



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

THIRD SECTION

CASE OF MEŽAN v. SLOVENIA

(Application no. 27102/02)

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 Mežan 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. 27102/02) 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 Valentin Mežan (“the applicant”), on 29 June 2002.

2. The applicant was represented by a lawyer, Mr Matevž Krivic. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged, *inter alia*, that the length of the proceedings before the domestic courts to which he was a party was excessive (Article 6 § 1 of the Convention). 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 30 September 2004 the Court declared the application partly inadmissible and 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 these complaints at the same time as their admissibility.

THE FACTS

5. The applicant was born in 1936 and lives in Radovljica.

6. During the works on a nearby motorway, some plots of the applicant's land were damaged by the investor – the National Road Administration of Ljubljana ("the NRAL").

7. On 4 July 1992 the applicant instituted civil proceedings against the NRAL in the Kranj Basic Court, Radovljica Unit (*Temeljno sodišče v Kranju, Enota v Radovljici*), seeking compensation in the amount of 2,487,490 Slovenian tolar (approximately 10,370 euros).

On 22 April 1993 the court held a hearing and decided to appoint an expert to assess the damage sustained by the applicant.

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

On 10 October 1994 the applicant appealed against the court's decision on the expert's costs. On 9 January 1995 he also appealed against the subsequently issued correcting decision concerning these costs. On 27 February 1996 the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) rejected the second applicant's appeal.

In the meantime, the Slovenian judicial system was reorganized and the Kranj District Court (*Okrožno sodišče v Kranju*), on 1 January 1995, obtained jurisdiction in the present case.

On 6 May 1998 the applicant made a request that a date be set for a hearing.

Of the two hearings held on 11 March and 7 June 1999, neither was adjourned at the request of the applicant.

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 4 September 1999.

8. On 17 September 1999 the applicant appealed to the Ljubljana Higher Court. The NRAL cross-appealed.

On 23 March 2000 the applicant made a request to expedite the proceedings.

On 11 October 2000, the Higher Court upheld both appeals and the case was remitted to the first-instance court for re-examination. The decision was served on the applicant on an unspecified date.

9. In the re-examination proceedings, between 28 March and 3 December 2001, the applicant filed three written submissions.

The court appointed a new expert to assess the damage.

Of the three hearings held between 28 May 2001 and 18 September 2003, none was adjourned at the request of the applicant. However, one hearing fixed for 3 May 2001 was called off on the applicant's request.

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 December 2003.

10. On 15 December 2003 the applicant appealed to the Ljubljana Higher Court.

On 2 March 2005 the court upheld the applicant's appeal regarding the costs of the proceedings and in this part remitted the case to the first instance court. The court rejected the remainder of the appeal.

The judgment was served on the applicant on 5 April 2005.

11. On 30 March 2005 the Kranj District Court issued a new decision on the costs of the proceedings, which was served on the applicant on 6 April 2005.

12. On 18 April 2005 the applicant appealed also against this decision.

On 23 November 2005, the Ljubljana Higher Court rejected the applicant's appeal.

The decision was served on the applicant on 13 December 2005.

THE LAW

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

13. 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..."

14. 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

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

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

17. 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.

18. 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.

19. 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

20. 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 13 December 2005, the day the Ljubljana Higher Court's decision concerning the cost of the proceedings was served on the applicant (see *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, § 28; *Beer v. Austria*, no. 30428/96, § 13, 6 February 2001). It therefore lasted about eleven years and five months for two levels of jurisdiction. However, due to the remittals, the case was considered on six instances.

21. 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).

22. The Court observes that in the period of more than eleven years, the applicant's case was considered on six instances, two of which dealt only with the issue of the costs of the proceedings. The Court notes that the latter proceedings were conducted promptly. However, as regards the proceedings concerning the substance of the applicant's claim, the Court observes that the case remained stationary for at least three years during the first examination and that almost six years, out of which more than four years fall within the Court's jurisdiction *ratione temporis*, had passed between the first and the second hearing before the first-instance court. This in itself presents a substantial delay in the proceedings.

23. In view of the foregoing, and having regard to the overall length of the proceedings, 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

24. 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 *Kudla 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.

25. 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

26. 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

27. The applicant claimed 28,980 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

30. The applicant also claimed reimbursement of costs and expenses incurred due to the delays in the proceedings, without clearly specifying his claim. The applicant’s lawyer submitted to the Court that the applicant was due to his health condition, supported by medical reports, unable to agree on the exact claim.

31. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim as far as it may concern costs and expenses incurred in the domestic proceedings and considers it reasonable to award the applicant, who was represented by the lawyer, EUR 1,000 for the proceedings before the Court.

C. Default interest

32. 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 4,000 (four 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* 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