceedings.

92. Lastly, the Court cannot ignore the fact that there are approximately 500 length of proceedings cases currently pending before the Court against Slovenia.

93. It is intrinsic to the Court's findings that the violation of the applicant's right to a trial within a reasonable time is not an isolated incident, but rather a systemic problem that has resulted from inadequate legislation and inefficiency in the administration of justice. The problem continues to present a danger affecting every person seeking judicial protection of their rights.

94. By becoming a High Contracting Party to the European Convention on Human Rights, the respondent State assumed the obligation to secure to everyone within its jurisdiction the rights and freedoms defined in Section 1 of the Convention. In fact, the States have a general obligation to solve the problems that have led to the Court finding a violation of the Convention. This should therefore be the primary goal of the respondent State.

95. Should violations of the Convention rights still occur, the respondent States must provide mechanisms within their respective legal systems for the effective redress of violations of the Convention rights (see paragraphs 41-42 above).

96. The Court has determined in the instant case that the respondent State failed to comply with its Convention obligations to secure the applicant a trial within a reasonable time and to provide him with an effective legal remedy for that violation.

97. As regards the financial repercussions a finding of a violation in the instant case may have on the respondent State, the Court reiterates that by virtue of Article 46 the High Contracting Parties have undertaken to abide

by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

98. The Court has identified some of the weaknesses of the established legal remedies guaranteed by the respondent State (see paragraphs 47-71 and 87-88 above), while acknowledging that certain recent developments show reassuring improvements. To prevent future violations of the right to a trial within a reasonable time, the Court encourages the respondent State to either amend the existing range of legal remedies or add new remedies so as to secure genuinely effective redress for violations of that right. The characteristics of an effective remedy are to be found in the Court's case-law cited in this judgment.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government contested the claim.

102. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,200 under that head.

B. Costs and expenses

103. The applicant, who is represented by a practising lawyer, also claimed approximately EUR 965 for the costs and expenses incurred before the Court in filing the application and the reply to the Government's observations.

104. The Government contested the claim, but left the matter to the Court's discretion in the event of the Court finding a violation of any of the Convention rights.

105. Under the Court's case-law, an applicant is entitled to reimbursement of his 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, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the full sum requested.

C. Default interest

106. 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* unanimously that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

4. *Holds* by six votes to one that the above violations have originated in the malfunctioning of domestic legislation and practice;

5. *Holds* by six votes to one that the respondent State must, through appropriate legal measures and administrative practices, secure the right to a trial within a reasonable time;

6. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:

(i) EUR 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage;
(ii) EUR 965 (nine hundred and sixty-five euros) in respect of costs and expenses;
(iii) any tax that may be chargeable;

(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;

7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Zagrebelsky is annexed to this judgment.

J.H.
V.B.

PARTLY DISSENTING OPINION OF JUDGE ZAGREBELSKY

I shared the Court's opinion in finding a violation of Article 6 §1 and Article 13 of the Convention, but I am not able to follow the majority of the Court, which decided that "the respondent State must through appropriate legal measures and administrative practices secure the right to a trial within a reasonable time" (point 5 of the operative provisions of the judgment). My dissent does not concern the existence in Slovenia, as in a number of other States which are members of the Council of Europe, of a systemic problem as explained in paragraphs 91 to 93 of the judgment. The issue is an extremely serious one, because the rule of law is called into question.

This case could have led the Court to recognise, as in *Bottazzi v. Italy* ([GC], no. 34884/97, § 22, ECHR 1999-V), a "practice that is incompatible with the Convention". However, in my opinion it was not an appropriate case in which to adopt a *Broniowski*-type judgment (*Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-V).

First of all, in my view it is of major importance that, when a Chamber feels that a *Broniowski*-type judgment might be appropriate, the case be referred to the Grand Chamber. There can be no doubt that the consistency of the Court case-law in this kind of judgment is of particular importance. Furthermore, the relinquishment of jurisdiction in favour of the Grand Chamber is the best way to allow the respondent Government to fully discuss the "systemic problem" and the possible solutions it calls for.

On the merits, the reasoning of the judgment seems to me to create a degree of confusion between the need to prevent and to avoid violations of the right to a trial within a reasonable time and the need to secure at national level an effective redress for such violations. But point 5 of the operative provisions of the judgment does not concern the necessity of modifying the national system with a view to introducing an effective remedy for violations of the said right. Had this been the case, I would probably have no cause to dissent, as on this point all the conditions for a *Broniowski*-type judgment appear to be present in the Slovenian legal system (see paragraphs 41-70 of the judgment).

Point 5, however, relates directly to the right to a trial within a reasonable time and indicates to the Government that it must introduce "appropriate legal measures and administrative practices [to] secure the right to a trial within a reasonable time".

In my view, such an indication to the Government falls outside the scope of a judgment of this Court (and probably of any court). It appears to me to be too general. It implies the need to identify the requested measures and, in so doing, to examine whether the laws concerning procedures must be changed (and if so how), to evaluate whether the number of judges and administrative personnel and their level of qualification are commensurate

with the task, to increase and modernise the resources made available to the judiciary, to adjust the national yearly budget accordingly, and to tackle the issue of the number of lawyers, their level of qualification and their role in dealing with civil disputes. When there is a "systemic problem" underlying the incapacity of a State to provide trials within a reasonable time, all these questions must be taken into consideration. In addition a particular system might labour under other specific difficulties. In conclusion, in point 5 of the operative provisions of this judgment, the Court is requesting the Government to change the national system in law and in practice. Nothing more, nothing less.

I do not think that this can be regarded as a judgment of a court. It is not an order that can be executed as judicial orders usually are. The timing and monitoring of the quality and suitability of the "execution" measures that the Government should introduce can only be guessed at. In my view it is up to the Committee of Ministers to identify, request, suggest, secure and monitor the measures which appear to be necessary.

I find an argument that corroborates my position in the long-standing difficulties the Committee of Ministers faces in obtaining a reform of the Italian system (legal and practical) with a view to ensuring that judicial procedures are concluded within a reasonable time (see the Committee of Ministers' resolutions on the subject, starting with Resolution ResDH(97)336 of 11 July 1997). Would a judgment like the present one add anything to the work of the Committee of Ministers? Would it make it easier and more effective? My answer is obviously not, and for that very reason this kind of judgment could ultimately run a real risk of undermining the authority of the Court.