



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

THIRD SECTION

**CASE OF ŠILC v. SLOVENIA**

*(Application no. 45936/99)*

JUDGMENT

STRASBOURG

29 June 2006

**FINAL**

*23/10/2006*

*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 Šilc 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 C. BÎRSAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

## PROCEDURE

1. The case originated in an application (no. 45936/99) 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 Iztok Dario Šilc (“the applicant”), on 2 November 1998.

2. 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 in breach of the “reasonable time” requirement of 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. By a decision of 13 February 2003 the Court (Third Chamber) decided to communicate the application concerning the length of the proceedings and the lack of remedies in that respect to the Government and declared inadmissible the remainder of the application. Applying Article 29 § 3 of the Convention, the Court decided to rule on the admissibility and merits of the application at the same time.

## THE FACTS

5. The applicant was born in 1964 and lives in Ljubljana.

### A. The circumstances of the case

6. The applicant holds a degree in law since 1992 and passed the national bar exam (*pravosodni izpit*) in 1995.

7. On 15 December 1997 he requested the Bar Association of Slovenia (*Odbor za odvetništvo Slovenije*, the “BAS”) to register his name in the Registry of Attorneys (*imenik odvetnikov*) and thus enable him to start practicing law as an attorney. BAS subsequently asked the applicant to complete his application, which he did on 21 May 1998. In early June 1998, BAS forwarded the applicant’s request to the Ljubljana Regional Bar Assembly (*Območni zbor odvetnikov v Ljubljani*, the “LRBA”) to obtain an opinion on his moral character.

On 6 July 1998 the applicant filed an administrative action before the Administrative Court (*Upravno sodišče*) on the ground of the silence of the administrative authorities, because he did not receive a decision from BAS.

On 23 September 1998 LRBA decided unanimously that the applicant’s past behaviour did not show him worthy of the trust required of an attorney.

On 3 November 1998 BAS requested LRBA to provide an explanation for its decision and evidence to support it. BAS further found that while the applicant ran a detective agency, he engaged in practices that were not permitted by a detective licence. It was also established that he was abusive towards BAS’s employees and lodged a complaint with the disciplinary prosecutor of BAS against the president and the secretary of LRBA, thus availing himself of inappropriate means to achieve his goals.

Subsequently, the Commission of the Bar Association for the Determination of Compliance with the Conditions for Registration with the Directory of Attorneys (the “Commission”) decided to hear the applicant on the matter and invited him twice for a meeting, on 7 and 16 December 1998 respectively. He refused to attend the first hearing because the president of the Commission did not sign the summons with his own hand. As to the second invitation, the applicant informed the Commission that he had no intention of expressing his views on the subject.

On 17 December 1998 BAS rejected his request for registration. The decision was apparently served on the applicant on 16 January 1999.

8. On 4 May 1999 the applicant amended his administrative action; firstly, he requested the court to find that BAS had not issued a decision within the time-limit required and, secondly, he sought an annulment of the decision.

On 30 June 1999 the Administrative Court quashed the BAS’s decision because the facts of the case needed to be more clearly established and remitted the case to BAS.

9. On 17 August 1999 BAS appealed to the Supreme Court (*Vrhovno sodišče*).

On 7 February 2001, the Supreme Court dismissed the appeal. The judgment was apparently served on the applicant on 23 February 2001 and the case remitted to BAS.

10. BAS failed to issue a decision within the one-month time limit prescribed by law. The applicant twice urged BAS to issue a new decision.

11. On 19 September 2001 the applicant brought another administrative action before the Administrative Court in which he complained of the lack of any response from BAS. He also requested the court to find that he had the right to practice law.

On 1 October 2001 the Administrative Court conducted a preliminary review of the claim. On 29 October 2001 BAS replied to the applicant's action and submitted evidence.

On 6 November 2001 BAS, after reconsidering the applicant's request, again rejected it. Apparently an oral hearing was held and the applicant was invited to participate in hearing the witnesses contesting his moral standing, but he sent a message that he would not attend. BAS heard six witnesses and took notice of several written documents. It found, among other things, that in the police investigation against one individual, the applicant pretended to be a practicing lawyer; and that while collecting debts for his clients as a detective, he sought a share in the collected money.

On 8 November 2001 the BAS's decision was submitted to the Administrative Court.

On 6 December 2001 the applicant responded to the BAS's decision and complained to the court about incomplete and wrongful finding of the facts.

On 12 November, 12 and 21 December 2001 the applicant requested a priority treatment of his case, which was granted by the court.

