CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF PEČNIK v. SLOVENIA

(Application no. 76439/01)

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 Pečnik 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. 76439/01) 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 Primož Pečnik ("the applicant"), on 23 October 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 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 rule on the admissibility and merits of the application at the same time.

THE FACTS

5. The applicant was born in 1973 and lives in Celje.

6. On 25 February 1994 the applicant was injured while serving a military service as a conscript.

7. On 4 February 1997 the applicant instituted civil proceedings against the Ministry of Defence in the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) seeking damages in the amount of 1,821,312 Slovenian tolars (approximately 7,590 euros) for the injuries sustained.

On 30 October 2000 the Ljubljana Local Court declared that the case was out of its jurisdiction and reassigned it to the Ljubljana District Court (*Okrajno sodišče v Ljubljani*).

Between 26 October 2000 and 15 October 2001 the applicant lodged four preliminary written submissions and/or adduced evidence.

Between 9 September 1998 and 20 November 2001 he made six requests that a date be set for a hearing.

Of the five hearings held between 20 September 2001 and 31 May 2002, none was adjourned at the request of the applicant.

At the last hearing, the Ljubljana District Court decided to deliver a written judgment. The judgment, rejecting the applicant's claim, was served on the applicant on 11 June 2002.

8. On 27 June 2002 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

On 11 June 2003 the court allowed the applicant's appeal and remitted the case to the first-instance court for re-examination.

The decision was served on the applicant on 26 June 2003.

9. In the re-examination proceedings, the applicant made a request that a date be set for a hearing on 28 August 2003.

On 16 October 2003 he lodged preliminary written submissions.

Hearings were held on 30 October 2003 and 8 December 2003. A hearing scheduled for 22 December 2003 was postponed until 12 January 2004 at the request of the applicant due to the death of his family member.

The applicant did not attend the hearing scheduled for 12 January 2004 and the Ljubljana District Court consequently issued a decision suspending the proceeding.

On 13 April 2004 the applicant requested the court to continue the proceedings and on 6 May 2004 made a request that a date be set for a hearing.

Of the two hearings held on 4 June 2004 and on 2 September 2005, none was adjourned at the request of the applicant.

During the proceedings, the court appointed a medical expert.

On 28 October 2004 and 1 August 2005 the applicant lodged written submissions.

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 3 October 2005.

10. On 18 October 2005 the applicant appealed to the Ljubljana Higher Court.

The proceedings are still pending.

THE LAW

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

11. 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..."

12. 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

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

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

15. 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.

16. 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.

17. As to the applicability of Article 6, the Court recalls that disputes between administrative authorities and employees who occupy posts involving participation in the exercise of powers conferred by public law do not attract the application of Article 6 § 1. However, regard being had to the fact that at the time the applicant sustained his injuries he was a conscript,

the Court considers that he was not the holder of a post "wielding a portion of the State's sovereign power" (see *Pellegrin v. France* [GC], no. 28541/95, § 67, ECHR 1999-VII). This provision is, accordingly, applicable in the present case.

18. 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

19. The period to be taken into consideration began on 4 February 1997, the day the applicant instituted proceedings with the Ljubljana Local Court, and has not yet ended. The relevant period has therefore lasted more than nine years and one month and four instances were involved.

20. 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).

21. The Court notes that the delay of about 3 months and 21 days which occurred due to the applicant's absence at the hearings scheduled for 22 December 2003 and 12 January 2004 and subsequent suspension of the proceedings cannot be attributed to the Government.

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, even assuming that the period between 22 December 2003 and 13 April 2004 cannot be attributed to the Government, was excessive and failed to meet the "reasonable-time" requirement.

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 10,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head.

B. Costs and expenses

29. The applicant also claimed approximately EUR 1,170 for the costs and expenses incurred before the Court.

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

31. 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

32. 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 1,200 (one thousand two 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* 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