CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF KLINAR v. SLOVENIA

(Application no. 66458/01)

JUDGMENT

STRASBOURG

9 March 2006

FINAL

09/06/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Klinar v. Slovenia,

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

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

Having deliberated in private on 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 66458/01) 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 Aleksander Klinar ("the applicant"), on 16 March 2000.

2. 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 was a party was excessive.

4. On 23 September 2003 the Court decided to communicate the complaints concerning the length of the proceedings 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

5. The applicant was born in 1943 and lives in Jesenice.

6. On 27 December 1994 the applicant lodged a request for promotion with the Ministry of Education and Sport.

On 10 November 1995 the Ministry rejected the applicant's request.

7. On 16 February 1996 the applicant instituted proceedings against the Ministry in the Supreme Court (*Vrhovno sodišče*) seeking an amendment of the Ministry's decision.

According to the information supplied by the Government, the applicant three times adduced written evidences between 8 December 1997 and 10 February 2000.

Between 10 December 1998 and 16 June 1999 he three times requested information about the state of the proceedings.

Following the legislative reform concerning the judicial review of administrative acts, the case was in September 2000 reassigned to the Administrative Court (*Upravno sodišče*).

On 18 April 2001 the court delivered a judgment rejecting the applicant's claim.

The judgment was served on the applicant on 26 April 2001.

8. On 9 May 2001 the applicant lodged an appeal with the Supreme Court (*Vrhovno sodišče*).

On 5 November 2003 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 20 December 2003.

9. On an unspecified date in 2004 the applicant lodged a constitutional appeal.

On 2 June 2004, the Ministry granted to the applicant the requested promotion.

On 11 May 2005 the Constitutional Court (*Ustavno sodišče*) dismissed the applicant's appeal.

It is not clear from the case-file when the decision was served on the applicant.

THE LAW

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

10. The applicant complained about the excessive length of the proceedings. 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..."

A. Admissibility

11. The Government pleaded non-exhaustion of domestic remedies.

12. The applicant contested that argument, claiming that the remedies available were not effective.

13. The Court notes that the present application is similar to the cases of *Belinger* and *Lukenda* (*Belinger v. Slovenia* (dec.), no. 42320/98, 2 October

2001, and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicant's disposal were ineffective.

14. As regards the instant case, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish it from its established case-law.

15. 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. It must therefore be declared admissible.

B. Merits

16. The period to be taken into consideration began on 16 February 1996, the day the applicant instituted proceedings in the Supreme Court and ended at the earliest on 11 May 2005 the day the Constitutional Court dismissed the applicant's appeal. It therefore lasted about nine years and three months and three levels of jurisdiction were involved.

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, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 2,000,000 tolars (approximately 8,340 euros) for just satisfaction without further specifying the claim.

21. The Government contested the claim.

22. Insofar as it may be understood that the applicant's claim referred to pecuniary damage, the Court notes that the applicant could seek reimbursement before domestic courts; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,800 under that head.

B. Costs and expenses

23. The applicant also claimed approximately EUR 145 for the costs and expenses incurred before the domestic courts and in the proceedings before the Court.

24. The government claimed that the applicant only showed the expenses occurred before the Court in the amount of approximately EUR 15.

25. According to 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 were reasonable as to quantum. Although the applicant did not specify his claim, the Court considers, having regard to the information in its possession and the above criteria, that the applicant, who was not represented by the lawyer, must have had expenses with the proceedings before the Court and considers it reasonable to award the full sum claimed.

C. Default interest

26. 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 UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds*

(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, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage and EUR 145 (one

hundred forty five euros) in respect of costs and expenses, plus 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.

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

Done in English, and notified in writing on 9 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President