



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

THIRD SECTION

CASE OF VIDIC v. SLOVENIA

(Application no. 54836/00)

JUDGMENT

STRASBOURG

3 August 2006

FINAL

03/11/2006

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 Vidic v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr C. BÎRSAN, *President*,
Mr B.M. ZUPANČIČ,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*

Having deliberated in private on 11 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 54836/00) 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 Lojze Vidic (“the applicant”), on 3 November 1999.

2. 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.

4. On 6 March 2003 the Court decided to communicate the complaints concerning the length of the proceedings 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*1. The first set of proceedings – concerning the payment of damages*

5. On 20 July 1989 A.D., I.D. and J.D. allegedly cut down the applicant’s hedge.

6. On 20 September 1989 the applicant instituted civil proceedings in the Ljubljana Basic Court (*Temeljno sodišče v Ljubljani*) against A.D., I.D. and

J.D. seeking compensation for damage resulting from the above mentioned incident.

On 3 April 1991 the first-instance judgment of 6 June 1990 was quashed on appeal and remitted for re-examination in respect of two of the defendants. However, with respect to one of the defendants, the first-instance judgement was upheld and became final.

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

According to the Government, the first-instance court twice requested the applicant to correct his claim, namely on 26 June 1992 and on 26 August 1999. The applicant corrected his claim on 3 July 1992 and, after a further request, on 6 October 1999.

On 3 August 1999 the applicant lodged a request for supervision due to the delays in the proceedings.

In January 2000 and July 2000 the applicant was twice requested to submit enough copies of the corrected claim to enable the court to serve them on the defendants, which he apparently did by September 2000.

Following the request for the payment of expert fees of 28 November 2001, the applicant, on 6 December 2001, withdrew the proposal for the appointment of a horticultural expert.

Of the three hearings held on 28 March 2001, 22 June 2001 and 4 April 2003 none was adjourned at the request of the applicant. Hearings scheduled for 20 December 2000, 19 September 2001, 6 February 2002 and 19 April 2002 were adjourned because the summons had not been successfully served on the defendants.

Following the absence of the applicant at the hearing held on 7 June 2002 the (renamed) Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) suspended the proceedings (*mirovanje postopka*) and resumed them again on 5 February 2003.

At the last hearing the court delivered a judgment, rejecting the applicant's claim. It was served on the applicant on 2 July 2003.

7. On 18 July 2003 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

The proceedings are still pending.

2. The second set of the proceedings – concerning the removal of a barrier

8. In 1989 the applicant was granted a right to make use of a certain plot of land.

9. On 14 January 1992 the applicant instituted civil proceedings in the Ljubljana Basic Court against A.D. and S. D. seeking a removal of the barrier which they had allegedly placed on the before mentioned land to prevent the applicant from using it.

According to the Government, none of at least eight hearings scheduled between 2 June 1992 and 14 July 1997 were held since the court did not succeed in serving the writ of a claim and summons on A.D. and/or S. D.

In the meanwhile, on 28 June 1994, the Convention entered into force with respect to Slovenia.

According to the Government, after the court had tried twenty times to serve the writ of claim, the latter was finally served on A.D. on 14 May 1999.

Between 25 September 1995 and 22 April 1999 the applicant five times urged the court to speed up the proceedings. He also made a complaint concerning the length of the proceedings to the Slovenian Ombudsman for Human Rights (*Varuh človekovih pravic*).

Of the three hearings scheduled between 8 September 1999 and 31 May 2000 none was adjourned on the request of the applicant.

On 13 February 2000 the applicant requested a temporary injunction. The court decided on that request on 11 July 2000.

The applicant did not attend the hearing called for 11 September 2000 and as a result, the (renamed) Ljubljana Local Court suspended the proceedings (*mirovanje postopka*).

On 22 September 2000 the applicant appealed against that decision and requested the court to reinstate his case (*vrnitev v prejšnje stanje*).

On 17 November 2000 the court dismissed the applicant's request and on 21 March 2001 the Ljubljana Higher Court approved the decision of 11 September 2000.

On 1 June 2001 the Ljubljana Local Court decided to terminate the proceedings on the basis of assumption that the applicant had withdrawn his claim.

10. The applicant appealed to the Ljubljana Higher Court.

On 9 January 2002 the court dismissed the applicant's appeal finding that the applicant's request and the appeal of 22 September 2000 could not have been considered as a request for a continuation of the proceedings.

The Ljubljana Higher Court's decision was served on the applicant on 25 January 2002.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

11. The applicant complained about the excessive length of both sets of 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...”

A. Admissibility

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

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

14. 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.

15. 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.

16. 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

17. The period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia. However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 28 June 1994 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999).

As far as the first set of the proceedings is concerned, the relevant period has not yet ended and has therefore lasted about twelve years for two levels of jurisdiction. As to the second set of the proceedings, the relevant period ended on 25 January 2002, when the Ljubljana Higher Court’s decision was served on the applicant, and has thus lasted nearly seven years and seven months for two levels of jurisdiction.

18. 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).

19. The Government invoked, *inter alia*, the complexity of the facts and the legal issues. They also cited the conduct of the applicant, who had failed to obey some of the court's orders and had not done enough in order to contribute to the faster service of the claim and summons in the second set of the proceedings; in particular he was not prepared, initially, to pay for a service through a special agency.

20. The Court firstly notes that neither sets of the proceedings involved complex issues.

21. As regards the conduct of the judicial authorities, the Court notes that in the first set of proceedings there were substantial delays. The proceedings after the case had been remitted by the second-instance court lasted more than twelve years on the first instance, of which nine years are within the scope of the Court's consideration. This is an excessively long period for the case as the instant one. In that respect, it is to be noted that the first-instance court after the applicant had insufficiently corrected his claim on 3 July 1992, made a new request only on 26 August 1999, which is after more than seven years of total inactivity.

22. The Court further notes that the excessive length of the second set of proceedings was mostly due to the unsuccessful service of the writ of claim and summons on the defendants, which delayed the proceedings for more than seven years. Contrary to the Government, it does not consider that this delay could be attributed to the applicant (see *Tumminelli v. Italy*, judgment of 27 February 1992, Series A no. 231-H, § 17). It takes notice of the Government's explanation that the legal provisions governing the service of judicial writings were in 1999 amended in order to correct the deficiencies that led in the present case to the considerable delay. That being so, it recalls that Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements (see, *inter alia*, *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17).

23. Undoubtedly, the applicant, too, caused some delays, particularly by his absence at the hearings which resulted in stay of the proceedings on 7 June 2002 and on 11 September 2000, as well as by not submitting the copies of his corrected claim on time in the first set of the proceedings. While taking this into account and even assuming that the applicant bears total responsibility for the length of the proceedings following his absence at the hearing in the second set of the proceedings, the Court nevertheless considers that the responsibility for the overall length of both sets of the proceedings lies primarily with the authorities.

24. 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 both sets of proceedings was excessive and failed to meet the “reasonable-time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed approximately 62,500 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8,000 under that head.

B. Costs and expenses

29. The applicant also claimed approximately EUR 1,910 for the expenses incurred in the domestic proceedings. He did not specify his claim for the costs and expenses incurred in the proceedings before the Court.

30. The Government contested the 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, the Court rejects the claim for costs and expenses in the domestic proceedings. Having regard to the information in its possession and the above criteria, it however considers that the applicant, who was not represented by a lawyer, must have had expenses with the proceedings before the Court and awards him the sum of EUR 150 in that respect.

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*
 - (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 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 150 (one hundred fifty 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Corneliu BÎRSAN
President