CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF ROŽIČ v. SLOVENIA

(Application no. 75779/01)

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 Rožič 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. 75779/01) 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 citizen of Bosnia and Herzegovina, Mr Mile Rožič ("the applicant"), on 27 July 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 16 September 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.

5. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Registrar informed the Austrian Government of their right to submit written comments. They did not indicate that they wished to exercise their right.

THE FACTS

6. The applicant was born in 1955 and lives in Vienna, Austria.

7. On 16 May 1987 the applicant, who was a conscript, was injured in a car accident. The perpetrator or the accident was an employee of a private company IN which insured the vehicle with the insurance company ZT. At the time of the accident the perpetrator was driving the private company's vehicle for the Yugoslav armed forces while conscripted under the order issued by the Celje Municipality Department of Defence.

8. On 7 August 1989 the applicant instituted civil proceedings against the Socialist Federal Republic of Yugoslavia ("SFRY") and ZT in the Celje Basic Court, Celje Unit (*Temeljno sodišče v Celju, Enota v Celju*) seeking damages for the injuries sustained.

On 2 July 1990 the court upheld the applicant's claim in part.

9. On 13 September 1990 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). SFRY and ZT cross-appealed.

On 13 March 1991 the court allowed the appeals and remitted the case to the first-instance court for re-examination.

10. On 4 September 1992 the first-instance court stayed the proceedings, because SFRY ceased to exist. The court advised the applicant that it would continue the proceedings once the legal successor of the SFRY took over the position of the defendant or upon the applicant's request.

11. On 5 August 1994 the applicant lodged a request for continuation of the proceedings against the Republic of Slovenia ("RS"), the Succession Fund, the Celje Municipality and companies ZT and IN.

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

13. On 5 February 1996 the court declared the case out of its jurisdiction and transferred it to the Celje District Court (*Okrožno sodišče v Celju*).

14. Between 31 January 1996 and 20 December 1999 the applicant lodged four preliminary written submissions and/or adduced evidence.

15. The court held a hearing on 5 February 1996.

Between 11 February 1998 and 9 November 1998 the applicant made three requests that a date be set for a hearing.

The hearing scheduled for 18 December 1998 was adjourned because the applicant, who did not attend the hearing, needed to be heard. At the hearing, applicant's legal representative informed that court that on that same day he had received a notice from the applicant explaining that he had moved to Austria.

The applicant failed to appear before the court on 29 January 1999 when the next hearing was held. At that time, the applicant resided in Austria and possessed a passport of SFRY which he could not use to exit Slovenia, had he entered it. Consequently the scheduled hearing was adjourned *sine die*,

until the applicant would inform the court that he had acquired the required identification documents and could attend the hearing.

The court held a hearing on 20 December 1999 and the applicant attended it.

At the last hearing held on 14 February 2000 the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 4 May 2000.

16. On 12 May 2000 the applicant appealed to the Celje Higher Court. RS cross-appealed.

17. On 23 May 2000 the first-instance court delivered a decision concerning the const and expenses of Celje Municipality.

On 18 July 2000 the applicant appealed against this decision to the Celje Higher Court.

18. On 31 May 2001 the court allowed the appeals concerning the judgment in part and remitted the case to the first-instance court for re-examination. The court dismissed the applicant's appeal concerning the decision on costs and expenses.

The judgment was served on the applicant on 3 July 2001.

19. On 20 July 2001 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*). The applicant also sought a recusal of one of the judges.

On 21 December 2001 the president of the court rejected the applicant's request for a recusal.

On 4 December 2002 the court rejected the applicant's appeal.

The judgment was served on the applicant on 21 January 2003.

20. Between 24 July 2001 and 2 April 2003 the applicant lodged four preliminary written submissions and/or adduced evidence.

On 20 March 2003 and 15 May 2003 the court held two hearings and decided to deliver a written judgment.

The judgment, upholding the applicant's claim in part, was served on the applicant on 10 July 2003.

