CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF ZORC v. SLOVENIA

(Application no. 2792/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

26/03/2007

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 Zorc 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 V. BERGER, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 2792/02) 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 Lojze Zorc ("the applicant"), on 16 January 2002.

2. From 7 June 2004 until 10 May 2006 the applicant was represented before the Court by Čeferin law firm from Grosuplje, Slovenia. Otherwise he had no legal representation. 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 proceedings before the domestic courts to which he was a party were unfair and of unduly long. 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 20 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. Under Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born in 1954 and lives in Ljubljana.

6. At an undetermined time, he invented a type of fish bait and secured a patent for production of this bait.

On 17 September 1992 the applicant and J.Z. made a contract to engage in production of fish baits.

On 24 March 1993 the applicant removed some of the production material and tools from J.Z.'s premises where the production had been taking place.

On 7 April 1993 J.Z. requested the applicant to sell him the patent for the bait, if he wished to keep their business relationship active.

On 16 April 1993 the applicant made an offer to J.Z. to sell him the patent, which the latter refused.

On 26 April 1993 the applicant informed J.Z. that he wished to end their business relationship by cancelling the contract of co-operation, but the latter refused.

1. Proceedings concerning the nuisance claim and the interim measure

7. On 23 April 1993 J.Z. lodged a nuisance claim in the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani*, *Enota v Ljubljani*) against the applicant and also sought an interim measure prohibiting the applicant to use or alienate any means for production of fish baits.

On 7 June 1993 the court upheld J.Z.'s request for an interim measure in part.

On 14 June 1993 the applicant replied to the claim and also appealed against the order issuing the interim measure. J.Z. cross-appealed.

Until 14 June 1994 the court held six hearings. On that day, the court partially stayed the proceedings because J.Z. had withdrawn the request for an interim measure in part. The court also allowed the applicant's appeal and annulled its decision of 7 June 1993.

J.Z. appealed against this decision to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

On 28 June 1994 the Convention took effect with respect to Slovenia.

On 21 July 1994 the Ljubljana Higher Court dismissed the appeal concerning the interim measure.

On 1 January 1995, following the reform of the Slovenian judicial system, the Ljubljana District Court (*Okrožno sodišče v Ljubljani*) gained jurisdiction in the case which was still pending in the first-instance court in the part referring to the nuisance claim.

On 20 June 1995 the court upheld J.Z.'s nuisance claim. The judgment was served on the applicant on 15 November 1995.

8. On 22 November 1995 the applicant appealed to the Ljubljana Higher Court.

On 9 July 1996 the court allowed the appeal and remitted the case to the first-instance court for re-examination.

9. On 10 December 1996 the Ljubljana District Court held a hearing which was adjourned *sine die*.

On 10 February 1997, after the applicant had instituted proceedings against the Republic of Slovenia due to excessive length of proceedings (see below §§ 11-14), the applicant requested that the case be transferred to a new court in order to secure the impartiality of the adjudicator. After his request was dismissed by the Supreme Court (*Vrhovno sodišče*) on 29 October 1997, he sought a recusal of the first-instance court's judge presiding over the case. Also this request was dismissed, ultimately, by the deputy of the President of the Ljubljana District Court on 1 September 1999.

On 8 March 2000 the court held a hearing.

On 5 April 2000 the applicant filed preliminary written observations and adduced evidence.

On 5 April 2000 the court held a hearing and rejected J.Z.'s claim.

10. On 14 June 2000 J.Z. appealed to the Ljubljana Higher Court.

On 7 July 2000 the applicant lodged a reply to the appeal.

On 8 January 2002 the court dismissed both appeals.

2. Proceedings referring to the claim for damages

11. On 27 January 1997 the applicant instituted civil proceedings in the Ljubljana District Court against the Republic of Slovenia seeking damages in the amount of 34,740,000 Slovenian tolars (approximately 145,000 euros) for damages sustained due to excessive length of proceedings concerning the nuisance claim and interim measure.

On 21 April 1998 the applicant filed preliminary written observations, raised his claim and requested that a date be set for a hearing.

On 8 January 1998 the court held a hearing.

On 14 December 1998 the court rejected the applicant's claim holding that the judge in charge of the case in the first-instance, conducted the proceedings in accordance with the legislation in force. The decision was served on the applicant on 15 March 1999.

12. On 29 March 1999 the applicant appealed to the Ljubljana Higher Court.

On 16 June 1999 the court dismissed the appeal. The judgment was served on the applicant on 9 July 1999.

13. On 28 July 1999 the applicant lodged an appeal on points of law with the Supreme Court.

On 20 April 2000 the court dismissed the appeal.

14. On 30 June 2000 the applicant lodged a constitutional appeal.

On 11 June 2001 the Constitutional Court (*Ustavno sodišče*) declared the case inadmissible as it was manifestly ill-founded. The decision was served on the applicant on 10 July 2001.

THE LAW

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

15. The applicant complained about the fairness and 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 fair ... hearing within a reasonable time by [a] ... tribunal..."

16. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. He relied on Article 13 of the Convention, which 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

1. The first set of proceedings

a) Fairness

17. In accordance with the Article 35 of the Convention, the Court may only consider the complaints raised by the applicant, after the applicant had exhausted all domestic remedies.

18. In this respect the Court notes that the applicant did not lodge any kind of appeal against the judgment of the Ljubljana Higher Court of 8 January 2002 to the Supreme Court of the Republic of Slovenia and, subsequently, to the Constitutional Court of the Republic of Slovenia.

19. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising her complaints before the said domestic courts.

It follows that this part of the application must be rejected for non-exhaustion within the meaning of Article 35 § 1 of the Convention.

b) Length

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

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

22. 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.

23. As regards the first set of the proceedings, 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.

24. The Court further notes that these complaints 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.

2. The second set of proceedings

a) Fairness

25. The Court notes that the applicant's complaints amount essentially to an objection to the outcome of the proceedings before the domestic judicial authorities and to the errors of interpretation and application of domestic law allegedly committed by them.

26. The Court recalls that while its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, it is primarily for the national administrative and judicial authorities, notably the courts, to interpret and apply domestic law (see, *inter alia*, S*treletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97, 44801/98, § 49, ECHR 2001-II, and *Nadbiskupija Zagrebačka v. Slovenia* (dec.), no. 60376/00, 27 May 2004).

27. In the Court's assessment, the national judicial authorities gave reasoned decisions, addressing all relevant submissions by the applicant. There is nothing to show that the conclusions of the national judicial authorities were arbitrary or contrary to the provisions of domestic law applied by them.

Ultimately, this application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

b) Length

28. The period to be taken into consideration began on 27 January 1997, the day the applicant instituted proceedings with the Ljubljana District Court, and ended on 10 July 2001, the day the Constitutional Court's decision was served on the applicant. It therefore lasted over four years and five months for four levels of jurisdiction.

29. 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).

30. Having examined all the material submitted to it, and having regard to its case-law on the subject (see *Katte Klitsche de la Grange v. Italy*, judgment of 27 October 1994, Series A no. 293-B, §§ 51 - 63), the Court considers that complaint concerning the length of the second set of the proceedings is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

31. The Court recalls that Article 13 requires the State to provide an effective legal remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, 8 June 2006). Considering that the complaint about the excessive length of the proceedings is inadmissible as manifestly ill-founded, the Court finds that the applicant did not have an arguable claim that his right to an effective remedy within the meaning of Article 13 was violated. Therefore, this claim does not reveal any appearance of violation of this provision.

Accordingly, this complaint is manifestly ill-founded and must be declared inadmissible in the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Article 6 § 1

32. The Government argued that the proceedings at issue were quite complex because they concerned a business-related dispute. The courts dealt with the case in accordance with their statutory authority. Although the dispute was undoubtedly of great importance for the applicant, it was not a matter that required priority treatment. Lastly, the applicant's numerous written submissions contributed to the length of the proceedings.

33. The applicant contested these arguments and reiterated his view that the proceedings at issue were exceedingly long.

34. In determining the relevant period to be taken into consideration, the Court notes the proceedings at issue started before 28 June 1994, the day the Convention took effect with respect to Slovenia. Given its jurisdiction *ratione temporis*, the Court can only consider the period which have elapsed since this day, although it will have regard to the stage reached in the proceedings in the domestic courts on that date (see, for instance, *Belinger*, cited above, and *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI). The period to be taken into consideration thus began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 8 January 2002, the day the Ljubljana Higher Court dismissed the appeals. It therefore lasted over seven years and six months and four instances have been involved.

35. 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).

36. The Court acknowledges that the case was of come complexity, but this was not the result of the applicant's submissions, as the Government argued. These submissions do not appear numerous nor particularly complex and did not make the case any more intricate. The court notes in this respect that the Government did not allege that the applicant abused any of the procedural rights that conferred to him by the domestic legislation. Considering this fact and having examined all the material submitted to it, the Court does not find any delays in the proceedings which could be attributable to the applicant.

37. Even though there was no singular outstanding delay in the proceedings, the Court nonetheless finds that the domestic courts, in particular the first-instance court, could have tried the case more diligently on the whole. Notably, it took a total of over two years and six months for the courts to dismiss the applicant's request for the transfer of the case and the recusal of a judge. Moreover, even when this procedural issue was resolved it took more than six months before the first-instance court resumed hearing the case.

38. In the view of these findings and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings, in particular before the first-instance court, was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13

39. 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.

40. 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

41. 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. Pecuniary damage

42. The applicant claimed 590,542 euros (EUR) in respect of pecuniary damage in the loss of production of the fish baits which he sustained due to the excessive length of proceedings.

43. The Government left the matter to the Court's discretion.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects the claim under this head.

B. Non-pecuniary damage

45. The applicant claimed EUR 43,398 in respect of non-pecuniary damage. The applicant claimed this damage stemmed from the inactivity of the domestic courts which, eventually, resulted in his bankruptcy and four-years' unemployment.

46. The Government left the matter to the Court's discretion.

47. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,000 under that head.

C. Costs and expenses

48. The applicant also claimed approximately EUR 5,000 for the costs and expenses incurred before the Court.

49. The Government left the matter to the Court's discretion.

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 notes that the applicant omitted to itemise particulars of her claims and provide the necessary supporting documents as required by Rule 60 of the Rules of Court. Next, the Court notes that the applicant was represented by a lawyer during a part of the proceedings before the Court, but is without representation at present.

51. The Court finds that the applicant must have incurred some costs and expenses in the proceedings. 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 700 for the proceedings before the Court.

D. Default interest

52. 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 complaints under Articles 6 § 1 and 13 of the Convention as regards the length of the first set of proceedings admissible and the remainder of the application inadmissible;

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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 700 (seven hundred 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President