



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

THIRD SECTION

**CASE OF RODIČ v. SLOVENIA**

*(Application no. 38528/02)*

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 Rodič 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. 38528/02) 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, Ms Suzana Rodič (“the applicant”), on 28 October 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 she was a party was excessive. In substance, she 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 15 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 1976 and lives in Velenje.

6. On 14 January 1998 the applicant was injured in a car accident. She was insured with the insurance company ZT.

7. On 24 July 1998 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 2,080,314 toolars (approximately 8,680 euros) for the injuries sustained. She also requested to be exempted from paying the court fees.

On 2 March and 27 September 1999 the applicant requested that a date be set for a hearing.

On 20 October 1999 the court rejected her request for the exemption from the payment of the court fees. The decision was served on the applicant on 2 November 1999.

On 15 November 1999 the applicant lodged an appeal with the Celje Higher Court (*Višje sodišče v Celju*).

On 16 February 2000 the court partly upheld her appeal and the case was returned to the first-instance court for re-examination. The decision was served on the applicant on 6 March 2000.

On 16 March 2000 the applicant submitted new evidence in support of her claim for exemption from payment of the court fees.

On 29 March 2000 the applicant was exempted from payment of the court fees. The decision was served on the applicant on 14 June 2000.

On 30 March and 9 April 2000 the applicant requested that a hearing be scheduled.

Between 17 July 2001 and 4 April 2002 the applicant lodged three preliminary written submissions and/or adduced evidence.

Of the three hearings held between 4 June 2000 and 27 May 2002 none was adjourned at the request of the applicant.

During the proceedings the court appointed two medical experts.

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 2 September 2002.

8. On 17 September 2002 the applicant appealed to the Celje Higher Court. ZT cross-appealed.

On 13 November 2003 the court allowed both appeals in part and lowered the damages awarded.

The judgment was served on the applicant on 19 December 2003.

9. On 30 December 2003 the applicant lodged a motion with the Supreme State Prosecutor's Office (*Vrhovno državno tožilstvo*, "the Office") requesting it to lodge a request for the protection of legality (*zahteva za varstvo zakonitosti*) with the Supreme Court (*Vrhovno sodišče*).

On 3 February 2004 the Office rejected the applicant's request.

10. On 13 April 2004 the applicant lodged a constitutional appeal against the judgments of the first and second-instance courts.

On 4 May 2005 the Constitutional Court (*Ustavno sodišče*) dismissed the appeal. The court found that the applicant's motion of 30 December 2003 was not a legal remedy available to a party to the civil proceedings and that no constitutional appeal was allowed against the decision of the Office. In

addition, the court found that the constitutional appeal against the Celje Higher Court judgment was out of time.

The judgment was served on the applicant on 6 May 2005.

## THE LAW

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

11. The applicant complained about the excessive length of the proceedings. She 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...”

12. 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

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

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

15. 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.

16. 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.

17. 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*

18. The period to be taken into consideration began on 24 July 1998, the day the applicant instituted proceedings with the Celje District Court, and ended on 19 December 2003, the day the Celje Higher Court's judgment was served on the applicant. It therefore lasted more than five years and five months for two levels of jurisdiction.

According to the judgment of the Constitutional Court of 4 May 2005, the motion of 30 December 2003, which the applicant lodged with the Office, was not a legal remedy at the applicant's disposal under the domestic law. As a consequence, her subsequent constitutional appeal was dismissed as not allowed. In addition, her constitutional appeal against the Celje Higher Court judgment was dismissed as out of time.

The Court considers that the applicant failed correctly to avail herself of available domestic legal remedies after she had received the Celje Higher Court judgment. Therefore, the period after 19 December 2003 cannot be considered "relevant" within the meaning of Article 6 § 1 (length of proceedings) of the Convention.

19. 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).

20. 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*

21. 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.

22. 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 her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

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

25. The Government contested the claim.

26. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,200 under that head.

### B. Costs and expenses

27. The applicant also claimed approximately EUR 1,290 for the costs and expenses incurred before the Court.

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

29. 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

30. 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

1. *Declares* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one that there has been a violation of Article 13 of the Convention;
4. *Holds* by six votes to one
  - (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 3,200 (three 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* unanimously 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