CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF LUKENDA v. SLOVENIA (no. 2)

(Application no. 16492/02)

JUDGMENT

STRASBOURG

13 April 2006

FINAL

03/07/2006

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 Lukenda v. Slovenia (no. 2),

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 DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 23 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 16492/02) 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 Franjo Lukenda ("the applicant"), on 18 April 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 12 November 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 1952 and lives in Velenje.

6. On 6 January 1994 the applicant was injured in an accident at work. The applicant's employer had taken out insurance with the insurance company ZT.

7. On 27 December 1995 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 4,400,000 tolars (approximately 18,300 euros) for the injuries sustained.

Between 15 January 1996 and 3 December 1997 the applicant lodged five preliminary written submissions and/or adduced evidence.

Between 24 March 1997 and 9 April 1998 he made three requests that a date be set for a hearing.

On 25 September 1997 the presiding judge was appointed to the Celje Higher Court (*Višje sodišče v Celju*) and the case was transferred to a new judge.

Of the six hearings held between 19 November 1997 and 10 June 1998 none was adjourned at the request of the applicant. Four hearings were adjourned because a witness failed to appear before the court.

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 14 July 1998.

8. On 22 July 1998 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). ZT cross-appealed.

On 14 April 1999 the court allowed the appeals, quashed the first-instance court judgment and remitted the case to the first-instance court for re-examination.

The judgment was served on the applicant on 10 June 1999.

9. During the re-examination proceedings before the first-instance court the applicant made preparatory written submissions and/or adduced evidence on 26 August 1999 and 9 September 1999.

On 22 September 1999 a hearing was held and the court decided to deliver a written judgment.

On 2 December 1999 the judgment was served on the parties.

10. On 13 December 1999 the applicant appealed to the Celje Higher Court. ZT cross-appealed.

On 18 October 2000 the Celje Higher Court dismissed the applicant's appeal. The judgment was served on the applicant on 12 December 2000.

11. On 27 December 2000 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 17 January 2002 the court allowed the applicant's appeal in part.

The judgment was served on the applicant on 26 March 2002.

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 27 December 1995, the day the applicant instituted proceedings with the Celje District Court, and ended on 26 March 2002, the day the Supreme Court decision was served on the applicant. It therefore lasted almost six years and three months for five levels of jurisdiction.

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 amounting to almost six years and three months for five instances, can still be considered reasonable. Although it took almost one year and eleven months before the first hearing was held, the Court considers that the swiftness of the proceedings that followed overweighs the initial delay in the proceedings.

There has accordingly been no breach of Article 6 § 1.

2. Article 13

22. Having regard to its decision on Article 6 § 1, the Court considers that it is not necessary to examine the case under Article 13 since its requirements are less strict than, and are here absorbed by those of Article 6 § 1 (see *G.C. v. The United Kingdom*, no. 43373/98, § 53, 19 December 2001).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that it is not necessary to examine the merits of the applicant's complaints under Article 13 of the Convention.

Done in English, and notified in writing on 13 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	John HEDIGAN President