



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

THIRD SECTION

CASE OF LESAR v. SLOVENIA

(Application no. 66824/01)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

23/05/2007

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 Lesar 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 9 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 66824/01) 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 Ladislav Lesar (“the applicant”), on 20 October 2000.

2. The applicant was represented by Mrs Mengus, a lawyer practising in Strasbourg. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged, *inter alia*, 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 8 July 2004 the Court declared the application partly inadmissible and 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 examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born in 1939 and lives in Ljubljana.

6. On 11 January 1984 the applicant, while walking on the street under the influence of alcohol, run into another person, I.Š., who sustained injuries.

7. On 20 June 1989 I.Š. instituted civil proceedings against the applicant in the Ljubljana Basic Court (*Temeljno sodišče v Ljubljani*) seeking compensation for the loss of income and a monthly rent.

On 17 June 1991 the court delivered a judgment, partly upholding I.Š.'s claim.

On 13 November 1991 the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) quashed the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

After the Ljubljana Basic Court had issued a new judgment in the case, the Ljubljana Higher Court, on 4 November 1992, quashed it again.

On 25 November 1993, after the re-examination of the case, the Ljubljana Basic Court ruled in favour of I.Š. The applicant again appealed.

On 2 February 1994 the Ljubljana Higher Court rejected his appeal.

8. On 21 March 1994 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 28 June 1994 the Convention entered into force in respect of Slovenia.

On 8 December 1994 the Supreme Court rejected the applicant's appeal.

The judgment was served on the applicant on 1 February 1995.

9. On 13 March 1995 the applicant lodged a constitutional appeal.

On 16 January 1997 the Constitutional Court (*Ustavno sodišče*) annulled the lower courts' judgements due to a violation of equal protection of rights guaranteed in Article 22 of the Slovenian Constitution. It found that the courts had, in determining the existence of the applicant's civil liability for damages, relied on final judgments issued in separate proceedings which had deprived the applicant of his right to defend his interests effectively. It ordered a re-examination of the case.

10. In the meantime, however, the applicant, on 10 April 1995, lodged a request for re-opening of the proceedings. After two hearings (the first one was adjourned due to the applicant's late submissions) the renamed Ljubljana Local Court (*Okrajno sodišče v Ljubljani*), on 13 May 1996, upheld the applicant's request and annulled the first-instance judgement of 25 November 1993. That decision was served on the applicant on 12 July 1996.

On 13 September 1996 the Ljubljana Higher Court partly upheld I.Š.'s appeal but approved the decision concerning the re-opening. The decision was served on the applicant on 8 October 1996.

11. On an unspecified date, but apparently prior to April 1998, the applicant lodged criminal charges for the abuse of public office with the Novo Mesto District Court (*Okrožno sodišče v Novem mestu*) against the judge B.I., who was responsible for the first-instance proceedings prior to their re-opening.

In addition, the applicant lodged a civil claim with the Celje District Court (*Okrožno sodišče v Celju*) against the State seeking compensation for damage resulting from the allegedly unlawful proceedings.

On 21 April 1998 the Ljubljana Local Court sent the case-file to Novo Mesto District Court to enable it to decide on the criminal charges against the judge.

It received the case-file back on 15 March 1999.

On 11 October 1999 the case-file was sent to the State Attorney's Office which had requested it in respect of the civil proceedings instituted against the State. On 17 January 2000, the Celje District Court decided to discontinue the civil proceedings against the State until the main proceedings and the criminal proceedings would be concluded.

12. In the main proceedings, the case was again considered before the Ljubljana Local Court as a result of the re-opening decision of 13 May 1996 and the Constitutional Court's decision of 16 January 1997 (see paragraphs 9 and 10).

At the hearing held on 1 December 1999, the Ljubljana Local Court noticed that the case-file was still at the State Attorney's Office. However, on 28 December 1999 the case-file was returned and the proceedings continued.

Between 22 November 1999 and 20 November 2002, the applicant lodged eleven preliminary written submissions and adduced evidence.

On 28 November 2001 the court appointed a medical expert.

During the proceedings, the court made also inquiries with I.Š.'s employer and the Slovenian Institute for Statistics (*Zavod Republike Slovenije za statistiko*) concerning the question of loss of I.Š.'s potential income.

Of the nine hearings held between 1 December 1999 and 20 November 2002, one was adjourned due to the applicant's late submissions. Two hearings fixed for 5 June 2000 and 13 September 2000 were called off due to an unavailability of a witness.

On 20 November 2002 the court issued an interim judgment finding that the applicant was liable for damages up to forty per cents. The judgment was served on the applicant on 13 January 2003.

13. On 27 January 2003 the applicant appealed. I.Š. also appealed.

On 11 June 2003 the Ljubljana Higher Court partly upheld the applicant's appeal and reduced his liability to twenty per cent. The judgment was served on the applicant on 7 July 2003.

