CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF GOLENJA v. SLOVENIA

(Application no. 76378/01)

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 Golenja 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. 76378/01) 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 Stjepan Golenja ("the applicant"), on 3 May 2001.

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 July 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 1959 and lives in Goričan.

6. As a result of the accident at work, which occurred on 15 February 1988, the applicant was a disabled person. From 1 June 1990 until 30 September 1993, he was in training to qualify for a post suitable for

his health problems. After the training, he was not appointed to any post at his employer, the company called EM. On 15 October 1994 he was made redundant.

7. On 24 November 1994 the applicant instituted labour law proceedings against EM in the Celje Labour Court (*Delovno sodišče v Celju*) contesting the termination of employment. He also sought temporary injunction.

On 12 December 1994 the court issued a temporary injunction ordering EM to pay the applicant an advance of his salaries since 1 November 1994.

EM appealed to the Higher Labour and Social Court (*Višje delovno in socialno sodišče*). On 12 January 1995 the court dismissed the appeal.

On 6 April 1995 the Celje Labour Court held a hearing and decided to deliver a written judgment.

The judgment, upholding the applicant's claim, was served on the applicant on 13 April 1995.

8. At an undetermined time, EM appealed to the Higher Labour and Social Court.

On 9 October 1996 the court allowed the appeal and remitted the case to the first-instance court for re-examination.

9. On 19 September 1997 the applicant requested in the first-instance court that a date be set for a hearing.

Of the five hearings held between 27 March and 11 December 1997 none was adjourned at the request of the applicant.

The judgment, upholding the applicant's claim, was served on the applicant on 17 December 1997.

10. At an undetermined time, EM appealed to the Higher Labour and Social Court.

On 4 February 1999 the court allowed the appeal in part and remitted the claim to the first-instance court for re-examination.

11. At an undetermined time, EM lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 23 November 1999 the court dismissed the appeal. The judgment was served on the applicant on 14 December 1999.

12. On 24 February 2000 the first-instance court held a hearing and appointed a financial expert to calculate the applicant's loss of income. On 1 February 2001 the court held a hearing and decided to issue a written judgment. The judgment was served on the applicant on 26 February 2001.

13. On 27 February 2001, the applicant appealed against the decision concerning the costs and expenses.

On 18 July 2002 the Higher Labour and Social Court dismissed the appeal. The decision was served on the applicant on 3 September 2002.

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. 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..."

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 24 November 1994, the day the applicant instituted proceedings with the Celje Labour Court, and ended on 3 September 2002, the day the Higher Labour and Social Court decision was served on the applicant. It therefore lasted over seven years and seven months and the decisions were rendered on 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. The Court notes that the decisions were rendered on seven instances. Therefore, the Court cannot conclude that the domestic courts have been inactive. On the contrary, the delay in the present case was caused mainly by the re-examination of the case. 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 (see, 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.

24. 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

25. 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.

26. 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

27. 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

28. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested the claim.

30. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,500 under that head.

B. Costs and expenses

31. The applicant also claimed approximately EUR 1,300 for the costs and expenses incurred before the Court.

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

33. 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

34. 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 2,500 (two thousand five 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	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 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.

In my opinion the overall proceedings did not last excessively long before the seven levels of jurisdiction. One should also take into account that the opposing party 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 judged on 26 February 2001, i.e. six years and three month after the applicant instituted the labour law proceedings. It was now the applicant who appealed against the decision concerning the costs and expenses. This issue – although closely connected to the substantive litigation – is a separate matter.