CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF ĐAKOVIĆ v. SLOVENIA

(Application no. 32964/02)

JUDGMENT

STRASBOURG

27 April 2006

FINAL

27/07/2006

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 Đaković 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,
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 6 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 32964/02) 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 Ratko Đakovič ("the applicant"), on 21 June 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 7 September 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 1942 and lives in Celje.

6. On 1 April 1992 the applicant was injured in an accident at work. The applicant's employer had taken out insurance with the insurance company ZT.

7. On 29 September 1993 the applicant instituted civil proceedings against ZT in the Celje Basic Court (*Temeljno sodišče v Celju*) seeking damages in the amount of 2,111,949 tolars (approximately 8,800 euros) for the injuries sustained.

Before 28 June 1994, the day the Convention entered into force with respect to Slovenia, the court held one hearing and appointed an ophthalmologist.

Between 9 September 1994 and 26 November 1996 the applicant lodged four preliminary written submissions and/or adduced evidence.

Between 9 September 1994 and 7 May 1996 he made four requests that a date be set for a hearing.

Neither of the hearings held on 9 December 1994 and 3 December 1996 was adjourned at the request of the applicant.

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

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 13 February 1997.

8. On 24 February 1997 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). ZT cross-appealed.

On 26 November 1997 the court quashed the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

The decision was served on the applicant on 8 January 1998.

9. On 11 June 1998 the applicant lodged preliminary written submissions with the Celje District Court.

On 22 June 1998 the court held a hearing. The court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 24 September 1998.

10. On 2 October 1998 the applicant appealed to the Celje Higher Court. ZT cross-appealed.

On 21 April 1999 the court quashed the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

The decision was served on the applicant on 31 May 1999.

11. On 14 June and 23 November 1999 the applicant lodged preliminary written submissions and/or adduced evidence.

Neither of the hearings held on 14 June 1999 and 13 December 1999 was adjourned at the request of the applicant.

During the proceedings the court sought an additional opinion from the appointed ophthalmologist.

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 9 February 2000.

12. On 14 February 2000 the applicant appealed to the Celje Higher Court against that part of the decision rejecting his claim.

On 21 March 2001 the second-instance court rejected his appeal.

13. On 21 May 2001 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 13 June 2002 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 28 August 2002.

THE LAW

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

14. 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..."

15. 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

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

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

18. 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.

19. 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.

20. 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

21. 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 28 August 2002, the day the Supreme Court's decision was served on the applicant. It therefore lasted eight years and two months and decisions were rendered on seven instances.

22. 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).

23. The Court notes that the decisions were rendered on seven 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.

24. 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

25. 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.

26. 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

27. 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

28. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested the claim.

30. 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

31. The applicant also claimed approximately EUR 1,610 for the costs and expenses incurred before the Court.

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

33. 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

34. 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 27 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	John HEDIGAN President