



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

THIRD SECTION

CASE OF OLENIK v. SLOVENIA

(Application no. 4225/02)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

12/02/2007

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 Olenik 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. 4225/02) 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, Ms Suzana Olenik (“the applicant”), on 23 November 2001.

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 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). In addition, the applicant complained under Article 6 § 1 of the Convention about the unfairness of the proceedings. Lastly, she claimed that the attitude of the courts to which she was subjected breached her rights protected by Article 3 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Pobegi.

6. On 2 October 1992 the applicant was injured in a car accident. The perpetrator of the accident had taken out insurance with the insurance company ZA.

7. On 26 January 1994 the applicant instituted civil proceedings against ZA in the Koper Basic Court, Koper Unit (*Temeljno sodišče v Kopru, Enota v Kopru*) seeking damages in the amount of 1,548,050 tolar (approximately 6,450 euros) for the injuries sustained.

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

On 19 July 1994 the applicant requested that a date be set for a hearing.

On 14 October 1994 the court held a hearing and heard the applicant.

On 28 November 1994 the court held a hearing. Since the witness, a police officer, summoned to the hearing did not appear and because a reform of the judicial system was planned, the hearing was adjourned *sine die*.

On 1 January 1995 the Koper Local Court (*Okrajno sodišče v Kopru*) gained jurisdiction in the case due to the reform of the Slovenian judicial system.

On 17 February 1995 the court held a hearing, heard a witness, the police officer, and decided to appoint a medical expert.

On 2 March 1995 the court appointed a medical expert and gave him a period of thirty days to deliver an opinion.

On 13 June and 3 July 1995 the court urged the expert to deliver the opinion which he did on 10 July 1995.

On 25 August 1995 the court held a hearing and, upon the request of the applicant, decided to seek an additional opinion from the appointed expert.

On 1 December 1995 the expert submitted an additional opinion.

At an undetermined time, but before 12 August 1996, and for an unknown reason, the case was transferred to a different judge.

On 5 May 1999 the court held a hearing. At the hearing the applicant increased her claim. For this reason, the court decided that the case was no longer within its jurisdiction and it was accordingly transferred to the Koper District Court (*Okrožno sodišče v Kopru*).

On 11 November 1999 the court held a hearing.

On 16 December 1999 the court held another hearing and heard the appointed expert. The court decided to deliver a written judgment.

On 22 December 1999 the court delivered a judgment dismissing the applicant's claim.

8. On 12 January 2000 the applicant appealed to the Koper Higher Court (*Višje sodišče v Kopru*). She was represented by her father who was not a practicing lawyer.

On 9 March 2000 the applicant requested the court to consider that she lodged an appeal of 12 January 2000 herself and that she had no legal representation.

On 30 January 2001 the court dismissed the appeal. The judgment was served on the applicant on 6 September 2001.

The applicant did not lodge further remedies against the Koper Higher Court judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1991 Constitution

9. Article 26 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads as follows:

“Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office. ...”

B. The Code of Obligations 2001

10. If a court is responsible for undue delay in the proceedings and an individual has sustained pecuniary damage as a result, he or she may claim compensation from the State under the Code of Obligations 2001 (*Obligacijski zakonik*). The person seeking compensation will thus have to prove, firstly, that there has been a delay in the proceedings; secondly, that damage has occurred and, thirdly, that there is a causal link between the conduct of the court and the damage sustained.

THE LAW

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

11. 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 ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

12. 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

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

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

15. 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.

16. 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.

17. 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

18. The Government argued that the period to be taken into consideration began to run on 28 June 1994, the day the Convention entered into force with respect to Slovenia and ended on 30 January 2001, the day the Koper Higher Court dismissed the applicant's appeal. The proceedings to which the applicant was a party were somewhat complex since the first-instance court had to examine the file of the misdemeanours' judge, hear two witnesses and appoint a medical expert. The court tried the case with all due diligence needed in such proceedings. The applicant, however, contributed to the length of proceedings by increasing her claim only five

years after the proceedings had been instituted. Also the fact that she needed to amend her appeal, because it was initially lodged by an incompetent person, contributed to some extent to a delay in the proceedings. The Government conceded, however, that what was at issue in these proceedings was of some importance to the applicant.

