



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

THIRD SECTION

CASE OF NOVINA v. SLOVENIA

(Application no. 6855/02)

JUDGMENT

STRASBOURG

26 October 2006

FINAL

26/01/2007

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 Novina 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,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFEVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 6855/02) 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 Slovenian national, Mr Ratko Novina (“the applicant”), on 29 January 2002.

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 13 September 2005 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.

THE FACTS

5. The applicant was born in 1958 and lives in Celje.

6. On 8 September 1993 the applicant was injured in a car accident. As a result, he remained permanently disabled in part. The applicant had taken out insurance with the insurance company ZT.

7. On 6 August 1996 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 3,200,733 tolar (approximately 13,350 euros) for the injuries sustained.

Between 10 October 1996 and 12 January 2000 the applicant lodged nine preliminary written submissions and adduced evidence.

On 5 November 1996 and 9 September 1998 he requested that a date be set for a hearing.

Of the three hearings held between 22 January 1998 and 3 February 2000 none was adjourned at the request of the applicant.

During the proceedings the court appointed orthopaedic and neurology experts. The experts were given a delay of thirty days to deliver their respective opinions, counting from the day the case-file was served on them. The first expert delivered his opinion in five months and the second expert in over three months. The court also sought an additional opinion from the appointed orthopaedist.

At the last hearing the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 23 March 2000.

8. On 6 April 2000 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*).

On 23 November 2000 the court dismissed the applicant's appeal.

The judgment was served on the applicant on 12 December 2000.

9. On 11 January 2001 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 29 November 2001 the court allowed the applicant's appeal, set aside the judgments of the first- and second-instance courts and remitted the case for re-examination.

The decision was served on the applicant on 8 January 2002.

10. Between 9 January 2002 and 16 January 2003 the applicant lodged five preliminary written submissions.

Of the four hearings held between 28 March 2002 and 15 May 2003 none was adjourned at the request of the applicant. However, two scheduled hearings were postponed to a later date at the request of the applicant. At least one of them was postponed because the applicant's lawyers were on holidays.

During the proceedings the court appointed a medical expert and gave him a delay of thirty days to deliver his opinion. The opinion was delivered in over two months. The court also took testimonies from the two experts appointed in the first proceedings before the first-instance court.

At the last hearing the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 5 September 2003.

11. On 12 September 2003 the applicant appealed to the Celje Higher Court. ZT cross-appealed on 22 September 2003.

On 8 June 2005 the court allowed the applicant's appeal in part, dismissed ZT's appeal and increased the damages awarded.

The judgment was served on the applicant on 23 May 2005.

12. On 6 July 2005 the applicant lodged an appeal on points of law with the Supreme Court.

On 1 December 2005 the court rejected the applicant's appeal on points of law as not allowed. The decision was served on the applicant on 29 December 2005.

THE LAW

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

13. 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...”

14. 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

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

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

17. 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 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.

18. As regards the instant case, the Court notes that the Government reiterated their arguments as to why the administrative action, a claim for damages and a request for supervision should be regarded as effective legal remedies.

19. The Government also referred to the judgment of the Constitutional Court of the Republic of Slovenia of 22 September 2005 in the case U-I-65/05. In that judgment, the Constitutional Court found that the Administrative Disputes Act, in the part governing the right to a trial within reasonable time for the proceedings which had already been terminated, is not in conformity with the Constitution. The Constitutional Court ordered the legislator to right this unconstitutional situation within one years' time.

20. The Court finds that, for the time being, the Government have not submitted any convincing arguments which would require the Court to distinguish this case from its established case-law (see *Belinger* and *Lukenda*, cited above).

21. 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

22. The Government claimed that the proceedings at issue were rather complex since the courts had to appoint three medical experts to deliver written expert opinions and also heard two of the appointed experts. The courts which tried the case did not lack diligence and proceeded with the case in accordance with the domestic legislation. The applicant, however, prolonged the proceedings by filing written submissions which required a reply. He also twice requested that a hearing be postponed. Taking into consideration the importance of what was at issue in the domestic proceedings, the applicant should have exercised his procedural rights with greater care.

23. The applicant contested the Government's arguments.

24. The period to be taken into consideration began on 6 August 1996, the day the applicant instituted proceedings with the Celje District Court, and ended on 29 December 2005, the day the Supreme Court's decision was served on the applicant. It therefore lasted nearly nine years and five months for three levels of jurisdiction. Due to remittals, decisions were rendered in six instances.

25. 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).

26. Although an opinion of three medical experts was required to decide the case, the Court finds that the proceedings were neither procedurally nor factually of exceptional complexity. The Government did not explain why had all the appointed experts exceeded the delay given for the delivery of their opinions and why the courts had not undertaken any measures to assure more speedy delivery of these opinions. In addition the appointment of the experts does not explain, for example, why nearly one year and six months elapsed between the day the applicant lodged his claim and the day the first hearing was held.

27. As to the applicant's conduct, it is true that he contributed to some extent to the prolongation of the proceedings by making two requests that the hearings be postponed. However, recalling the facts of similar cases decided by the Court, it appears that his written submissions were not exceeding in number, length or their content and thus could not have had a substantial impact on the length of the proceedings.

28. 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 the proceedings was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13

29. 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.

30. 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

31. 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

32. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court 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

35. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court.

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

37. 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

38. 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 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 26 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President