



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

THIRD SECTION

CASE OF FETIŠ D.O.O. v. SLOVENIA

(Application no. 75366/01)

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 Fetiš d.o.o. 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. 75366/01) 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 company, Fetiš d.o.o. (“the applicant”), on 27 August 2000.

2. The applicant was represented by Mr J. Nastran, who was a director of the company. 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 it was a party was excessive.

4. On 23 September 2003 the Court decided to communicate the complaint concerning the length of the proceedings 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. On 24 June 1994 the applicant instituted civil proceedings against S.H. in the Murska Sobota Basic Court (*Temeljno sodišče v Murski Soboti*) seeking payment of 20,000 DEM to recover a debt. It also sought an injunction to secure the payment.

On 28 June 1994 it raised the claim to 30,000 DEM.

On 6 July 1994 the court granted the injunction.

On 5 October 1994 S.H. agreed to pay 20,000 DEM and the court consequently delivered a partial judgment, which became final on 28 October 1994.

On 17 May 1995 S.H. paid the agreed amount.

On 16 January 1996 the applicant lodged preliminary written submissions in which it continued to claim 30,000 DEM.

On 2 July 1998, further to the reorganization of the judicial system, the Murska Sobota Local Court (*Okrajno sodišče v Murski Soboti*) requested the applicant to modify the claim taking into account the partial judgment. Since the applicant refused to do so, the court, having regard to the amount of money requested, found on 9 July 1998 that it lacked jurisdiction over the case. It then reassigned the case to the Murska Sobota District Court (*Okrožno sodišče v Murski Soboti*).

The latter submitted the question of jurisdiction to the Maribor Higher Court (*Višje sodišče v Mariboru*) which, on 28 March 2000, decided that the case should be dealt by the Local Court since the amount at dispute remained only 10,000 DEM.

On 3 April 2000 the applicant lodged a request with the State Attorney (*Državno pravobranilstvo*) seeking compensation for the damage it suffered due to the delays in the proceedings. On 11 August 2000 the State Attorney rejected the request.

On 22 August 2000, following the applicant's modification of the claim to raise it to 26,161 DEM, the Murska Sobota Local Court again declared its lack of jurisdiction and sent the case to the District Court.

It appears that at least five hearings were held between 5 October 1994 and 15 December 2003, the second hearing taking place on 10 July 2000. At least two of the hearings were adjourned at the request of the applicant: the one held on 10 July 2000 was adjourned in order for the applicant to modify the claim and the hearing held on 4 September 2002 because the applicant now increased its claim to 30,000 DEM.

Between 28 June 1994 and 3 December 2002 the applicant lodged six written submissions.

During the proceedings, the applicant several times urged the authorities to speed up the proceedings. Between 7 June 1998 and 11 April 2005 it lodged five requests for supervision with the Murska Sobota District Court and on 2 February 1999 a request for supervision with the Ministry of Justice. In their replies, the authorities informed the applicant about the state of advancement of the proceedings.

On 23 December 2003 the court delivered a judgment rejecting the applicant's claim, and a decision annulling the injunction previously granted.

The judgment and the decision were served on the applicant on 30 December 2003.

6. On 14 January 2004 the applicant appealed to the Maribor Higher Court.

On 16 June 2004 the court allowed the applicant's appeal and remitted the case to the first-instance court for re-examination.

The applicant has not informed the Court about the date when that decision was served on it.

7. It appears that in the re-examination proceedings the Murska Sobota District Court held two hearings on 9 May 2005 and 15 June 2005 respectively.

On 14 July 2005 the court delivered a judgment rejecting the applicant's claim and a decision rejecting its request for an injunction.

The judgment and the decision were served on the applicant on 16 August 2005.

8. On 31 August 2005 the applicant appealed to the Maribor Higher Court.

The proceedings are still pending.

THE LAW

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

9. The applicant complained about the excessive length of the proceedings. Article 6 § 1 of the Convention 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

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

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

12. 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.

13. 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.

14. 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

15. 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 more than eleven years and eight months and four instances were involved.

16. The Court recalls 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).

17. Acknowledging that some delays could be attributed to the applicant's frequent modification of the claim, the Court nevertheless considers that the applicant's conduct itself does not justify the length of the first-instance proceedings, which lasted more than nine years and six months. The Court in particular notes that the courts were totally passive and the applicant's case remained stationary in the period between 28 October 1994 and 2 July 1998. As a result of that and the dispute over the jurisdiction, more than five years and nine months passed between the first and the second hearing in the case.

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 in total 59,200 euros (EUR) in respect of pecuniary damage. It argued that it lost EUR 54,200 as a result of unsuccessful litigation in the relevant proceedings and EUR 5,000 due to the winding up of the company, which resulted from the length of the relevant domestic proceedings.

21. The Government did not express an opinion on this claim, but contested the applicant’s initial claim for pecuniary damage in the amount of 35,000 DEM (approximately 17,860 EUR).

22. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

23. The applicant also claimed EUR 100 for the costs and expenses it incurred by filing requests for supervision in the proceedings before the domestic authorities and EUR 380 for costs and expenses incurred before the Court.

24. The Government contested the claim.

25. According to the Court’s case-law, an applicant is entitled to reimbursement of its 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 sum of EUR 380 for the proceedings before the Court.

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 380 (three hundred eighty 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 30 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President