



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

THIRD SECTION

CASE OF CUNDRIČ v. SLOVENIA

(Application no. 57566/00)

JUDGMENT

STRASBOURG

30 March 2006

FINAL

30/06/2006

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 Cundrič v. Slovenia,

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

Mr J. HEDIGAN, *President*,

Mr B.M. ZUPANČIČ,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 57566/00) 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 Ivo Janez Cundrič (“the applicant”), on 1 March 2000.

2. The applicant was represented by Mr Janez Gruden, attorney at law. 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. 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 12 June 2003 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying 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 applicant was born in 1947 and lives in Bohinjska Bistrica.

6. The case concerns three set of proceedings resulting from the dismissal of the applicant from his office in 1994, subsequent transfer to other posts and, ultimately, the termination of his employment in 1998.

During the proceedings the applicant urged different authorities to accelerate the proceedings, including the Petition's Commission of the Parliament, the Ombudsman for Human Rights and the Higher Labour and Social Court.

1. The first set of proceedings

7. On 14 March 1994 the applicant's employer A dismissed the applicant from a job position of a technical director and on 15 March 1994 transferred him to a new post.

8. On 28 February 1994 the applicant instituted proceedings against A in the Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*) seeking, *inter alia*, the annulment of the above mentioned decisions.

Of the seven hearings held between 17 February 1995 and 10 September 1997, none was adjourned at the request of the applicant.

On 4 June 1997 the applicant requested the exclusion of a judge from the proceedings, which was rejected on 2 July 1997.

At the last hearing, the court decided to deliver a written judgment. The judgment, rejecting the applicant's claim, was served on the applicant on 17 October 1997.

9. On 24 October 1997 the applicant appealed to the Higher Labour and Social Court (*Višje delovno in socialno sodišče*). On 4 May he made a request to speed up the proceedings.

On 14 January 2000 the court allowed the applicant's appeal and remitted the case to the first-instance court for re-examination.

10. In the meanwhile, on 16 November 1998, the applicant lodged a constitutional appeal with the Constitutional Court (*Ustavno Sodišče*), which was rejected on 2 February 1999 as premature.

11. In the re-examination proceedings, of the four hearings held between 20 June 2000 and 15 October 2001, one was adjourned due to the applicant's modification of the claim.

At the last hearing, the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 27 November 2001.

12. On 5 December 2001 the applicant appealed to the Higher Labour and Social Court.

On 24 September 2004 the court in part upheld the first-instance court judgment and in part remitted the case to the first-instance court for re-examination.

The Higher Labour and Social Court's judgment was served on the applicant on 9 February 2005.

13. On 5 March 2005 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*) against the part of the Higher Court's judgment upholding the first-instance court judgment.

The proceedings are pending in part before the Supreme Court and in part on the first instance.

2. The second set of proceedings

14. On 9 November 1998 the applicant was again transferred to a new post.

15. On 22 December 1998 the applicant instituted proceedings against A in the Ljubljana Labour and Social Court seeking annulment of the above decision on transfer and payment of the loss in his salary.

On 9 January 2002 the court held a hearing.

After the hearing, the court delivered a judgment, in which it excluded from the proceedings the part of the claim concerning the difference in the salary, which was joined with the third set of the proceedings, and rejected the remainder of the applicant's claim.

16. On 7 March 2002 the applicant appealed to the Higher Labour and Social Court.

On 29 January 2004 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 15 March 2004.

17. On 10 April 2004 the applicant lodged an appeal on points of law with the Supreme Court.

On 15 February 2005 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 2 March 2005.

3. The third set of proceedings

18. Ultimately, on 30 December 1998, A dismissed the applicant from work and on 17 March 1999 terminated his employment.

19. On 30 March 1999 the applicant instituted civil proceedings in the Ljubljana Labour and Social Court seeking the annulment of that decision and recognition of continuation of his employment.

Of the two hearings held on 9 January 2002 and 5 February 2002, neither was adjourned at the request of the applicant.

At the last hearing, the court delivered a judgment, rejecting the applicant's claim.

20. On 22 March 2002 the applicant appealed to the Higher Labour and Social Court.

On 2 April 2004 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 4 May 2004.

21. On 11 May 2004 the applicant lodged an appeal on points of law with the Supreme Court.

On 15 February 2005 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 2 March 2005.

THE LAW

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

22. 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...”

23. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. Article 13 of the Convention 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

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

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

26. 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. The Court recalls its findings in the *Lukenda* judgment that the violation of the right to a trial within a reasonable time is a systemic problem resulting from inadequate legislation and inefficiency in the administration of justice.

27. 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.

28. 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

29. As regards the first set of the proceedings, the period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and has not yet ended. The relevant period has therefore lasted over eleven years and eight months for four levels of jurisdiction. Due to the remittals of the case, seven instances were involved in this set of the proceedings.

As to the second and third set of the proceedings, the relevant period began on 22 December 1998 and 30 March 1999, respectively, when the applicant instituted proceedings with the Ljubljana Labour and Social Court and ended on 2 March 2005, the day the Supreme Court's decisions were served on the applicant. The relevant period for the second set of the proceedings therefore lasted about six years and two months and for the third set of the proceedings about five years and eleven months. In both sets of the proceedings, three levels of jurisdiction were involved.

30. 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).

31. 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 each sets of the proceedings was excessive and failed to meet the "reasonable-time" requirement. Moreover, the Court is, in particular, struck by the fact that the first set of the proceedings is after almost twelve years still pending and considers that the authorities did not display due diligence in handling the applicant's case.

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

2. Article 13

32. 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 *Kudła 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.

33. 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 applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 221,137 euros (EUR) in respect of pecuniary damage and EUR 203,100 in respect of non-pecuniary damage.

36. The Government contested the claim.

37. 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, ruling on an equitable basis, it awards him EUR 6,400 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant also claimed approximately EUR 1,720 for the costs and expenses incurred before the Court. In addition he claimed also EUR 3,890 for the costs and expenses incurred before the domestic courts.

39. The Government contested the claim.

40. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the full sum claimed for the proceedings before the Court.

C. Default interest

41. 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* that there has been a violation of Article 13 of the Convention;
4. *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 6,400 (six thousand four hundred euros) in respect of non-pecuniary damage and EUR 1,720 (one thousand seven hundred twenty 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 30 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President