



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

THIRD SECTION

CASE OF KORDA v. SLOVENIA

(Application no. 25195/02)

JUDGMENT

STRASBOURG

30 November 2006

FINAL

28/02/2007

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 Korda 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. 25195/02) 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 Jerolim Korda (“the applicant”), on 20 June 2002.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant complained under Article 6 § 1 of the Convention of the unfairness and the excessive length of the proceedings before the domestic courts to which he was a party. 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 (Section III) 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 1935 and lives in Maribor.

6. On 27 February 1988 the applicant, who was a private entrepreneur, was hired by the institution called Dom upokojecev Danice Vogrinec, a retirement home (“the retirement home”), to paint its premises.

7. On 20 February 1990 the applicant instituted civil proceedings in the Maribor Basic Court, Maribor Unit (*Temeljno sodišče v Mariboru, Enota Maribor*) against the retirement home seeking payment for the work he had carried out.

On 15 January 1991, after the court had held four hearings, the applicant's claim was upheld in part.

8. On 6 March 1991 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*).

On 18 July 1991 the court allowed the applicant's appeal, annulled the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

9. On 15 October 1991, after a hearing was held, the first-instance court again upheld the applicant's claim in part. Upon the applicant's request a supplementary judgment was issued on 13 December 1991.

10. The applicant and the retirement home appealed against both judgments to the Maribor Higher Court.

On 4 May 1993 the court allowed the appeals of the applicant and his adversary, annulled the first-instance court's judgment and remitted the case to the first-instance court for re-examination.

11. Until 28 June 1994, the day the Convention entered into force with respect to Slovenia, the first-instance court held two hearings. Another hearing was scheduled but did not take place because the applicant's lawyer failed to appear before the court.

On 14 October 1994 the court held a hearing.

The hearing scheduled for 6 December 1994 was cancelled for an unknown reason.

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

On 10 October 1995 the applicant requested that a date be set for a hearing.

On 16 October 1995 the applicant lodged a request for supervision against the judge presiding over the case, but apparently to no avail.

On 17 October 1995 the court declared the case out of its jurisdiction and transferred it to the Maribor District Court (*Okrožno sodišče v Mariboru*).

On 9 January 1996 the applicant lodged preliminary written submissions.

There was apparently a dispute between the Maribor Local Court and the Maribor District Court concerning the jurisdiction. In this respect, the Maribor Higher Court decided on 12 January 1996 that the case fell within the jurisdiction of the Maribor District Court.

On 16 May and 20 September 1996 the court held hearings.

On 6 and 11 November 1996 the applicant lodged preliminary written submissions.

On 22 November 1996 and 10 January 1997 the court held hearings.

The judgment of 11 February 1997, dismissing the applicant's claim, was served on the applicant on 14 February 1997.

12. On 24 February 1997 the applicant appealed to the Maribor Higher Court and the following day he amended his appeal. The retirement home cross-appealed.

On 4 June 1998 the Maribor Higher Court allowed both appeals, annulled the first-instance court's judgment and remitted the case to the first-instance court for re-examination. The decision was served on the applicant on 27 June 1998.

13. On 1 October 1998 the Maribor District Court held a hearing.

On 10 November 1998 the applicant lodged preliminary written submissions.

The hearing scheduled for 19 November 1998 was cancelled for an unknown reason.

On 5 February, 25 March, 6 May and 26 August 1999 the court held hearings. At the last hearing the court upheld the applicant's request to appoint an expert in construction engineering. The applicant paid the required deposit for the costs of the expert on 3 September 1999.

On 12 January 2000 the court appointed an expert in construction engineering to determine the value of the applicant's work. The expert opinion was delivered on 29 March 2000.

On 16 February 2000 the applicant filed a rush notice.

On 12 May, 7 September and 10 November 2000 the court held hearings.

At the last hearing the court delivered an oral judgment, upholding in part the applicant's claim. On 20 November 2000 the parties to the proceedings informed the court that they would appeal against this judgment, once they receive a written copy.

In a letter of 5 March 2001 the applicant requested the court not to deliver a written judgment yet, since he attempted to settle the case with the retirement home. On 9 April 2001 the latter informed the court that a friendly settlement was in progress.

On 16 May 2001 the applicant requested the court to issue a written judgment. The written judgment was served on the applicant on 28 May 2001.

