



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

THIRD SECTION

CASE OF MAMIČ v. SLOVENIA (no. 2)

(Application no. 75778/01)

JUDGMENT

STRASBOURG

27 July 2006

FINAL

27/10/2006

This judgment may be subject to editorial revision.

In the case of Mamič 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 C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr R. LIDDELL, *Section Registrar*,

Having deliberated in private on 6 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 75778/01) 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 Slovenian national, Ms Zofija Mamič (“the applicant”), on 24 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 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 7 May 2004 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of corresponding remedies 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Ravne na Koroškem.

6. On 10 May 1995 the applicant was grievously injured in a car accident. She was unconscious for ten days and remained in hospital for two and a half months. Although she and her husband were separated at the time and were going through a divorce, he was also in the car and sustained some injuries.

7. On 6 June 1995 the police filed a criminal complaint against the applicant with the Slovenj Gradec District Prosecutor's Office, alleging that she had caused the accident by negligent driving.

On 17 May 1996 the Slovenj Gradec District Prosecutor lodged a bill of indictment against the applicant, in the Slovenj Gradec Local Court (*Okrajno sodišče v Slovenj Gradcu*), for causing a traffic accident by negligence.

In November 1996 the summons to the first hearing scheduled for 3 December 1996 was served on the applicant.

On 3 December 1996 the court held a hearing and heard testimony from the applicant's husband. He gave a detailed description of how the accident had occurred, even though he had lost consciousness for a while at the time of the accident.

The court found the applicant guilty and issued her with a warning (*sodni opomin*).

8. On 24 December 1996 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*).

On 27 December 1996 and 12 March 1997 the applicant supplemented her appeal by adducing additional evidence.

On 9 April 1997 the Maribor Higher Court allowed the applicant's appeal, annulled the first-instance court's judgment and remitted the case for new fact-finding.

9. The hearings held on 25 September 1997 and 22 January 1998 were adjourned, but not at the request of the applicant. In this period the applicant lodged three written submissions.

During the proceedings, the court appointed a medical expert. The court also sought an additional opinion from the appointed expert.

The court heard six witnesses, including the applicant's former husband. He acknowledged that he had not been telling the truth when he first gave testimony in court. He explained that on the morning of the accident he had sneaked into the boot of the car to follow his wife. Consequently, he was neither driving the car nor was he able to see out of the boot.

At the last hearing the court found the applicant guilty and issued her with a warning.

10. On 12 February 1998 the applicant appealed to the Maribor Higher Court.

On 27 January 1999 the court allowed the applicant's appeal, annulled the first-instance court's judgment and remitted the case for new fact-finding.

11. On 16 May 2001 the applicant requested the court to terminate the proceedings because the criminal prosecution had become time-barred and sought reimbursement of the costs and expenses she had incurred in the proceedings.

On 24 May 2001 the court rejected the bill of indictment because it was time-barred. The criminal proceedings were thus discontinued.

The decision was served on the applicant on 30 May 2001.

On 19 June 2001 the applicant again requested the court to give a decision on the costs and expenses incurred in the proceedings.

On 4 July 2001 the court delivered the decision in question.

12. On 11 July 2001 the applicant appealed.

On 8 October 2001 a chamber of the Slovenj Gradec District Court (*Okrožno sodišče v Slovenj Gradcu*) allowed the applicant's appeal in part and increased the award of costs and expenses.

The decision was served on the applicant on 9 October 2001.

II. RELEVANT DOMESTIC LAW

13. Section 96 of the Criminal Procedure Act (*Zakon o kazenskem postopku*) read as follows:

“(1) If criminal proceedings are terminated or a judgment is rendered by which the applicant is acquitted or the bill of indictment dismissed, or if a decision is rendered by which the bill of indictment is rejected, the court shall decide in the judgment or decision that the costs and expenses of the criminal proceedings, from clause 1 to clause 5 of the second paragraph of section 92 of the present Act, as well as necessary expenses of the accused and necessary expenses and fees of defence counsel, shall be charged to the [State] budget...”

THE LAW

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

14. 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 or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

15. In substance, the applicant further complained that the remedies available for excessively lengthy 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

16. The Government objected that domestic remedies had not been exhausted.

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

18. The Court notes that the present application is similar to the cases of *Belinger* and *Lukenda* (see *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 reiterates 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.

