



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

THIRD SECTION

**CASE OF GAISCHEG v. SLOVENIA**

*(Application no. 32958/02)*

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 Gaischeg 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 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. 32958/02) 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 Slovenian nationals, Mrs Stanislava Gaischeg (“the first applicant”) and Mr Adolf Gaischeg (“the second applicant”), on 7 August 2002.

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

3. With respect to the first set of proceedings, the applicants alleged under Article 14 of the Convention that they were denied the restitution of property because they are of German origin (Article 1 of Protocol No. 1). With regard to the second set of proceedings, the first applicant complained under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts was excessive. In substance, she further alleged the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 20 January 2006 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 examine the merits of the application at the same time as its admissibility.

**THE FACTS**

5. The applicants were born in 1929 and 1959 and live in Maribor.

6. They are wife and son of A.G. who died in 1980 and was of German origin.

*1. The background of the case*

7. M.G., A.G.'s mother, who died on 3 September 1948, owned a house in the centre of Maribor. She bequeathed the house to her son K.G., who was mentally ill, in order to provide for his maintenance. In her will, M.G. acknowledged that A.G. agreed not to claim the house. After the inheritance proceedings had been terminated, K.G. became the owner of the house and A.G. got a life-long right to reside in the house.

8. At an undetermined time, K.G. was declared incapacitated due to his mental illness and was put under guardianship. In October 1949 he was sent to a psychiatric institution. On 3 November 1949 the Maribor Local Court (*Okrajno sodišče v Mariboru*) ordered that K.G. should remain institutionalised.

9. On 6 December 1948 K.G.'s guardian asked the Maribor Municipality whether they would be interested in purchasing the house, because K.G. had insufficient income to cover his expenses and to maintain the house.

10. On 29 August 1949 the Maribor Municipality drafted a contract for the purchase of the house and taking on the responsibility of life-long care and maintenance of K.G. The contract established that the payment for the house would also cover A.G.'s claim against K.G. originating from a loan, which was secured by a mortgage on the house.

11. On 7 April 1950 K.G.'s guardian signed the contract before the Maribor Local Court.

12. On 14 April 1950 the Maribor Municipality requested A.G. to express his agreement with the contract by way of signing it. At an undetermined time, but apparently shortly after this date, he complied with the request.

13. On 4 April 1951 K.G. died.

*2. The first set of proceedings*

14. At an undetermined time, the applicants instituted non-contentious proceedings against the Maribor Municipality in the Maribor Basic Court, Maribor Unit (*Temeljno sodišče v Mariboru, Enota Maribor*) seeking restitution of the house. They claimed that the house was nationalised because the contract on its purchase had been closed under duress.

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 26 April 1996 the applicants lodged preliminary written submissions.

On 23 May 1996 the court held a hearing and heard witnesses.

On 30 January 1997 the court dismissed the applicant's request because the applicants failed to prove that the impugned contract had been made under duress.

15. On 4 April 1997 the applicants appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*).

On 13 May 1997 the court dismissed the appeal as unfounded.

16. On 4 September 1997 the applicants lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 25 March 1998 the court dismissed the appeal as unfounded. The decision was served on the applicant on 27 May 1998.

17. On 11 December 2000 the first applicant appealed to the Constitutional Court (*Ustavno sodišče*).

On 21 January 2002 the court declared the application inadmissible as out of time.

### 3. *The second set of proceedings*

18. On 3 August 1993 there was a gas explosion in the cellar of the building where the first applicant resided, namely the house claimed by the applicants in the first set of proceedings. At the time of the explosion, the first applicant was in the cellar and sustained injuries. The liability for the explosion laid with the company MP who was responsible for maintenance of the gas pipeline in the building.

19. On 28 March 1994 the first applicant instituted proceedings against the company MP and the insurance company ZM in the Maribor Basic Court, Maribor Unit seeking damages in the amount of 7,255,000 tolar (approximately 30,000 euros) for the injuries sustained.

On 7 July 1994 the court held a hearing and decided to appoint the Ljubljana University Clinic Centre to deliver an expert opinion regarding the applicant's injuries. The opinion was delivered in six months.

On 19 December 1995 the court held another hearing and requested the appointed expert institution to amend its opinion.

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

On 11 June 1996 the court terminated the proceedings against the insurance company following the applicant's withdrawal of the claim against this party.

On 26 August 1996 the applicant submitted preliminary written observations and raised her claim.

During the proceedings, the court appointed two more medical experts.

At the hearing held on 5 June 1997 the court requested one of the appointed experts to deliver an additional opinion.

On 16 June and 17 September 1998 the court held hearings. At the last hearing the court issued a judgment upholding the applicant's claim in part.

20. On 9 November 1998 the MP appealed to the Maribor Higher Court. On 16 November 1998 the applicant cross-appealed.

At an undetermined time in 2000, the Maribor Higher Court set aside the first-instance court's judgment and remitted the case for re-examination.