On 16 May 2002 the Administrative Court rejected the applicant's action, because it found that BAS had complied with the court's first ruling of 30 June 1999 and established the facts correctly and sufficiently. No hearing was held.

12. On 14 June 2002 the applicant appealed to the Supreme Court.

On 26 September and 26 October 2002 and 25 March 2003 the applicant requested the Supreme Court for a speedy decision.

On 17 September 2003 the Supreme Court allowed the appeal because the applicant's submissions of 6 December 2001 had to be considered as a new application which required a hearing in the Administrative Court. The case was accordingly remitted to the Administrative Court.

13. On 12 January 2004 the applicant requested the Administrative Court to render a decision promptly.

On 29 March and 4 and 8 June 2004 the applicant filed written submissions with the court, put forward new evidence and made comments to the BAS's responses.

On 24 June 2004 the court held a hearing. Since both parties to the case agreed to try to settle the case, the court adjourned the hearing.

On 5 July 2004 the applicant requested BAS to make him an offer of friendly settlement. Since he received no response from BAS, he made another request to the court for a prompt decision on 13 September 2004.

On 11 and 26 October and 7 November 2004 the applicant filed written submissions.

On 3 December 2004 the court ruled in favour of the applicant, annulled the BAS's decision of 6 November 2001 due to wrongful application of law and remitted the case to BAS to issue a new decision. The judgment was served on the applicant on 13 January 2005.

14. At an undetermined time the applicant appealed to the Supreme Court because the Administrative Court failed to decide that he had the right to practice law. BAS cross-appealed.

On 1 March 2005 the applicant received a letter from BAS informing him that, considering the negative opinion on his moral standing made by LRBA in 1998, his name could not be entered into the Registry of Attorneys.

On 25 August 2005 the Supreme Court dismissed both appeals and upheld the judgment of the Administrative Court. Accordingly, the case was remitted to BAS for re-examination. The decision was apparently served on the applicant on 13 September 2005.

The proceedings before BAS are still pending.

## **B. Relevant domestic law and practice**

15. Section 26 of the 1997 Administrative Disputes Act (*Zakon o upravnem sporu*, Official Journal no. 50 /97) entitles a party having lodged an application with an administrative body to institute administrative proceedings before the Administrative Court (administrative dispute) in the following cases:

“ (...)

2. If the appellate body does not rule on the applicant's appeal against the first-instance decision within 2 months or within a shorter period if any, provided by law, and fails to make an award upon a subsequent request within a further period of seven days, the applicant may then bring an administrative action, as if his request had been dismissed.

3. The applicant may also act in accordance with the preceding paragraph when an administrative body of the first-instance fails to give a decision from which no appeal lies.

4. If in matters where a right to an appeal exists a body of the first instance fails to give a decision upon the individual's application within 2 months or within a shorter period, if any, provided by law, the individual may then submit his application to the appellate administrative body. Should the latter find against him, the individual may

then bring an administrative action. The individual may also bring an administrative action under the conditions set out in paragraph 2.”

## THE LAW

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

16. The applicant complained about the excessive length of the proceedings concerning his request to be listed in the Registry of Attorneys. 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...”

17. 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

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

19. The applicant contested that argument, claiming that he had no effective legal remedies at his disposal to speed up the proceedings.

20. 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.

21. 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.

22. 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*

#### **a) Applicability**

23. It was not disputed between the parties that Article 6 applies to the facts of the case. The Court, having in mind the established case-law, sees no reason to dissent (see *H. v. Belgium*, judgment of 30 November 1987, Series A no. 127-B, p. 31, §§ 44-8, and *De Moor v. Belgium*, judgment of 23 June 1994, Series A no. 292-A, p. 31, §§ 42-47).

#### **b) Period to be taken into consideration**

24. The Government distinguished between two sets of proceedings. They claimed that the relevant period in the first set of proceedings started on 17 December 1998, the day the applicant amended his claim in the Administrative Court and sought an annulment of the BAS' decision, since it was on this date that a "genuine" dispute arose. This period ended with the decision of the Supreme Court rendered on 7 February 2001.

According to the Government, in the second set of proceedings the relevant period started on 19 September 2001, the day the applicant lodged the second administrative action.

The applicant claimed that the proceedings started on 15 December 1997, the day he lodged a request for a licence and have not yet finished.

25. Unlike the Government, the Court does not distinguish two sets of proceedings in the case at hand. It considers that the proceedings started running from 6 July 1998, the day the applicant instituted the proceedings in the Administrative Court, due to the silence of the administrative authority. On that day the applicant seized the domestic court with the aim of receiving a decision concerning a dispute over his civil rights (see, *inter alia*, *H. v. Belgium*, cited above, §§ 44-8). The period has not yet ended.

