



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

THIRD SECTION

CASE OF BAUER v. SLOVENIA

(Application no. 75402/01)

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 Bauer 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. 75402/01) 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 Cvetko Bauer (“the applicant”), on 30 June 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 1952 and lives in Maribor.

6. In January 1991, after two concluded disciplinary proceedings, the applicant’s employer L. dismissed the applicant from his work. The applicant, who was consequently unemployed, instituted several proceedings challenging both decisions given in the disciplinary proceedings.

1. The main proceedings

7. On 16 April 1990 and, according to the applicant, on 1 February 1991 respectively, the applicant instituted proceedings in the Ljubljana Court of Associated Labour (*Sodišče združenega dela v Ljubljani*) seeking the annulment of the disciplinary decisions.

On 15 May 1991, after several hearings, the court delivered, in the joint proceedings, a decision rejecting the applicant's claims.

On 20 February 1992 the Court of Associated Labour of the Republic of Slovenia (*Sodišče združenega dela Republike Slovenije*) allowed the applicant's appeal of 28 June 1991 and remitted the case to the first-instance court for re-examination.

On 3 March 1993 the Ljubljana Court of Associated Labour again rejected the applicant's claims.

On 25 November 1993 the Court of Associated Labour of the Republic of Slovenia allowed the applicant's appeal of 31 March 1993 and remitted the case again to the first-instance court for re-examination.

On 28 June 1994 the Convention entered into force with respect to Slovenia.

In the re-examination proceedings, the applicant lodged several written submissions addressed to the first-instance court, the (renamed) Higher Labour and Social Court (*Višje delovno in social sodišče*) and to different judges.

Of the three hearings held between 11 July 1994 and 3 February 1995, none was adjourned at the request of the applicant.

During the proceedings, the court appointed a medical expert. It appears that the applicant objected to the appointment and the Higher Labour and Social Court rejected the objection on 6 October 1994.

After the last hearing, the court decided to deliver a written judgment. The judgment, rejecting the applicant's claim, was served on the applicant on 20 February 1995.

8. On 27 February 1995, the applicant appealed to the Higher Labour and Social Court.

On 13 December 1996 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 14 February 1997.

9. On 1 March 1997 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*). On 29 April 1997 the applicant urged the court to decide on his appeal and on 23 May 1997 he supplemented the appeal.

On 23 September 1997 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 22 November 1997.

10. In the meantime, on 27 March 1997 the applicant lodged a constitutional appeal against all the courts involved in his case. It appears that on 15 December 1997 the applicant lodged a constitutional appeal also against the Supreme Court's judgment.

On 7 March 2000 the Constitutional Court (*Ustavno sodišče*) dismissed the applicant's appeal. The decision was served on the applicant on 1 June 2000.

2. *The re-opening proceedings*

11. Despite the Court's request, the applicant has not filed copies of his requests and the relevant decisions regarding the re-opening proceedings. However, according to the information supplied by the Government and corresponding to that supplied by the applicant, the latter, on 20 October 1998, lodged a request for reopening of the proceedings with the (renamed) Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*). After the decision rejecting the request had been quashed on appeal and remitted for reconsideration, the court rejected the applicant's request again. On 25 May 2000 the Higher Labour and Social Court dismissed the applicant's appeal. The decision was served on the applicant on 27 May 2000.

On 31 May 2000 the applicant lodged an appeal on points of law. The Supreme Court's decision, dismissing the applicant's appeal, was served on the applicant on 4 July 2001.

According to the applicant, the Constitutional Court also rejected his constitutional appeal lodged in July 2001.

On 12 December 2001 the Ljubljana Labour and Social Court rejected the applicant's second request for reopening of the proceedings. After his appeal had been rejected, the applicant, on 9 September 2003, lodged an appeal on points of law with the Supreme Court. It is possible that these proceedings are still pending.

THE LAW

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

12. 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

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

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

15. 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.

16. 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.

17. The Court further notes that the application relating to the main proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. This part of the application must therefore be declared admissible.

B. Merits

18. The period to be taken into consideration began only on 28 June 1994, the day when the Convention entered into force with respect to Slovenia. However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 28 June 1994 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999).

The relevant period ended on 1 June 2000, the day the Constitutional Court decision was served on the applicant. It thus lasted about five years and eleven months for four levels of jurisdiction.

It is true that since the completion of the proceedings, the applicant has sought to have them re-opened. Nonetheless, the Court reiterates that Article 6 of the Convention does not apply to proceedings which determine whether a civil case is to be reopened or not (see *Wierciszewska v. Poland*, no. 41431/98, § 35, 25 November 2003). Accordingly, the time that has elapsed since 1 June 2000 cannot be added to the period at issue.

19. 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).

The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

20. 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

21. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

22. The applicant claimed 42,380 euros (EUR) in respect of pecuniary and non-pecuniary damage.

23. The Government contested the claim.

24. 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 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant did not specify his claim for the costs and expenses incurred before the Court.

26. 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 him EUR 150.

C. Default interest

27. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 150 (one hundred fifty 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