CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF HUSEINOVIĆ v. SLOVENIA

(Application no. 75817/01)

JUDGMENT

STRASBOURG

6 April 2006

FINAL

06/07/2006

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 Huseinović v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J. HEDIGAN, *President*,
Mr B.M. ZUPANČIČ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr D.T. BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 March 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 75817/01) 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 Kasim Husejinović ("the applicant") on 5 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 1956 and lives in Velenje.

6. On 17 August 1989 the applicant was injured in an accident at work in a mine. The applicant's employer had taken out insurance with the insurance company ZT.

7. On 30 June 1993 the applicant instituted civil proceedings against ZT. in the Celje Basic Court, Celje Unit (*Temeljno sodišče v Celju, Enota v Celju*) seeking damages in the amount of 700,000 tolars (approximately 2,900 euros) for the injuries sustained.

Until 28 June 1994, the day the Convention entered into force with respect to Slovenia, the applicant lodged six preliminary written observations and made four requests that a date be set for a hearing. The court held a hearing and appointed a medical expert.

On 1 January 1995 the Celje Local Court (*Okrajno sodišče v Celju*) gained jurisdiction in the present case due to the reform of the Slovenian judicial system.

On 13 June 1996 and 11 September 1996 the applicant lodged preliminary written submissions and/or adduced evidence.

On 18 October 1996 he requested that a date be set for a hearing.

Neither of the hearings held on 13 July 1994 and 29 January 1997 was adjourned at the request of the applicant.

During the proceedings the court sought an additional opinion from the appointed medical expert.

At the last hearing the court decided to deliver a written judgment. The judgment, upholding the applicant's claim, was served on the applicant on 3 March 1997.

8. On 18 March 1997 ZT appealed to the Celje Higher Court (*Višje sodišče v Celju*).

On 17 September 1997 the court allowed the ZT's appeal in part and remitted the case to the first-instance court for re-examination.

The decision was served on the applicant on 22 December 1997.

9. On 5 January 1998 the applicant submitted preliminary written observations and requested that a date be set for a hearing.

On 12 March 1998 the court held a hearing.

The judgment, upholding the applicant's claim, was served on the applicant on 7 April 1998.

10. On 21 April 1998 ZT appealed to the Celje Higher Court.

On 23 September 1998 the court allowed the appeal and dismissed the applicant's claim.

The judgment was served on the applicant on 28 December 1998.

11. On 7 January 1999 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 20 January 2000 the court allowed the applicant's appeal, annulled the second-instance court's judgment and remitted the case to the second-instance court for re-examination.

The decision was served on the applicant on 6 November 2000.

12. On 28 September 2000 the Celje Higher Court, re-examining TZ's appeal of 21 April 1998, allowed the appeal and remitted the case to the first-instance court for re-examination.

13. Between 12 February 2001 and 4 July 2001 the applicant lodged three preliminary written submissions and/or adduced evidence.

Neither of the hearings held on 1 March 2001 and 4 April 2001 was adjourned at the request of the applicant.

During the proceedings the court sought an additional opinion from the appointed medical expert.

At the last hearing the court decided to deliver a written judgment. The judgment, dismissed the applicant's claim, was served on the applicant on 2 October 1997.

14. On 4 October 2001 the applicant appealed to the Celje Higher Court.

On 18 September 2002 the court dismissed the appeal.

The judgment was served on the applicant on 15 October 2002.

15. On 23 October 2002 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*). He also sought a recusal of one of the judges.

On 24 February 2003 the president of the court rejected the applicants request for a recusal.

On 8 January 2004 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 16 February 2004.

THE LAW

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

16. The applicant complained about the excessive length of the proceedings. 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..."

17. 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

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

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

20. 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.

21. 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.

22. 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

23. 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 ended on 16 February 2004, the day the Supreme Court's judgment was served on the applicant. The relevant period has therefore lasted over nine years and eight months for nine levels of jurisdiction.

24. 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).

25. The Court notes that the decisions were rendered on nine instances and, consequently, cannot conclude that the courts were inactive in the present case. 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.

26. 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

27. 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.

28. 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

29. 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

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

31. The Government contested the claim.

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

B. Costs and expenses

33. The applicant also claimed approximately EUR 1,260 for the costs and expenses incurred before the Court.

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

35. 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

36. 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 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President