CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF BELOŠEVIĆ v. SLOVENIA

(Application no. 7877/02)

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 Belošević 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. 7877/02) 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 Jože Belošević ("the applicant"), on 6 February 2002.

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 11 June 2004 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 1946 and lives in Celje.

6. In 1988 the applicant was granted an invalidity status after being injured in an accident at work. The Pension and Disability Insurance

Community ("PDIC") paid his invalidity pension, allegedly with some delays.

7. On 30 March 1990 the applicant instituted proceedings against PDIC in the Court of Associated Labour of Pension and Disability Insurance (*Sodišče združenega dela invalidskega in pokojninskega zavarovanja*) seeking payment of interests which occurred due to the late payments of his invalidity pension.

After the first instance judgment had been quashed twice on appeal and remitted for reconsideration, on 12 October 1993 the Court of Associated Labour of Pension and Disability Insurance upheld the applicant's claim in part.

On 2 November 1993 the applicant appealed.

On 28 June 1994 the Convention entered into force with respect to Slovenia.

On 22 September 1994, further to the applicant's appeal, the Higher Labour and Social Court (*Višje delovno in social sodišče*) quashed the first-instance decision again and remitted the case to the first-instance court for re-examination.

8. Between 23 January 1995 and 3 November 1998 the applicant lodged three preliminary written submissions and/or adduced evidence.

Between 23 October 1997 and 18 June 1998 he made four requests that a date be set for a hearing.

Of the two hearings held on 8 July 1998 and 10 December 1998, neither was adjourned at the request of the applicant.

At the last hearing, the (renamed) Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*) decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 4 March 1999.

9. On 8 March 1999 the applicant appealed to the Higher Labour and Social Court.

On 5 February 2002 the applicant urged the court to decide on the appeal.

On 1 March 2002 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 12 March 2002.

10. On 21 March 2002 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 6 May 2003 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 26 May 2003.

11. On 23 May 2003 the Ljubljana Labour and Social Court requested the applicant to pay court fees. Subsequently, the applicant paid only part of the fees. As regards the remaining part, he lodged an objection stating that the request was time barred.

On 11 June 2003 the court issued a decision ordering the applicant to pay the remainder of the court fees and rejected his objection.

On 16 June 2003 the applicant appealed.

On 20 August 2004 the Higher Labour and Social Court dismissed the applicant's appeal. That decision was served on the applicant on 1 September 2004.

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. 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..."

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 June 1994, the day when the Convention entered into force with respect to Slovenia.

As regards the end of the relevant period, the Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, § 28; *Beer v. Austria*, no. 30428/96, § 13, 6 February 2001). Accordingly, the proceedings concerning court fees, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as a part of a "determination of ... civil rights and obligations" (see, *mutatis mutandis*, the authorities cited above). The period to be taken into consideration thus ended on 1 September 2004, the day the Higher Labour and Social Court's decision concerning the court fees was served on the applicant. It therefore lasted about ten years and two months and five 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 substantial delays in the proceedings following the remittal of the case on 22 September 1994, notably, proceedings before the Ljubljana Labour and Social Court which ended on 4 March 1999, and the proceedings before the Higher Labour and Social Court which ended on 12 March 2002. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that these delays cannot be attributed to the applicant and therefore concludes 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

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 15,000 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 2,400 under that head.

B. Costs and expenses

28. The applicant also claimed approximately EUR 1,280 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 2,400 (two thousand eight 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 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	John HEDIGAN President