14. In the course of the proceedings the applicant lodged two and I.Š. three requests for supervision.

The applicant informed the judge M.J., responsible for the first-instance proceedings (paragraph 12), that he might initiate criminal proceedings also against her. He also lodged a request for opening of disciplinary

proceedings against her and against the Ljubljana Higher Court's judges who had decided on his appeal.

15. On 23 July 2003 the applicant and on 18 August 2003 I.Š. lodged appeals on points of law.

On 7 October 2004 the Supreme Court rejected the appeals.

The decision was apparently served on the applicant on 5 November 2004.

16. In the meanwhile, on 27 August 2003, the applicant lodged a constitutional appeal against the first and the second-instance courts' judgments.

On 6 July 2005 the Constitutional Court, taking into account also the Supreme Court's decision of 7 October 2004, dismissed the applicant's appeal as manifestly ill-founded. The decision was served on the applicant on 11 July 2005.

17. The first-instance proceedings concerning the amount of compensation to be awarded to I.Š. are still pending.

THE LAW

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

18. The applicant complained about the excessive length of the civil proceedings instituted against him by I.Š. 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...”

19. 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

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* (*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.

23. 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.

24. 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

25. 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).

The proceedings have not yet ended. The relevant period has therefore lasted over twelve years for four levels of jurisdiction. Due to remittals, the case was considered on several instances.

26. 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).

27. The Government argued that the case was a complex one and that the domestic courts could not be criticised for not being active in the proceedings at issue. Before being quashed by the Constitutional Court, the case was decided by a final decision in five years and seven months, despite the involvement of seven instances. They pointed out that the applicant made use of virtually all available legal remedies in the relevant proceedings. He also requested that criminal and disciplinary proceedings be instituted against the judge and lodged a compensation claim against the State. While admitting that to make use of those remedies was the

applicant's right, the Government stated that it should not be ignored that dealing with them required additional time. In particular, the first-instance court did not have in its possession the case-file for more than a year due to the institution of separate proceedings.

In addition, the Government submitted that in the first-instance proceedings some delays were caused also due to problems with summoning of one of the witnesses: the court failed to serve summons in respect of four hearings, two of them were called off for that reason.

28. The Court cannot but notice that the applicant did indeed take a series of steps which complicated the proceedings. The applicant succeeded with his numerous appeals, which resulted in the three re-examinations of the case before the Convention entered into force in respect of Slovenia on 28 June 1994 and in one re-examination in the period under the consideration – after he had successfully pursued the request for re-opening of the case (*Sablon v. Belgium*, no. 36445/97, § 87, 10 April 2001) and the constitutional appeal.

29. After the case had been partially decided by the interim judgement of 20 November 2002, the applicant again used all ordinary remedies available against it (paragraphs 13, 15 and 16 above). In addition, he instituted proceedings against the State and the relevant judges which also caused delays in the proceedings at issue since the competent courts needed to study the case-file (paragraphs 11 and 12).

30. As to the argument based on the applicant's use of several remedies (paragraphs 28 and 29 above), the Court notes that, while the applicant cannot be blamed for making full use of the remedies available to him under the domestic law, his behaviour, however, is an objective fact which must be taken into account for the purpose of determining whether or not the "reasonable time" has been exceeded (see, *mutatis mutandis*, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 36, § 82). On the other hand, the Court reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements.

31. As to the difficulties with the summoning of a witness, the Court observes that they contributed to the length of the proceedings only to a limited extent. It moreover notes that the decision to have recourse to the testimony of a witness was taken in the context of judicial proceedings supervised by a judge (see, *mutatis mutandis*, *Jelen v. Slovenia*, no. 5044/02, § 18, 1 June 2006, and *Capuano v. Italy*, 25 June 1987 Series A no. 119, p. 13, § 30), who remained responsible for the preparation and the speedy conduct of the trial.

32. That being said, the Court notes that after twelve years, within the period under the Court's jurisdiction, the case against the applicant is pending before the first-instance court. In addition, over six years had elapsed between the re-opening of the proceedings and the delivery of the

interim judgment. The court considers that the absence of the case-file and the applicant's use of several remedies, which indeed delayed the proceedings, do not, however, justify such length. The Court notes, above all, that the length of the proceedings was in a large part a result of a re-examination of the case. The Court, though not being in a position to analyse the juridical quality of the case-law of the domestic courts, considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a deficiency in the judicial system (e.g. *Deželak v. Slovenia*, no. 1438/02, § 25, 6 April 2006).

33. Accepting that the case was of a certain complexity and taking into account the above considerations, the Court is of the opinion that the length of the present proceedings could not be considered as justified in the circumstances of the case.

34. In view of the foregoing and having regard to its case-law on the subject, the Court finds that there has been a breach of Article 6 § 1.

2. Article 13

35. 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.

36. 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

37. 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

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

39. The Government did not express their opinion on that issue.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

41. The applicant also claimed approximately EUR 15,804 for the costs and expenses incurred in the domestic proceedings and EUR 4,874 before the Court.

42. The Government did not express their opinion in that respect.

43. 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, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

44. 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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five 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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President