



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

THIRD SECTION

CASE OF NOVAK v. SLOVENIA

(Application no. 75618/01)

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 Novak 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. 75618/01) 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 Marjan Novak (“the applicant”), on 4 August 2000.

2. The applicant was represented by the Verstovšek lawyers. 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 8 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. 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 1961 and lives in Žalec.

6. On 23 November 1993 the applicant was injured in an accident at work. The applicant’s employer had taken out insurance with the insurance company ZT.

7. On 4 August 1995 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 8,174,751 tolar (approximately 34,000 euros) for the injuries sustained.

On 31 January 1996 the applicant requested that a date be set for a hearing.

On 15 January 1997 and 16 April 1998 he lodged preparatory written submissions.

On 6 February 1997 and 21 April 1998 the court held hearings.

During the proceedings the court appointed a medical expert.

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 21 May 1998.

8. On 5 June 1998 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). ZT cross-appealed.

On 14 January 1999 the first-instance court, at the request of the Celje Higher Court, amended the apparent errors in the judgment and resubmitted the case to the Celje Higher Court.

On 13 May 1999 the court allowed both appeals in part and remitted the case to the first-instance court for re-examination in the part referring to the damages for disfigurement.

The judgment was served on the applicant on 26 August 1999.

9. On 21 September 1999 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*). ZT cross-appealed.

On 31 May 2000 the court dismissed the applicant's appeal and upheld ZT's appeal.

The judgment was served on the applicant on 17 July 2000.

10. On 27 July 2000 the applicant lodged a constitutional appeal.

On 11 June 2001 the Constitutional Court (*Ustavno sodišče*) dismissed the applicant's appeal. The decision was served on the applicant on 4 July 2001.

11. On 9 April 2002 the first-instance court held a hearing concerning the damages for disfigurement. The parties reached a court settlement.

On 4 October 2002 the applicant requested the court to decide on the costs and expenses. The court rendered the decision on 3 July 2003.

12. The applicant lodged an appeal with the Celje Higher Court contesting the decision on costs and expenses.

On 18 November 2004 the court allowed the appeal and remitted the case to the first-instance court for re-examination.

The decision was served on the applicant on 28 December 2004.

13. On 16 February 2005 the applicant lodged preliminary written submissions.

The case is pending before the Celje District Court.

THE LAW

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

14. 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...”

15. 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

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

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

18. 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.

19. 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.

20. 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

21. The period to be taken into consideration began on 4 August 1995, the day the applicant instituted proceedings with the Celje District Court,

and has not yet ended. The relevant period has therefore lasted over ten years and seven months for seven instances.

22. 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).

23. 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

24. 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.

25. 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

26. 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

27. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,400 under that head.

B. Costs and expenses

30. The applicant also claimed approximately EUR 1,160 for the costs and expenses incurred before the Court.

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

32. 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. The Court also notes that the applicant's lawyers, who also represented the applicant 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 applicant the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

33. 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* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;
4. *Holds* by six votes to one
 - (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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and 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* unanimously 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

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Myjer is annexed to this judgment.

J.H.
V.B.

DISSENTING OPINION OF JUDGE MYJER

Since the entry into force of the Convention the expression ‘*qui juge bien juge tard*’ may be at odds with the reasonable time provision of Article 6.

Indeed, as the saying goes ‘justice is sweetest when it is freshest’, but in daily practice it sometimes takes a long time before the last judicial word is said in civil proceedings. This may be the case when the case is of particular complexity or when the parties concerned make use of every remedy available at the national level. It may also be (partly) due to the fact that the national authorities did not fulfil their obligation to ensure that the national judiciary consists of sufficient judges and judicial and administrative staff to cope with all cases in time or when the national judges do not perform their task with the required expediency.

In the Lukenda judgment of 6 October 2005 this Court found that the violation of the right to a trial within a reasonable time was – as far as Slovenia is concerned – a systemic problem which resulted from inadequate legislation and inefficiency in the administration of justice. Although this finding gives rise to the assumption that in Slovenian cases in which the proceedings have lasted many years such a systemic violation will have occurred, it will still be necessary to look at the specific circumstances of each case.

In this particular case – like in the more than 20 other Slovenian reasonable time cases which have been decided today – the majority found a violation of the reasonable time-requirement. This is one of the three cases in which I did not vote for a violation.

Although I agree that especially the Celje District Court should have acted with much more expediency and efficiency, in my opinion the overall proceedings did not last excessively long before the altogether seven levels of jurisdiction. One should also take into account that the applicant lodged appeal after appeal. Under such circumstances proceedings will indeed last much longer. The fact that the case was sent back to a lower court for re-examination in part is not uncommon in judicial practice and does not necessarily disclose a deficiency in the judicial system as such. Besides, the substantive litigation was settled on 9 April 2002, i.e. six years and eight months after the applicant instituted the civil proceedings. The issue of costs and expenses – although closely connected to the substantive litigation – is a separate matter.