21. On 1 February 2001 the first-instance court held a hearing and issued a judgment upholding the applicant's claim in part. The court awarded the applicant more damages than in its previous judgment.

22. On 27 March 2001 both parties appealed to the Maribor Higher Court.

On 9 July 2002 the court allowed the appeals in part and increased the amount of damages awarded.

23. On 17 September 2002 MP lodged an appeal on points of law with the Supreme Court.

On 11 December 2003 the court dismissed the appeal on points of law.

24. In the meanwhile, on 16 September 2002 the applicant instituted enforcement proceedings in the Maribor Local Court against MP for payment of the damages awarded in the Maribor Higher Judgment.

On 9 January 2003 the court allowed the enforcement and the amounts due were paid to the applicant on 30 January 2003.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

#### A. Admissibility

25. The applicants claim that A.G. signed the contract of 29 August 1949 under duress and that national authorities in fact confiscated the house in question. They claim that they were deprived of property in the proceedings they instituted in the domestic courts and relied on Article 1 of Protocol No. 1 which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law [...]”

26. The applicants complained that they were discriminated against in the proceedings concerning the restitution of the house, because they are of

German origin. They invoked Article 14 of the Convention which reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

27. First, the Court recalls that it is not called upon to decide whether the facts alleged by the applicant disclose any appearance of violation of the Convention, if they refer to the events that had occurred before 28 June 1994, the day the Convention took effect with respect to Slovenia (see *Majarič v. Slovenia*, no. 28400/95, Commission decision of 12 April 1996).

28. In this respect the Court notes that apparently shortly after 14 April 1950 A.G. signed the impugned contract of 29 August 1949.

It follows that all applicants' complaints concerning the impugned contract must be declared incompatible *ratione temporis* with the provisions of the Convention. They must therefore be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

29. Next, noting that the second applicant was not a party to the proceedings before the Constitutional Court, the Court considers that he cannot claim to be a victim within the meaning of Article 34 of the Convention in respect of the complaint under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention. Therefore, his complaints must be rejected for being incompatible *ratione personae*.

30. With regard to the first applicant's complaints under Article 1 of Protocol No. 1 the Court notes that the alleged confiscation of the house was an instantaneous act and did not produce a continuing situation of “deprivation of a right”. In this respect the Court recalls that there is no right to restitution under the Convention and its case-law. The hope that a long-extinguished property right may be revived cannot be regarded as a “possession”, and neither can the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively, or a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Kopecký v. Slovakia* [GC], no. 44912/98, ECHR 2004-...; *Nadbiskupija Zagrebačka v. Slovenia*, no. 60376/00, 27 May 2004).

31. The first applicants' complaints under Article 1 of Protocol No. 1 are hence incompatible *ratione materiae* with the provisions of the Convention and its Protocols. Therefore, they must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

32. Last, the Court recalls that under Article 35 § 1 it may deal with the complaints raised by the applicant only after all domestic remedies have been exhausted according to the generally recognised rules of international law. The mere fact that the applicant submitted his case to the Constitutional

Court does not in itself constitute compliance with this rule. During the domestic proceedings concerned he must have raised, at least in substance, the complaint he is addressing to the Court (see *Tričković v. Slovenia*, no. 39914/98, Commission decision of 27 May 1998).

33. The facts of the case disclose that the first applicant did not raise any of the Article 14 issues in her constitutional complaint. Moreover, her constitutional appeal was declared inadmissible as out of time. Besides, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the first applicant, according to the generally recognised rules of international law, from raising their complaints in the proceedings referred to.

34. Accordingly, the first applicant failed to avail herself of the available legal remedies. Therefore her complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 must be rejected in accordance with Article 35 § 1 and 4 of the Convention.

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

35. The first applicant complained about the excessive length of the second set 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...”

36. In substance, the first 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

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

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

39. 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.

40. 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.

41. 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*

42. The period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 11 December 2003, the day the Supreme Court dismissed the appeal on points of law. It therefore lasted over nine years and five months and decisions were rendered in five instances.

43. 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).

44. 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*

45. 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.

46. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The first applicant did not specify the damages claimed in respect of non-pecuniary damage. She left the matter to the discretion of the Court.

49. The Government argued that the claim was not properly formulated.

50. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her 2,000 euros (EUR) under that head.

### B. Costs and expenses

51. The first applicant also claimed reimbursement of costs and expenses incurred before the Court, but did not specify her claim.

52. The Government argued that the claim was not properly formulated.

53. 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 this respect, the applicant is required by Rule 60 of the Rules of Court to itemise particulars of her claims and provide the necessary supporting documents.

The Court observes that, in the present case, the applicant had no legal representation in the proceedings before the Court. Nevertheless, 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 150 for the proceedings before the Court.

### C. Default interest

54. 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 first applicant's complaints 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 first 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 150 (one hundred and fifty 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.

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