CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF CVETREŽNIK v. SLOVENIA

(Application no. 75653/01)

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 Cvetrežnik 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. 75653/01) 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, Ms Karmen Cvetrežnik ("the applicant"), on 29 September 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 she was a party was excessive. In substance, she 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 1978 and lives in Celje.

6. On 18 August 1996 the applicant was injured in a car accident. The perpetrator of the accident had taken out insurance with the insurance company ZT.

7. On 7 July 1997 the applicant instituted civil proceedings against ZT in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*) seeking damages in the amount of 2,760,600 tolars (approximately 11,500 euros) for the injuries sustained.

Between 11 November 1997 and 1 April 1998 the applicant made three requests that a date be set for a hearing.

Between 27 January 1998 and 1 July 1999 she lodged four preliminary written submissions and/or adduced evidence.

Of the three hearings held between 7 October 1998 and 13 September 2000 none was adjourned at the request of the applicant.

During the proceedings the court appointed two medical experts.

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 2 November 2000.

8. On 17 November 2000 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

On 10 October 2001 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 15 November 2001.

THE LAW

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

9. The applicant complained about the excessive length of the proceedings. She 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..."

10. 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

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

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

13. 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.

14. 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.

15. 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

16. The period to be taken into consideration began on 7 July 1997, the day the applicant instituted proceedings with the Ljubljana District Court, and ended on 15 November 2001, the day the Ljubljana Higher Court judgment was served on the applicant. It therefore lasted over four years and four months for two levels of jurisdiction.

17. 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).

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.

2. Article 13

19. 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.

20. 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 her right to have her case heard within a reasonable time, as set forth in 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 5,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested the claim.

24. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,000 under that head.

B. Costs and expenses

25. The applicant also claimed approximately EUR 1,000 for the costs and expenses incurred before the Court.

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

27. 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. 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 full sum claimed.

C. Default interest

28. 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 five votes to two that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by five votes to two that there has been a violation of Article 13 of the Convention;

4. *Holds* five votes to two
   (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 2,000 (two thousand 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	John HEDIGAN
Registrar	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 joined by Mr Caflisch is annexed to this judgment.

J.H.
V.B.

DISSENTING OPINION OF JUDGE MYJER JOINED BY JUDGE CAFLISCH

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.

The case must have been of particular complexity, taking into account that two medical experts were appointed. During the proceedings the applicant lodged four preliminary written submissions and/or adduced evidence. Three hearings were held. It took the Ljubjana Court more than three years to deliver its judgment. The Ljubljana Higher Court managed to deliver a judgment within one year after the appeal of the applicant. Under these circumstances the overall time does not appear excessive.