CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF SCHÜTZENHOFER v. SLOVENIA

(Application no. 1419/02)

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 Schützenhofer 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. 1419/02) 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 an Austrian national, Mr Manfred Schützenhofer ("the applicant"), on 5 December 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 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 application at the same time.

5. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Registrar informed the Government of Austria of their right to submit written comments. They did not indicate that they wished to exercise their right.

THE FACTS

6. The applicant was born in 1952 and lives in Grafenschachen in Austria.

7. On an unspecified date in 1994 the applicant made an agreement for sale with the company C. The applicant, who had already paid to C, afterwards withdrew from the agreement since he had not received the agreed goods.

8. On 18 October 1995 the applicant instituted civil proceedings against C in the Ormož Local Court (*Okrajno sodišče v Ormožu*) seeking reimbursement of the payment.

On 12 December 1996 the applicant made a request that a date be set for a hearing. On 13 December 1996 the only judge working at the court at that time informed the applicant that the court lacked capacities and that the applicant's case had not yet been allocated to any judge. The applicant made further three requests for a hearing on 19 March 1998, 22 January and 10 May 1999.

On 14 February 1997 and 27 May 1998 the court held hearings and on 8 June 1998 issued a decision declaring lack of jurisdiction and transferred the case to the Ptuj District Court (*Okrožno sodišče na Ptuju).*

Between 7 October 1997 and 30 September 2002 the applicant lodged eight preliminary written submissions and/or adduced evidence.

On 11 January 2000, he made a request that a hearing of a witness living in Austria and himself be carried out by an Austrian court – the Oberwart Local Court (*Bezirksgericht Oberwart*). On 13 April and 19 September 2001 he urged the Ptuj District Court to send a request to the Austrian court.

On 25 October 2001 the applicant filed a request for supervision with the president of the Ptuj District Court because of the delays in the proceedings.

On 27 November 2001 the request was forwarded to the Austrian authorities by the Slovenian Ministry of Justice (*Ministrstvo za pravosodje*). On 11 April 2002 the Ministry forwarded the minutes of the hearing it had received from Austria to the Ptuj District Court and on 22 April 2002 the applicant was requested to provide a translation of the minutes within 15 days. On 7 June 2002 the applicant submitted the translation, stating that he had received it from the court's translator only on 28 May 2002.

Of the five hearings held before the Ptuj District Court between 16 September 1999 and 16 October 2002, none 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, was served on the applicant on 29 October 2002.

On 16 November 2002 the judgment became final.

THE LAW

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

9. 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..."

10. 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

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

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

13. 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.

14. 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.

15. 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

16. The period to be taken into consideration began on 18 October 1995, the day the applicant instituted proceedings with the Ormož Local Court, and ended on 16 November 2002 when the first-instance court's judgment became final. It therefore lasted about seven years and one month for one level of jurisdiction.

17. 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).

18. As to the present case, the Court considers that the length of the proceedings was excessive.

It is true that the instant case was unusual in that that the hearing of the applicant and a witness was carried out by a foreign court. However, this fact did not contribute to the length of the proceedings in a significant way. Nor did the applicant's conduct justify the long duration of the proceedings at issue. On the contrary, the Court considers that the responsibility for the length of the proceedings, which lasted more than seven years for only one level of jurisdiction, lies primarily with the Slovenian authorities.

Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court therefore finds that there has been a breach of Article 6 § 1 in that the length of the proceedings failed to meet the "reasonable-time" requirement.

2. Article 13

19. 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.

20. 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

21. 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

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested the claim.

24. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,800 under that head.

B. Costs and expenses

25. The applicant also claimed approximately EUR 1,630 for the costs and expenses incurred before the Court.

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

27. 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 one. Accordingly, in the present case, 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 1,000 for the proceedings before the Court.

C. Default interest

28. 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 4,800 (four thousand eight hundred 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 3 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Corneliu BÎRSAN
President