



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

THIRD SECTION

CASE OF ČAKŠ v. SLOVENIA

(Application no. 33024/02)

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 Čakš 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. 33024/02) 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 Rudolf Čakš (“the applicant”), on 16 August 2002.

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

THE FACTS

5. The applicant was born in 1944 and lives in Limbuš.

6. On 6 June 1994 the applicant instituted execution proceedings in the Maribor Basic Court, Maribor Unit (*Temeljno sodišče v Mariboru, Enota v Mariboru*) against Obrtna zadruga Trgokooperant Maribor (“OZTN”) seeking payment of unpaid salaries as determined by court judgments of 31 March 1993 and 27 January 1994.

On 28 June 1994 the Convention took effect with respect to Slovenia.

On 12 September 1994 the court allowed the execution.

On 16 September 1994 OZTN opposed the execution order and on 21 October 1994 requested that the execution be adjourned.

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 19 May 1995 the applicant partially withdrew his action for enforcement because OZTN had paid its debt in part. At the same time he sought payment of additional unpaid salaries.

On 25 August 1995 OZTN amended its objection.

The court scheduled a hearing for 21 October 1997, but OZTN and its legal representative failed to appear before the court. Therefore, the court adjourned the hearing until 4 November 1997. This hearing was held and then adjourned to give the parties the opportunity to settle the case outside the court.

The court held a new hearing on 4 December 1997 which was adjourned until 27 January 1998 because OZTN failed to attend. On the latter date the hearing was cancelled. It was adjourned *sine die* because the judge presiding over the case was absent.

On 11 February 1998 the applicant lodged preliminary written submissions.

On 22 December 1998 the court held a hearing and decided to appoint a financial expert to determine the amount due. The court also made an enquiry with the tax authorities.

On 19 January 1998 the applicant informed the court that he had paid the advance on costs and expenses of the expert. On 10 March and 19 July 1999 he urged the court to appoint the expert as decided on 22 December 1998.

On 31 August 1999 the applicant lodged a request for an injunction to prevent OZTN to sell its property, which was rejected on 9 November 1999.

On 28 September 1999 the court held a hearing. OZTN explained that it had not paid its share of the advance on costs and expenses of the expert because it hoped that an out-of-court settlement would be reached in the case.

On 13 October 1999 OZTN submitted a proposal for a friendly settlement.

On 11 November 1999 the applicant, upon retaining a new representative, rejected OZTN's offer.

On 22 November 1999 OZTN informed the court that it had paid the advance on costs and expenses of the expert.

On 9 March 2000 the court appointed a financial expert. Initially, she informed the court that she could not take over the production of an expert opinion due to too much work, but she subsequently submitted an expert opinion in this case. On 23 January 2001 the opinion was served on the applicant.

In the meanwhile, on 20 January 2000, the applicant requested the court to speed up the proceedings.

On 17 May 2001 the case was transferred to a new judge for an unknown reason.

On 16 August 2001 the applicant informed the court that he had no objections to the expert opinion and requested the court to decide the case.

On 28 November 2001 and again on 28 March 2003 OZTN requested the court to refer the applicant to institute contentious proceedings in order to establish his claim. On 10 September 2002 it requested the court to decide the case and the following day lodged a request for supervision.

On 13 September 2002 the court established that the applicant's motion for enforcement was not in order and requested the applicant to amend it accordingly.

On 26 September 2002 the applicant amended his motion.

On 7 April 2003 the court sought some evidence from the Employment Office of the Republic of Slovenia and received it on 16 April 2003.

On 5 May 2003 the case was transferred to a new judge for an unknown reason.

On 9 May 2003 the applicant applied for leave to amend the order sought. He asked the court to allow the enforcement by way of selling the defendant's real estate. He also requested that a date be set for a hearing.

On 15 March 2004 the court requested the applicant to amend his appeal for leave as required by the law.

On 17 March 2004 the applicant lodged a request for supervision with the aim of speeding up of the proceedings, but to no avail.

On 22 March 2004 the court terminated the enforcement proceedings in part because the applicant had partially withdrawn his action for enforcement on 19 May 1995. The court also referred OZTN to institute proceedings within thirty days in order to establish the inadmissibility of the enforcement.

7. On 22 March 2004 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*) against the decision of referral.

On 5 November 2004 the court dismissed the appeal.

8. On 20 April 2004 OZTN instituted contentious proceedings against the applicant in order to establish the inadmissibility of the enforcement.

9. In the meanwhile, on 6 April 2004 the Maribor Local Court allowed the leave to amend the petition for execution and ordered that the notice be made in the Land Registry that the enforcement proceedings are pending against OZTN.

The court apparently stayed the enforcement proceedings awaiting the outcome of the contentious proceedings.

The proceedings are still pending.

THE LAW

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

10. The applicant complained about 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 ... hearing within a reasonable time by [a] ... tribunal...”

11. 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

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

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

14. 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.

15. 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.

16. 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

17. 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 has not yet ended. The relevant period has therefore lasted over twelve years and four months and three instances have been involved.

18. 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).

19. 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

20. 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.

21. 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

22. 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. Pecuniary damage

233. The applicant claimed 71,400 euros in respect of pecuniary damage.

24. The Government contested that claim.

25. The Court notes that the proceedings complained of are still pending. The Court further recalls that the applicant will be able to seek damages for material damage incurred due to excessively long proceedings after the proceedings at issue will have been terminated (*Lukenda v. Slovenia*, no. 23032/02, §§ 54 and 59, 6 October 2005).

Accordingly, the Court rejects the applicant's claim under this head.

B. Non-pecuniary damage

24. The applicant claimed 41,666 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested the claim.

26. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 9,600 under that head.

C. Costs and expenses

27. The applicant also claimed approximately EUR 19,563.60 for the costs and expenses incurred before the domestic courts, of which EUR 7,784 corresponded to the costs for consultations with lawyers, legal experts, and representatives of labour unions with the aim of speeding up the proceedings, and the related material costs. He did not claim, in particular, reimbursement of any costs incurred in the proceedings before the Court.

28. The Government argued that the claim was unspecified.

29. It follows from the Court's case-law, that 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 at to quantum.

30. The Court recalls that the proceedings before the domestic courts were not essentially aimed at remedying the violations of the Convention rights alleged by the applicant before the Court (see, *a fortiori*, *Scordino v. Italy (no. 1)* [GC], no. 36813/98, §§ 283/286, ECHR 2006-...). In these proceedings, however, the applicant lodged several requests that a hearing be scheduled and also lodged a request for supervision in order to speed them up. Although he had legal representation in the impugned proceedings, the applicant himself lodged the latter remedy. The Court therefore considers that the costs incurred in those proceedings should be reimbursed in part.

31. 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 100 for the proceedings before the domestic courts.

D. Default interest

32. 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 9,600 (nine thousand six hundred euros) in respect of non-pecuniary damage and EUR 100 (one 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 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President