



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

THIRD SECTION

CASE OF JELEN v. SLOVENIA

(Application no. 5044/02)

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 Jelen 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. 5044/02) 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, Mrs Tamara Jelen (“the applicant”), on 21 January 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 11 June 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 examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born 1973 and lives in Celje.

6. On 5 October 1996 the applicant was injured in a car accident. The perpetrator of the accident had taken out insurance with the insurance company A.

7. On 29 October 1997 the applicant instituted civil proceedings against A in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 3,000,000 Slovenian tolar (approximately 12,500 euros) for the injuries sustained. In the course of the proceedings the applicant increased her claim to 16,575,386 Slovenian tolar.

Between 26 April 1999 and 20 January 2006 the applicant lodged five preliminary written submissions and/or adduced evidence.

The court held a hearing on 28 January 2000 and adjourned it in order to obtain medical expert opinions.

On 3 February 2000 the court appointed the Commission for the Expert Opinions at the Ljubljana Faculty of Medicine ("the Expert Commission") to draw up relevant expert opinions.

On 30 May 2000 and 24 November 2000 the applicant made requests that some experts be excluded from the proceedings. She also addressed such requests directly to the Expert Commission.

Between 14 March 2002 and 11 March 2003 the court four times summoned the experts to produce their reports.

On 13 August 2004 the court received three expert opinions from the Expert Commission together with the case-file. Four expert opinions remained to be filed.

On 10 December 2004 the applicant urged the court to immediately decide on her requests concerning the exclusion of experts.

On 29 June 2005 the court issued a decision rejecting the before mentioned requests finding that they had been lodged out of time. The decision was served on the applicant on 15 July 2005 and she appealed on 18 July 2005. On 8 September 2005 the Celje Higher Court (*Višje sodišče v Celju*) rejected her appeal.

The remaining four expert opinions were submitted by the end of October 2005

On 14 February 2006 a hearing was held. The new hearing was scheduled for 4 April 2006.

The proceedings are still pending.

THE LAW

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

8. 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...”

9. 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

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

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

12. 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.

13. 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.

14. 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

15. The period to be taken into consideration began on 29 October 1997, the day the applicant instituted proceedings with the Celje District Court and has not yet ended. The relevant period has therefore lasted more than eight years and five months for one level of jurisdiction.

16. 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).

17. The Court considers that the case was to some extent a complex one since it was necessary to obtain several medical expert opinions in order to resolve the issue in dispute. The Court nevertheless considers that neither the complexity of the case nor the applicant's conduct explains such length of the first-instance proceedings.

18. The Court notes that the length of the proceedings has been mostly a result of the long delays in the production of expert opinions. The Expert Commission prepared the first three opinions in more than four years and the remaining four opinions in more than five years from the moment of its appointment. In this connection, the Court observes that the Expert Commission was appointed and was working in the context of judicial proceedings supervised by a judge, who remained responsible for the preparation and the speedy conduct of the trial (see *Billi v. Italy*, judgment of 26 February 1993, Series A no. 257-G, § 19). The Court thus considers that these delays can not be attributed to the applicant but fall under the responsibility of the State.

As to the way the court has dealt with the applicant's case, the Court further observes that it took it more than four years to decide on the applicant's requests concerning the exclusion of some experts.

19. 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

20. 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.

21. 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

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 20,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the claim.

25. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,400 under that head.

B. Costs and expenses

26. The applicant also claimed approximately EUR 1,950 for the costs and expenses incurred before the Court.

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

28. 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. 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

29. 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 6,400 (six thousand four hundred euros) in respect of non-pecuniary damage and EUR 1,000 (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 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President