14. On 4 June 2001 the applicant appealed. He amended his appeal on 19 July 2001.

On 8 April and 22 May 2002 the applicant filed rush notices.

On 30 May 2002 the Maribor Higher Court allowed the appeal in part and amended the judgment in the part referring to costs and expenses. The decision was served on the applicant at an undetermined time, but after 5 June 2006. The applicant did not appeal.

15. On 24 July 2002 the applicant asked the Public Prosecutor's Office to lodge a request for protection of legality (*zahteva za varstvo zakonitosti*) with regard to his case. The request was dismissed on 4 September 2002.

16. On 20 January 2003 the applicant lodged a request for reopening of proceedings with the Maribor District Court. On 12 June 2003 the request was rejected. The decision was served on the applicant on 18 June 2003.

17. On 23 June 2003 the applicant appealed to the Maribor Higher Court, which dismissed his appeal on 1 December 2003.

18. On 12 December 2004 the applicant requested a leave for an appeal on points of law, which the Maribor District Court rejected on 21 January 2004 as not allowed.

19. On 27 January 2005 the applicant appealed to the Maribor Higher Court against this decision.

On 16 December 2004 the court dismissed the appeal.

20. On 5 January 2005 the applicant lodged submissions which were considered as an appeal on points of law and the case was transferred to the Supreme Court on 18 April 2005.

The proceedings are still pending.

THE LAW

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

21. The applicant complained about the unfairness 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 and public hearing within a reasonable time by [a] ... tribunal...”

22. 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. As to the proceedings before 20 January 2003*1. Admissibility***a) As to the fairness of the proceedings**

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

24. The Court observes that the applicant lodged a request for protection of legality with the Public Prosecutor's Office against the Maribor Higher Court's decision of 30 May 2002. This legal remedy, however, is not available to a party in civil proceedings (see *Rodič v. Slovenia*, no. 38528/02, § 18, 27 April 2006). The court further notes that the applicant did not contest the impugned decision before the Constitutional Court (see, e.g., *Tričković v. Slovenia*, no. 39914/98, Commission decision of 27 May 1998). Lastly, an examination of the facts of the case 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 his complaint in the proceedings referred to.

It follows, that the applicant failed to exhaust the domestic remedies as required by Article 35 § 1 of the Convention and that this part of the application should therefore be rejected in accordance with Article 35 § 4 of the Convention.

b) As to the length of the proceedings

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

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

27. 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.

28. 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.

29. 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.

2. Merits

a) Article 6 § 1

30. 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). It follows that the period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia. Before the Convention took effect with respect to Slovenia the proceedings had been pending over four years and four months and four instances had been involved.

31. The relevant period ended sometime in June or July 2002, when the Maribor Higher Court's decision was served on the applicant. It therefore lasted approximately eight years for two levels of jurisdiction. Due to remittals, decisions were rendered in four instances.

32. 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).

33. Having examined all the material submitted to it, taking into consideration the stage of the proceedings at the time the Convention took effect with respect to Slovenia, 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.

b) Article 13

34. 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.

35. 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.

B. As to the proceedings after 20 January 2003

1. Applicability of Article 6 § 1

36. The Court recalls that, according to established case-law of the Convention organs, Article 6 § 1 is not applicable to the determination of a request for reopening of proceedings (see *Sablon v. Belgium*, no. 36445/97, § 87, 10 April 2001).

37. In the present case, the applicant requested that the proceedings be reopened on 20 January 2003. These proceedings are still pending.

It follows that the applicant's complaints under Article 6 § 1, as far as they concern the proceedings after 20 January 2003 are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3. They must therefore be rejected in accordance with Article 35 § 4.

2. Applicability of Article 13

38. 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 fairness and 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 16,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government contested the claim.

42. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,200 under that head.

B. Costs and expenses

43. The applicant also claimed approximately EUR 610 for the costs and expenses incurred before the Court.

44. The Government made no comment to this claim.

45. 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.

46. The Court considers that the applicant, who was not represented by a lawyer but was assisted by a lawyer during a part of the proceedings, must have sustained some costs and expenses in the proceedings. In addition, the Court considers the applicant's claim under this head is sufficiently itemised and well founded. 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 full sum claimed.

C. Default interest

47. 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 concerning the length of proceedings pending before 20 January 2003 under Articles 6 § 1 and 13 of the Convention 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 610 (six 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 30 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President