



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

THIRD SECTION

CASE OF KOVAČIČ v. SLOVENIA

(Application no. 75742/01)

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 Kovačič 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. 75742/01) 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 Croatian national, Mr Josip Kovačič (“the applicant”), on 6 July 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 1969 and lives in Nüziders, Austria.

6. On 16 July 1994 the applicant damaged his car in a car accident. He had taken out insurance with the insurance company IVA. The perpetrator of the accident had taken out insurance with the insurance company ZT.

7. On 28 July 1995 the applicant and IVA instituted civil proceedings against ZT in the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) seeking damages in the amount of 205,012 tolar (approximately 850 euros) for the car damage.

On 5 July 1996 the applicant lodged preliminary written submissions and adduced evidence.

On 5 July and 8 October 1996 he requested that a date be set for a hearing.

On 17 January 1997 the court held a hearing. Since the defendant did not appear before the court and failed to reply to the applicant's claim, the applicant requested the court to issue a default judgment.

On 12 February 1998 the court decided to recommence the hearing in the present case.

8. On 17 March 1998 the applicant appealed.

On 5 October 2000 the Ljubljana Local Court dismissed the appeal.

On 19 October 2000 the applicant appealed.

On 9 August 2001 the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) dismissed the appeal.

9. In the meanwhile the first-instance court continued the proceedings concerning the applicant's claim.

On 20 April 1998 the applicant requested that the defendant's reply to the claim be served on him.

Between 12 May 1998 and 17 December 2003 the applicant lodged six preliminary written submissions and/or adduced evidence.

Between 16 October 1998 and 7 May 1999 he made three requests that a date be set for a hearing.

Of the four hearings held between 26 May 1998 and 16 January 2004, one was adjourned at the request of the applicant.

During the proceedings, the case was transferred twice to a new judge for an undetermined reason.

At the last hearing the court decided to deliver a written judgment. The judgment, rejecting the applicant's claim, was served on the applicant on 16 February 2004.

10. On 18 February 2004 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

On 11 January 2005 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 7 March 2005.

11. On 6 May and 13 July 2005 the applicant lodged preliminary written observations with the Ljubljana Local Court.

The proceedings are still pending.

THE LAW

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

12. 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...”

13. 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

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

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

16. 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.

17. 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.

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 28 July 1995, the day the applicant instituted proceedings with the Ljubljana Local Court, and

has not yet ended. The relevant period has therefore lasted over ten years and seven months and three instances have been 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. 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, in particular before the first-instance court, was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13

22. 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.

23. 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

24. 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

25. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested the claim.

27. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,400 under that head.

B. Costs and expenses

28. The applicant also claimed approximately EUR 1,390 for the costs and expenses incurred before the Court.

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

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. 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

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 6,400 (six 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* 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