



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

THIRD SECTION

CASE OF VIRJENT v. SLOVENIA

(Application no. 6841/02)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

07/03/2007

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 Virjent 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 V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFEVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 6841/02) 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, Mrs Bojana Virjent (“the applicant”), on 6 June 2000.

2. Since 24 October 2005, the applicant was represented by Mr R. Završek, a lawyer practising in Ljubljana. 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).

4. On 16 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 examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant was born in 1956 and lives in Ljubljana.

6. The applicant was married to A.N. They divorced on 7 October 1991.

1. Non-contentious proceedings

7. On 7 August 1992 the applicant instituted non-contentious civil proceedings against A.N. in the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani, Enota Ljubljana*) seeking the division of their common property. To this end she submitted a proposal. Upon the request of the court, the applicant submitted an amendment to her proposal on 5 October 1992.

On 22 October and 25 March 1993 the court held a hearing where the parties settled the case in part. For the remainder of the property at issue, the court established that there was a dispute over its ownership.

On 22 October 1993 the court issued a decision referring the applicant to institute contentious civil proceedings against A.N. in order to determine the ownership of the garage (see below paragraphs 8 through 11). At the same time, the court ordered A.N. to institute contentious civil proceedings against the applicant to establish the size of his share in the apartment the parties owned jointly.

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

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

At an undetermined time, but after 9 February 2000, the Ljubljana Local Court scheduled a hearing in the non-contentious proceedings for 25 May 2001.

On 24 May 2001 the applicant informed the court that the parties had settled the remainder of the case and withdrew her proposal of 7 August 1992. Consequently, the court terminated the proceedings on 25 May 2001.

The decision was served on the applicant on 28 May 2001 and became final on 19 June 2001.

2. Contentious proceedings

8. On 3 December 1993 A.N. instituted contentious proceedings against the applicant in the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani, Enota Ljubljana*). The applicant did not institute proceedings against A.N. of which she informed the court on 15 November 1994.

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

On 13 June 1995 the applicant instituted proceedings against A.N. in the Ljubljana District Court seeking equal share of their common apartment.

On 21 October 1996 the applicant requested priority treatment for her case.

On 28 November 1996 the applicant requested the court to issue an interlocutory measure prohibiting A.N. to encumber or give up the apartment.

On 5 December 1996, upon the request of A.N., the Ljubljana District Court joined both sets of proceedings and issued the interlocutory measure sought by the applicant.

On 24 January 1997 the applicant again sought priority treatment for her case. On 11 February 1997 the court informed her that her case did not require a priority treatment.

Between 26 March 1997 and 12 November 1997 the court held five hearings. It heard ten witnesses and both parties.

On 19 December 1997 the court held a hearing where the parties settled the case in part. The court issued a judgment holding that the applicant owned thirty per cent of the apartment and A.N. the rest. It also ordered A.N. to pay rent to the applicant for the time he had been using the apartment. The judgment was served on the applicant on 15 January 1998.

9. On 30 January 1998 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*). A.N. cross-appealed.

On 2 March and 15 June 1998 the applicant filed a request to speed up the proceedings. On 2 July 1998 the court informed the applicant that her case was not a matter of priority.

On 25 November 1998 the court allowed the appeals in part, found that the applicant and A.N. owned the apartment in equal shares and remitted the case in the part referring to payment of rent to the first-instance court for re-examination. The judgment was served on the applicant on 17 December 1998.

10. At an undetermined time, A.N. lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 11 November 1999 the court dismissed the appeal.

The judgment was served on the applicant on 5 January 2000.

11. On 9 February 2000 the parties settled the case in the Ljubljana District Court. The proceedings were thus terminated.

THE LAW

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

12. 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...”

13. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. She 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. Admissibility of the non-contentious proceedings

a) Article 6 § 1

14. 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 19 June 2001, the day the decision of the Ljubljana Local Court became final. It therefore lasted nearly seven years for one level of jurisdiction.

15. 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).

16. The Court observes that the proceedings came to a standstill of over five years and seven months, a period during which the contentious proceedings were pending. This period cannot be attributed to the domestic court before which the non-contentious proceedings were pending.

17. Also the period of over one year and three months which lapsed between the 9 February 2000, the day the parties settled the case and 24 May 2001, the day the applicant informed the court of the latter fact, is not, in its entirety, imputable to the domestic authorities. After all, the applicant could have informed the court of the friendly settlement and sought a termination of the non-contentious proceedings.

18. 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 not excessive. The applicant's claim in this regard is manifestly ill-founded.

Accordingly, this complaint should be rejected within the meaning of Article 34 §§ 4 and 5 of the Convention.

b) Article 13

19. 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.

2. Admissibility of the contentious proceedings (Article 6 § 1)

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 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 this part of 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, and ended on 9 February 2000, the day the parties reached friendly settlement, which brought the proceedings to an end. It therefore lasted nearly five years and seven months for three level of jurisdiction. Due to a remittal, four instances were involved.

26. 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, in particular before the first-instance court, was excessive and failed to meet the “reasonable-time” requirement (see, e.g., *Krajnc v. Slovenia*, no. 27694/02, 27 April 2006).

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

2. Article 13

27. 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.

28. 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

29. 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. Non-pecuniary damage

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

31. The Government contested the claim claiming it was not sufficiently itemised.

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

B. Costs and expenses

33. The applicant also claimed EUR 3,106.20 for the costs and expenses incurred before the Court.

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

35. 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.

36. The Court observes that the applicant was represented before the Court since 24 October 2005, which is after the case had been communicated to the Government. The Court further notes that the applicant's representative

submitted an itemised claim for costs and expenses incurred by production of detailed observations, made in reply to those of the Government, claims for just satisfaction and communication between the lawyer and the applicant.

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 1,000 for the proceedings before the Court.

C. Default interest

37. 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 referring to the length of contentious proceedings (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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand 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 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President