



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

THIRD SECTION

CASE OF KERŽINA-KUKOVEC v. SLOVENIA

(Application no. 75574/01)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Keržina-Kukovec 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 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 75574/01) 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, Sonja Keržina-Kukovec (“the applicant”), on 14 February 2000.

2. 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.

4. On 23 September 2003 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born in 1953 and lives in Ruše.

6. On 15 January 1992 the applicant instituted denationalization proceedings in the Ruše Municipality (*Občina Ruše*) seeking restitution of a property previously owned by her grandmother.

On 17 April 1992 the Municipality forwarded the applicant’s claim to the Maribor Basic Court, Maribor Unit (*Temeljno Sodišče v Mariboru, enota v Mariboru*). The court dismissed her claim twice and declared a lack of jurisdiction in the case. However, both decisions had been quashed on

appeal and the case was ultimately considered by the renamed Maribor Local Court (*Okrajno Sodišče v Mariboru*).

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

Of the four hearings held between 8 December 1994 and 27 May 1999, none was adjourned at the request of the applicant.

On 5 May 2000 the court gave a judgement dismissing the applicant's claim.

7. On 23 May 2000 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*).

On 26 September 2000 the court allowed her appeal and remitted the case to the first-instance court for re-examination.

8. On 13 November 2001 the first-instance court held a hearing.

On 5 July 2002 the court found that the legal grounds for the denationalisation proceedings existed but suspended the part of the proceedings concerning the form and means of restitution until the decision concerning the legal grounds became final.

9. On 19 July 2002 the first defendant (the National Farm Land and Forest Fund, represented by the State Attorney) and on 23 August 2002 the second defendant (the Selnica ob Dravi Agricultural Cooperative) appealed against that decision to the Maribor Higher Court.

On 22 October 2002 the court allowed the appeals and remitted the case to the first-instance court for re-examination by a new judge.

10. Between 12 November 2003 and 7 November 2005 the Maribor Local Court held four hearings. A hearing scheduled for 2 March 2005 was called off on the applicant's request.

During the proceedings, the court appointed two experts to assess the property at issue.

Between 14 January and 9 February 2005 the applicant lodged three written submissions in which she disagreed with the estimated costs for one of the expert opinions.

On 9 November 2005 the applicant lodged preliminary written submissions.

The proceedings are still pending.

11. Throughout the proceedings, the applicant lodged three requests for supervision with the President of the Maribor Local Court and three petitions with the Human Rights Ombudsman (*Varuh človekovih pravic*) complaining about the length of the denationalisation proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. 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...”

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

18. 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 has not yet ended. The relevant period has therefore lasted over eleven years and nine months for two levels of jurisdiction. However, due to remittals, the case was considered on five instances.

In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 28 June 1994 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999). Consequently, the Court observes that

the decisions in the case had already been twice quashed on appeal before that date.

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. The Court notes that the main delay in the present case occurred in the first examination of the case by the Maribor Local Court, which lasted five years and ten months within the Court's jurisdiction *ratione temporis*. Moreover, the Court observes that the overall length, which exceeded eleven years, was caused also by the repeated re-examination of the case (see, e.g., *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

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 was excessive and failed to meet the "reasonable-time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed approximately 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

24. The Government contested the claim.

25. The Court rejects the applicant's claim as far as it concerns pecuniary damage. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,000 under that head.

B. Costs and expenses

26. The applicant claimed reimbursement of costs and expenses incurred in the domestic proceedings and before the Court, but did not further specify her claim.

27. According to the Court's case-law, an applicant is entitled to reimbursement of her 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses incurred in the domestic proceedings and considers it reasonable to award the applicant, who was not represented by the lawyer, EUR 150 for the proceedings before the Court.

C. Default interest

28. 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*
 - (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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 150 (one hundred fifty 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;

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

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President