19. The applicant contested the Government's arguments. She claimed that the relevant period ended on 6 September 2001, the day the Koper Higher Court's judgment was served on her. In addition, the proceedings were not at all complex and she did all she could to speed them up.

20. The Court recalls that for the purposes of Article 6 § 1 of the Convention, the relevant period in the civil proceedings generally commences to run on the day of the institution of the proceedings concerning the determination of a dispute over the applicant's civil rights and obligations. This period terminates, in principle, with the last decision delivered in the domestic courts which has become final or, where later, when the written judgment is served on the applicant (see, e.g., *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, § 30).

21. The proceedings at issue in the present case were instituted 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 has 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). Therefore, the period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia.

22. The Court notes that the last decision in the proceedings before the domestic courts was issued on 30 January 2001. However, since this decision was communicated to the applicant only on 6 September 2001, it was then when the relevant period ended. The period to be taken into consideration therefore lasted over seven years and two months for two levels of jurisdiction.

23. 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).

24. The Court finds that the proceedings at issue were of no considerable complexity. Notwithstanding the Government's argument, the Court does not find that the applicant's amendment of the claim contributed in a significant manner to the length of the proceedings. Moreover, the

Court does not accept the Government's argument that the courts dealt with the case diligently since, for example, the proceedings came to a standstill for nearly two years and nine months after the case was transferred to a new judge. Likewise, the Government made no comments as to the period of over six months which elapsed before the judgment of the Koper Higher Court was served on the applicant.

25. 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

26. 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 *Kudla 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.

27. 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 her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 6 § 1 OF THE CONVENTION

28. The applicant complained about the unfairness of the proceedings. Article 6 § 1 of the Convention reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing... by [a] ... tribunal...”

29. The applicant also complained that she was unfairly criticized by the domestic courts. She relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

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

31. In this respect the Court notes that the applicant did not lodge any kind of appeal against the judgment of the Koper Higher Court to the Supreme Court of the Republic of Slovenia and, subsequently, to the Constitutional Court of the Republic of Slovenia.

32. 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 the domestic remedies were not exhausted within the meaning of Article 35 § 1 of the Convention.

33. In any event, as to the complaints made under Article 3, the Court notes that the applicant failed to produce evidence demonstrating that the treatment complained of reached the threshold of severity required to bring it within the scope of Article 3 of the Convention.

This part of the application must be rejected as manifestly ill-founded in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed approximately 45,480 euros (EUR) in respect of pecuniary damage. She claimed that this amount of damages is imputable to the other driver involved in the car accident, as was established by the court-appointed expert. However, by the time the court appointed the expert, the statute of limitations had passed and the applicant could no longer claim damages from the allegedly responsible individual.

36. The Government considered this claim as a claim for non-pecuniary damage. They argued that the claim for just satisfaction was neither duly specified nor substantiated by the documents in the case-file and must therefore be rejected (*Mitchell and Holloway v. the United Kingdom*, no.

44808/98, § 69, 17 December 2002). In any event, the claim was exaggerated.

37. The Court observes that the applicant, claiming to have suffered material damages due to an excessive delay in proceedings can, under Article 26 of the Constitution and the provisions of the Code of Obligations 2001 (see paragraphs 9 and 10 above), institute civil proceedings against the State seeking compensation for these damages. The court has already found that this remedy is in principle effective (see *Lukenda*, cited above, § 59).

38. In the present case, the applicant neither availed herself of the said remedy, nor alleged that this remedy was ineffective in the circumstances of her case. The applicant thus failed to exhaust domestic remedies.

Accordingly, her claim for pecuniary damage must be declared inadmissible.

B. Costs and expenses

39. The applicant, who was not represented by a lawyer, also claimed approximately EUR 210 for the costs and expenses incurred before the Court.

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

41. 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. 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 full sum claimed.

C. Default interest

42. 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* admissible the complaints under Articles 6 § 1 and 13 of the Convention (length of the proceedings) 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 210 (two hundred and ten 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