19. 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.

20. 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) Period to be taken into consideration

21. The Government claimed that the proceedings began on 17 May 1996, when the bill of indictment was lodged against the applicant.

22. The applicant informed the Court that the summons for the first hearing had been served on her in November 1996. She claimed that it was then that she had learned that the criminal proceedings were pending against her.

23. In *Eckle v. Germany* (judgment of 15 July 1982, Series A no. 51, p. 33, § 73) the Court said:

“In criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court (see, for example, the *Deweert* judgment of 27 February 1980, Series A no. 35, p. 22, par. 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (see the *Wemhoff* judgment of 27 June 1968, Series A no. 7, pp. 26-27, par. 19, the *Neumeister* judgment of the same date, Series A no. 8, p. 41, par. 18, and the *Ringeisen* judgment of 16 July 1971, Series A no. 13, p. 45, par. 110). “Charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see the above-mentioned *Deweert* judgment, p. 24, par. 46).”

24. In the present case, since the summons for the first hearing was served on the applicant in November 1996, the Court considers that it was then that she first learned that criminal proceedings were pending against her. It was at that time that the applicant’s situation became “substantially affected” for the purposes of Article 6 § 1. Accordingly, the period to be taken into consideration began in November 1996.

25. In the applicant’s view, the relevant period ended on 9 October 2001, when the last decision regarding the costs and expenses of the proceedings was served on her. The Government contested this by claiming that the proceedings ended on 24 May 2001, when the first-instance court rejected the bill of indictment.

26. The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the determination of an individual’s civil rights and obligations or of any criminal charge against him or her, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Robins v. the United Kingdom*, judgment of 23 September 1997, Reports of Judgments and Decisions 1997-V, §§ 28-9). In criminal length-of-proceedings cases, the relevant period generally ends with the day on which a charge is finally determined or the proceedings are discontinued (see *Rokhlina v. Russia*, no. 54071/00, § 81, 7 April 2005). Moreover, criminal proceedings will normally end with an official notification to the accused that he or she is no longer to be pursued on those charges so as to allow a conclusion that the situation of that person can no longer be considered to be substantially affected (*X v. the United Kingdom*, no. 8233/78, Commission decision of 3 October 1979, unreported).

27. The Court considers that the proceedings concerning costs and expenses in this case did not give rise to a “criminal charge” against the applicant. The issue is, however, whether those proceedings were linked to the criminal trial in such a way as to fall within the scope of Article 6 § 1. In this connection, the Court notes that the costs proceedings were conducted under section 96 of the Criminal Procedure Act (see paragraph 13 above), under which the person who had been charged might claim reimbursement of costs and expenses incurred in the criminal proceedings if the bill of

indictment was ultimately rejected and the proceedings terminated. Under that provision, the outcome of the criminal proceedings was the decisive factor, it being imperative that the proceedings end without conviction in order for the applicant to seek reimbursement. Therefore, the civil limb of the proceedings remained closely linked to the criminal limb (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 62, ECHR 2002-I).

28. Furthermore, in accordance with section 96 of the Criminal Procedure Act, the applicant's request for the reimbursement of costs and expenses was processed under the same (criminal) application number, was dealt with by the same (criminal) court and by the same (criminal) judge as the substantive (criminal) proceedings, and the court could have rendered the decision concerning costs and expenses together with the decision dismissing the bill of indictment. Thus, the costs and expenses proceedings were inherently linked to the outcome of the criminal proceedings, were tied to them in legislation with regard to jurisdiction and followed them in time (see, *mutatis mutandis*, *Hammern v. Norway*, no. 30287/96, § 46, 11 February 2003).

29. To sum up, the Court finds that the proceedings concerning costs and expenses were not an autonomous set of proceedings; as far as the period to be taken into consideration is concerned, those proceedings were a natural extension of the substantive criminal proceedings and therefore cannot be divorced from them (see, *mutatis mutandis*, *Robins*, cited above).

30. Accordingly, in the Court's view, the relevant period lasted until 9 October 2001, the day on which the Slovenj Gradec District Court communicated to the applicant its decision regarding the reimbursement of cost and expenses.

