



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

THIRD SECTION

CASE OF PUŽ v. SLOVENIA

(Application no. 76199/01)

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 Puž 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. 76199/01) 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 Slovene national, Mr Ivan Puž (“the applicant”), on 26 January 2001.

2. 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 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. 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 1933 and lives in Maribor.

6. On 14 July 1975 the applicant, who used to work as a farmer and a car mechanic, was injured in a car accident. The perpetrator of the accident had taken out insurance with the insurance company HUK.

7. On 20 June 1978 the applicant instituted civil proceedings against HUK in the Maribor District Court (*Okrožno sodišče v Mariboru*) seeking pecuniary and non-pecuniary damages resulting from the accident.

On 11 February 1981 the applicant and insurance community T, acting on behalf of HUK, made an out-of-court settlement concerning non-pecuniary damage. Subsequently, HUK recognized the basis of the claim, but continued to disagree with the amount claimed for the pecuniary damage, including the damage for loss of capacity and business loss.

During the proceedings HUK was represented firstly by T and then by its alleged successor, insurance company ZM.

By 28 June 1994, when the Convention entered into force with respect to Slovenia, the first-instance court decisions were three times quashed on appeal and remitted for re-examination, the last time on 18 March 1994.

Between 4 April 1996 and 25 November 1998, in the fourth trail, the applicant lodged five preliminary written submissions and/or adduced evidence.

Of the seven hearings held between 14 December 1995 and 15 April 1999, one was adjourned at the request of the applicant.

During the proceedings, the court appointed a financial expert. The court also sought two additional opinions from the appointed experts.

At the last hearing, the court delivered a judgment, in which it upheld the applicant's claim in part.

8. On 1 June 1999 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*). HUK cross-appealed. Insurance company M also appealed.

On 5 December 2000 the Maribor Higher Court rejected ZM's appeal and allowed the appeals of applicant and HUK and remitted the case to the first-instance court for re-examination. It found, *inter alia*, that ZM all the time during the proceedings lacked the authority to represent HUK.

9. In the fifth trail, the applicant lodged nine preliminary written submissions and/or adduced evidence between 2 February 2001 and 9 May 2002.

During the proceedings the court appointed a medical expert, a financial expert and an agricultural expert. The court also sought an additional opinion from one of the appointed experts.

Of the seven hearings held between 28 June 2001 and 3 June 2004, none was adjourned at the request of the applicant.

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 9 July 2004.

10. At an undetermined time the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*). HUK cross-appealed.

On 31 May 2005 the court dismissed the applicant's appeal and allowed the HUK's appeal in part.

The judgment was served on the applicant on 14 July 2005.

11. On 18 July 2005 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

The proceedings are still pending.

12. In the meanwhile, on 10 February 2001 the applicant instituted a separate set of proceedings against the insurance company ZM seeking compensation for damage he sustained due to ZM's unauthorized interference in the above proceedings.

THE LAW

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

13. The applicant complained about the excessive length of the proceedings he instituted against HUK. 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...”

14. 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

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

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

17. 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.

18. 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.

19. 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

20. 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 for three levels of jurisdiction. Due to a remittal of the case, the latter was considered on five instances after 28 June 1994.

However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 28 June 1994 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999). Accordingly, the Court notes that in the instant case, due to three remittals, decisions were rendered already on six instances in the period of sixteen years before 28 June 1994.

21. 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).

22. 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. Moreover, although the Court is not in a position to analyse the juridical quality of the case-law of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (e.g., *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The Government have failed to provide any explanation that would lead the Court to reach a different conclusion.

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

2. Article 13

23. 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.

24. 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

25. 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

26. The applicant claimed 203,267 euros (EUR) in respect of pecuniary damage he sustained due to unnecessary expenses for legal representation and expert opinions and insufficient compensation granted by the court, which allegedly resulted from unreasonable length of the proceedings.

27. The Government contested the claim.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Since the applicant has not submitted any claim for non-pecuniary damage, the Court is not in a position to award him any just satisfaction in this respect.

B. Costs and expenses

29. The applicant did not specify his claim for the costs and expenses incurred before the Court.

30. 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. Although the applicant did not specify his claim, the Court considers, having regard to the information in its possession and the above criteria, that the applicant, who was not represented by the lawyer, must have had expenses with the proceedings before the Court and considers it reasonable to award him EUR 300.

C. Default interest

31. 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 300 (three hundred 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 claims 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