The overall period therefore lasted over seven years and eleven months for two levels of jurisdiction. Due to three remittals, the decisions have been rendered in six court instances.

#### **c) Reasonableness of the relevant period**

26. 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).

27. The Government firstly asserted that the proceedings before the domestic authorities were complex because the courts were required to interpret and apply domestic law. They went on to claim that, on the one hand, the applicant's reluctance to cooperate with BAS contributed to the overall length of proceedings. The proceedings would have been concluded earlier had the applicant been prepared to take part in them. On the other hand, the domestic courts abode by the rules governing court proceedings and processed the case as soon as feasible. In addition, what was at stake in the domestic proceedings, namely whether or not the applicant had the right to practice law as an attorney, was of no exceptional importance for the applicant. He could have chosen to follow numerous other career paths just as many other law graduates. Therefore, no special attention for the rapid hearing was required.

28. The applicant claimed that by unreasonable delays in the proceedings he was stripped of an important source of income.

29. The Court finds no reasons to concede to the Government's argument concerning the complexity of the case. It is the task of a court to interpret and apply the domestic law. The Government failed to show why this should be believed to have been more difficult to exercise in the present case than in any other.

30. As to the conduct of the applicant, the Court notes that although he refused to attend the meetings before BAS, this did not prevent BAS from eventually issuing the decision. More importantly, the applicant's conduct did not contribute to the length of the proceedings before the courts. However, the Court is susceptible to the Government's claim that had the applicant not twice refused to participate in the proceedings before BAS, he may have contributed to a more speedy decision before that administrative organ.

31. The Court observes that an applicant, who is a party to administrative proceedings which are allegedly unduly long due to the lack of response of administrative authority, may, under Section 26 § 2 of the Administrative Disputes Act, in cases where no appeal lies, institute proceedings in the Administrative Court complaining about the silence (*molk*) of the administrative authority (see paragraph 15 above).

The Court notes that in the case at hand, the applicant could have instituted proceedings before the Administrative Court due to lack of response of BAS after a prescribed lapse of time (see, *mutatis mutandis*, *Sirc v. Slovenia*, no. 44580/98, 16 May 2002). Hence, the period between 7 February 2001, the day the Supreme Court upheld the remittal of the case to BAS for new fact finding, and 19 September 2001, the day the applicant instituted proceedings in the Administrative Court complaining of lack of response from BAS, is attributable to the applicant. The same conclusion applies to the period after 13 September 2005, the day the Supreme Court's

decision, upholding remittal of the case to BAS, was served on the applicant.

Likewise, the period between 24 June 2004, the day the parties informed the Administrative Court that they wished to try to settle the case, and 13 September 2004, the day the applicant requested the court to decide the case since no settlement had been reached, cannot be attributed to the national authorities.

32. As to the conduct of the national courts, although the Court is not in a position to analyse the juridical quality of the decisions of the domestic courts, it considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (e.g. *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The Government have failed to provide any explanation that would lead the Court to reach a different conclusion.

33. The Court disagrees with the Government's assertion that this was a case of little importance. Cases involving a right to practice a profession must be considered as urgent as any other employment-related dispute. The Court has often held that a considerable degree of diligence is required in such cases (see, *inter alia*, *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17, and *Davies v. the United Kingdom*, no. 42007/98, § 26, 16 July 2002). Therefore, disputes concerning licence to practice a profession must be decided promptly regardless of whether or not the outcome of the proceedings may be favourable to the applicant.

In contrast to many other cases where the length of proceedings was at issue, in the present case there were no particularly excessive delays before a single court instance. This fact notwithstanding, the State must be held responsible for the overall length of the proceedings.

34. In the circumstances of this case, the Court does not consider that the proceedings instituted by the applicant were pursued with the due diligence. There has accordingly been a violation of Article 6 § 1, in that the applicant's "civil rights and obligations" were not determined within "a reasonable time".

## 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 that he was deprived of an income he would have earned, had the licence to practice law been issued in his name. To this end he claims at least 512,488.22 euros (EUR) in respect of pecuniary damage. He further seeks EUR 50,000 in respect of non-pecuniary damage.

39. The Government contested these claims.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it 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 EUR 300 for the costs and expenses incurred before the domestic courts and the Court.

42. The Government contested the claims.

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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full.

### 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 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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 300 (three hundred 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 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

John HEDIGAN  
President