



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

THIRD SECTION

CASE OF MULEJ-ZUPANEC & OTHERS v. SLOVENIA

(Application no. 77545/01)

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 Mulej-Zupanec & Others 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. 77545/01) 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 Slovene nationals, Mrs Marjeta Mulej - Zupanec, Mr Nejc Mulej and Mr Matic Mulej (“the applicants”), on 6 November 2001.

2. The applicants were represented by the Verstovšek lawyers. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicants alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which they were parties was excessive. In substance, they 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 16 September 2003 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicants were born in 1958, 1984 and 1985 respectively and live in Škofja Vas. The first applicant is a mother of the other two applicants. She was a wife of I. Z., who was also a father of the other two applicants.

6. On 20 November 1997 the first applicant and I. Z. were injured in a car accident. I. Z. died after the accident because of the injuries sustained. The perpetrator of the accident, C. D., had taken out insurance with the insurance company ZA.

7. On 22 May 1998 the applicants instituted civil proceedings against ZA in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 9.789.433,00 Slovenian tolar (approximately 40,790 euros) for the death of I. Z. and in respect of a non-pecuniary damage resulted from the injuries the first applicant's sustained in the accident.

Between 22 February 1999 and 10 June 2003 the applicants lodged fifteen preliminary written submissions and/or adduced evidence.

During the proceedings, the applicants partially withdrew their claim.

Between 17 November 1998 and 19 October 2001 they made four requests that a date be set for a hearing.

Of the six hearings held between 12 February 1999 and 7 July 2003, none was adjourned at the request of the applicants.

During the proceedings, the court appointed a medical expert.

At the hearing held on 4 September 2002, the court decided to suspend the civil proceedings until the criminal proceedings against C. D. were concluded. On 16 September 2002 and 2 December 2002 the applicants requested that a date be set for a hearing in the criminal proceedings. On 9 June 2003 the court issued a judgement finding C. D guilty and the civil proceedings subsequently continued.

On 30 October 2003 the court delivered a judgment. The judgment, upholding the applicant's claim in part, was served on the applicants on 19 December 2003.

8. On 22 December 2003 the applicants appealed to the Celje Higher Court (*Višje sodišče v Celju*).

On 24 November 2005 the court allowed the applicants's appeal in part and increased the damages awarded.

The judgment was served on the applicants on 12 December 2005.

9. On 15 December 2005 the applicants lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

The proceedings are still pending.

THE LAW

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

10. The applicants complained about the excessive length of the proceedings. They 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...”

11. In substance, the applicants further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. They relied on Article 13 of the Convention, which 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

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

13. The applicants contested that argument, claiming that the remedies available were not effective.

14. 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 applicants’ disposal were ineffective.

15. 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.

16. 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

1. Article 6 § 1

17. The period to be taken into consideration began on 22 May 1998, the day the applicants instituted proceedings with the Celje District Court, and

has not yet ended. The relevant period has therefore lasted more than seven years and eight months for three levels of jurisdiction.

18. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

19. 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.

2. Article 13

20. 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 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see *Lukenda*, cited above) and sees no reason to reach a different conclusion in the present case.

21. Accordingly, the Court 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 applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. Each of the applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the claim.

25. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of the applicants EUR 2,400 under that head.

B. Costs and expenses

26. The applicants also claimed approximately EUR 1,890 for the costs and expenses incurred before the Court.

27. The Government argued that the claim was too high.

28. According to the Court's case-law, applicants are entitled to reimbursement of their 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. The Court also notes that the applicants' lawyers, who also represented the applicants in *Lukenda* (cited above), lodged nearly 400 applications which, apart from the facts, are essentially the same as this one. Accordingly, in the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

29. 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* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and to the applicants jointly EUR 1,000 (one thousand 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.

5. *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