21. On 11 July 2003 the applicant appealed to the Celje Higher Court. RS cross-appealed.

On 19 February 2004 the court dismissed the applicant's appeal and allowed RS's appeal.

The judgment was served on the applicant on 3 March 2004.

22. On 15 March 2004 the applicant appealed to the Supreme Court.

On 25 November 2004 the court allowed the applicant's appeal in part.

The judgment was served on the applicant on 11 January 2005.

THE LAW

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

23. 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..."

24. 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

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

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

27. 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.

28. 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.

29. As to the applicability of Article 6, the Court recalls that disputes between administrative authorities and employees who occupy posts involving participation in the exercise of powers conferred by public law do not attract the application of Article 6 § 1. However, regard being had to the fact that at the time the applicant sustained his injuries he was conscripted under the order of the Celje Municipality Department of Defence, the Court considers that he was not the holder of a post "wielding a portion of the State's sovereign power" (see *Pellegrin v. France* [GC], no. 28541/95, § 67,

ECHR 1999-VII). This provision is, accordingly, applicable in the present case.

30. 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

31. The period to be taken into consideration began on 5 August 1994, the day the applicant instituted proceedings with the Celje District Court, and ended on 11 January 2005, the day the Supreme Court's decision was served on the applicant. It therefore lasted over ten years and six months and decisions were rendered on six instances.

32. 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).

33. The Court considers that the period before 5 August 1994, the day the applicant lodged a request for continuation of the proceedings in the Celje Local Court, is not imputable to the national authorities. Neither is the period of approximately one year when the proceedings came to a standstill because the applicant did not acquire the necessary documents which would enable him to attend hearings and be heard by the court.

34. 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

35. 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.

36. 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

37. 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

38. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,000 under that head.

B. Costs and expenses

41. The applicant also claimed approximately EUR 1,420 for the costs and expenses incurred before the Court.

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

43. 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

44. 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 2,000 (two thousand 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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	John HEDIGAN President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Myjer is annexed to this judgment.

J.H.
V.B.

DISSENTING OPINION OF JUDGE MYJER

Since the entry into force of the Convention the expression ‘qui juge bien juge tard’ may be at odds with the reasonable time provision of Article 6.

Indeed, as the saying goes ‘justice is sweetest when it is freshest’, but in daily practice it sometimes takes a long time before the last judicial word is said in civil proceedings. This may be the case when the case is of particular complexity or when the parties concerned make use of every remedy available at the national level. It may also be (partly) due to the fact that the national authorities did not fulfil their obligation to ensure that the national judiciary consists of sufficient judges and judicial and administrative staff to cope with all cases in time or when the national judges do not perform their task with the required expediency.

In the Lukenda judgment of 6 October 2005 this Court found that the violation of the right to a trial within a reasonable time was – as far as Slovenia is concerned – a systemic problem which resulted from inadequate legislation and inefficiency in the administration of justice. Although this finding gives rise to the assumption that in Slovenian cases in which the proceedings have lasted many years such a systemic violation will have occurred, it will still be necessary to look at the specific circumstances of each case.

In this particular case the majority found a violation of the reasonable time-requirement. I do not agree with this finding.

Although I agree that especially the Celje District Court should have acted with much more expediency and efficiency, in my opinion the overall proceedings (especially taking into account the speedy handling of the case by the Celje Higher Court and the Supreme Court) did not last excessively long before the altogether six levels of jurisdiction. One should also take into account that the applicant lodged appeal after appeal and apparently made use of any possible remedy he had, including seeking the recusal of a judge. Under such circumstances proceedings will indeed last much longer. The fact that the case was sent back to the lower court several times for re-examination in part is not uncommon in judicial practice and does not necessarily disclose a deficiency in the judicial system as such. Besides, the due to the fact that the applicant had moved to Austria in 1998 and the needed to be heard at a hearing, one year elapsed for which the Government cannot be blamed.