



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

THIRD SECTION

CASE OF ARSENIĆ v. SLOVENIA

(Applications nos. 22174/02 and 23666/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

29/09/2006

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 Arsenić 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 8 June 2006,

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

PROCEDURE

1. The case originated in two applications (nos. 22174/02 and 23666/02) 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 Bosnian national, Mr Milenko Arsenić (“the applicant”), on 5 and 14 June 2002, respectively. On 2 July 2003 the applicant died. The applicant’s wife and children, Mrs Leksija Arsenić, Mr Miroslav Arsenić, and Mrs Milanka Zakić, declared that they wished to pursue their respective late husband’s and father’s application before the Court.

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 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 rule on the admissibility and merits of the applications at the same time

THE FACTS

5. The applicant was born in 1950 and lives in Celje.

1. First set of the proceedings

6. On 6 August 1993 the applicant was injured in an accident at work.

7. On 30 January 1996 the applicant instituted civil proceedings against the companies INGRAD and GIPOSS in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 3,900,000 tolar (approximately 16,200 euros) for the injuries sustained.

Between 28 July 1997 and 10 January 2002 the applicant lodged eight preliminary written submissions and/or adduced evidence.

Between 9 March 1998 and 31 August 2001 he made six requests that a date be set for a hearing.

Of the six hearings held between 5 May 1998 and 8 January 2002, none was adjourned at the request of the applicant.

At the last hearing the court decided to deliver a written interim judgment. The interim judgment, holding the applicant's adversaries jointly liable for the applicant's accident, was served on the applicant on 8 May 2002.

8. At an undetermined time, the applicant's adversaries appealed to the Celje Higher Court (*Višje sodišče v Celju*).

On 2 October 2003 the court dismissed the appeals.

9. At an undetermined time GIPOSS lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 24 February 2005 the court dismissed the appeal.

The judgment was served on the applicant on 21 March 2005.

10. On 22 March 2005 the applicant's legal representative informed the court that the applicant had deceased and withdrew the applicant's claims. He filed a claim for costs and expenses incurred in the proceedings.

On 12 May and 12 April 2005 the court held hearings.

At the last hearing the court decided to deliver a written judgment. The judgment concerning the costs and expenses was served on the applicant's representative on 14 July 2005.

On 16 June 2005 the court discontinued the proceedings against INGRAD because bankruptcy proceedings had been instituted against this company.

11. On 29 August 2005 the applicant's representative appealed to the Celje Higher Court against the judgment and the decision.

The proceedings are still pending.

2. *Second set of the proceedings*

12. On 6 August 1993 the applicant was injured in an accident at work. The applicant was insured with the insurance company ZT.

13. On 30 December 1997 the applicant instituted civil proceedings with the Celje Local Court (*Okrajno sodišče v Celju*) against ZT seeking damages in the amount of 322,000 SIT (approximately 1,340 euros) for the sustained injuries.

On 3 March and 18 November 1999 the applicant requested that a date be set for a hearing.

Between 31 March 1998 and 10 May 2002 the applicant filed eight preliminary written submissions and/or adduced evidence.

Of the four hearings held between 18 September 2000 and 6 November 2002 none was adjourned at the request of the applicant.

During the proceedings the court appointed two medical experts.

After the last hearing the applicant and his adversary settled the case outside the court and requested the court to issue a decision on costs and expenses.

On 5 December 2002 the court ruled on costs and expenses. The judgment was served on the applicant on 3 March 2003.

On 14 March 2003, due to a mistake in the calculation, the court corrected its decision on costs and expenses. The decision was served on the applicant on 17 March 2003 and became final on 3 April 2003.

THE LAW

14. Having regard to the fact that both applications were lodged with the court by the same applicant and concern similar complaints, the Court finds it convenient to join them (Rule 42 (former 43) § 1 of the Rules of Court).

I. AS TO THE *LOCUS STANDI* OF MRS LEKSIJA ARSENIĆ, MR MIROSLAV ARSENIĆ AND MRS MILANKA ZAKIĆ

15. The Court must first address the issue of Mrs Leksija Arsenić's, Mr Miroslav Arsenić's and Mrs Milanka Zakić's entitlement to pursue the application originally introduced by the applicant who died in the course of the proceedings before the Court.

16. The applicant's wife and children, Mrs Leksija Arsenić, Mr Miroslav Arsenić and Mrs Milanka Zakić, have declared since December 2005 that they wished to pursue their respective husband's and father's application before the Court.

17. The Court recalls that in various cases where an applicant died in the course of the proceedings it has taken into account the statements of the

applicant's heirs or of close members of his family who expressed the wish to pursue the proceedings before the Court (see, for example, the *X. v. France* judgment of 31 March 1992, Series A no. 234-C, p. 89, § 26).

18. In the present case it is the late applicant's next of kin who wish to pursue the application before the Court.

19. The Court therefore considers that the conditions for striking the case out from the list of pending cases, as defined in Article 37 § 1 of the Convention, are not met and that it must accordingly continue to examine the application at Mrs Leksija Arsenić's, Mr Miroslav Arsenić's and Mrs Milanka Zakić's request. The Court will refer to late Mr Arsenić as the applicant.

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

20. 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...”

21. 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

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

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

24. The Court notes that the present applications are 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.

25. As regards the instant cases, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish them from its established case-law.

26. The Court further notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1

27. The period to be taken into consideration with respect to the first set of the proceedings began on 30 January 1996, the day the applicant instituted the proceedings with the Celje District Court and has not yet ended. The relevant period has therefore lasted over ten years and two months and five instances have been involved.

The period to be taken into consideration with respect to the second set of the proceedings began on 30 December 1997, the day the applicant instituted proceedings before the Celje Local Court, and ended on 3 April 2003, the day the judgment of the first-instance court became final. It therefore lasted over five years and three months before the first-instance court.

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the cases and with reference to the following criteria: the complexity of the cases, 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).

29. 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 cases the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

The Court notes that the periods of the first and second set of proceedings overlapped and thus the overall length has exceeded ten years and two months.

There has accordingly been a breach of Article 6 § 1 with respect to both sets of the proceedings.

2. Article 13

30. 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 cases.

31. Accordingly, the Court considers that in the present cases 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 cases heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage incurred in each set of the proceedings.

34. The Government contested the claim.

35. 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

36. The applicant also claimed in total approximately EUR 2,030 for the costs and expenses incurred before the Court.

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

38. 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 two applications. Accordingly, in the present cases, 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 2,000 for the proceedings before the Court.

C. Default interest

39. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 2,000 (two 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;
6. *Dismisses* 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