31. The period to be taken into consideration thus lasted approximately four years and eleven months for two levels of jurisdiction. As the case was remitted twice, it involved six full hearings.

(b) The reasonableness of the length of the proceedings

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

33. The Government pointed out that the criminal proceedings were relatively complex "since it was necessary to establish the circumstances in which the traffic accident had occurred", "owing to two decisions quashing the first-instance sentence" and because a medical expert had been appointed and six witnesses had to be examined. In the Government's view, the applicant's various written submissions and requests for new evidence

(she also sought a supplementary opinion of the appointed expert) contributed to the length of the proceedings. By contrast, the courts had “constantly acted in line with their jurisdiction as determined by law” and the delays in the proceedings had “occurred mostly for objective reasons” such as the reorganisation of the judicial system which took effect on 1 January 1995.

34. The Court does not consider the proceedings to have been particularly complex. The fact that the Maribor Higher Court twice remitted the case to the first-instance court did not render the case more intricate.

35. As to the conduct of the national authorities, the Court notes that the case involved a total of six full hearings. Thus, the Court cannot conclude that the domestic courts were inactive in the present case. On the contrary, it notes that on some occasions the case was decided by the courts of first and second instance very swiftly. However, the remittal of the case for re-examination caused some delays in the proceedings. Although the Court is not in a position to analyse the juridical quality of the domestic courts’ decisions, it considers that, since the remittal of cases for re-examination is frequently 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 (see, for example, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

36. In addition, the Court cannot accept the argument that the reorganisation of the judiciary, which had taken effect nearly two years before the summons was served on the applicant (see paragraphs 7 and 24 above), could have triggered all the delays that occurred in the case at issue.

37. Lastly, it does not appear that the applicant’s conduct contributed substantially to delays in the proceedings.

38. However, making an overall assessment of the length of the proceedings in the above circumstances, the Court finds that the proceedings do not disclose periods of inactivity such as to render them incompatible with Article 6 § 1 of the Convention. Nor does the overall length of the proceedings infringe the reasonableness requirement of that provision.

There has accordingly been no violation of Article 6 § 1.

2. Article 13

39. Article 13 of the Convention guarantees an “effective remedy before a national authority” to everyone who claims that his rights and freedoms under the Convention have been violated (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 29, § 64). However, Article 13 requires a remedy in domestic law only in respect of an alleged grievance which is an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Hence, the effect of this provision is to require the

existence of an effective remedy to deal with the substance of an “arguable complaint” and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

40. The Court further reiterates that the existence of an actual breach of another provision of the Convention (a “substantive” provision) is not a prerequisite for the application of Article 13 (see the *Klass and Others* judgment of 6 September 1978, Series A no. 28, p. 29, § 64). The fact that the applicant’s allegations were not ultimately substantiated does not prevent his or her claim from being considered an arguable one for the purposes of Article 13 of the Convention (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 330-31, § 107).

41. In the present case, the Court found the applicant’s claim under Article 6 § 1 admissible, although unfounded. Hence, the applicant did have an “arguable complaint”, notwithstanding the Court’s finding that the length of the proceedings before the domestic courts did not infringe the reasonable-time requirement. Consequently, the applicant did have the right under Article 13 to be afforded a remedy by the national authorities to determine whether or not the criminal proceedings brought against her were excessively long.

42. The Court notes that the objections and arguments put forward by the Government as to the existence of an effective legal remedy in this connection have been dismissed in previous cases (see *Lukenda*, cited above) and sees no reason to reach a different conclusion in the present case.

43. Accordingly, the Court considers that in the circumstances of 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 on whether her case had been heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 7,500 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the claim.

47. Taking into consideration the finding that the proceedings to which the applicant was a party were not unreasonably long, the Court considers that the finding of a violation of Article 13 constitutes in itself sufficient just satisfaction and makes no monetary award under this head.

B. Costs and expenses

48. The applicant also claimed approximately EUR 1,180 for the costs and expenses incurred in the proceedings before the Court.

49. The Government argued that the claim was excessive.

50. 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 the present one. Accordingly, in the present case, regard being had to the information in its possession and to 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

51. 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 no 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 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 27 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Roderick LIDDELL
Registrar

John HEDIGAN
President