



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

THIRD SECTION

CASE OF LAKOTA v. SLOVENIA

(Application no. 33488/02)

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 Lakota 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. 33488/02) 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 Matija Lakota (“the applicant”), on 31 August 2002.

2. The applicant was represented, since 13 October 2005, by Mr U. Ilić, 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 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 Ljubljana.

6. On 18 October 1994 the applicant started working for the company called IP Aplrem (“IPA”). The employment contract was signed on

2 November 1994. On 8 November 1994 the Board of Employees of IPA (*delavski svet*, “the Board”) found that the director did not have the necessary authority to sign the employment contract and declared the contract void.

7. On 24 November 1994 the applicant instituted proceedings in the Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*) against IPA contesting the Board's decision and seeking payment of salaries.

On 16 October 1995 the court held a hearing because the respondent did neither appear before the court nor send a reply to the claim.

On 4 December 1995 the court held a hearing and requested the respondent to submit some documents.

On 31 January and 13 March 1996 the court held hearings.

After the latter hearing, the court issued a partial judgment and upheld the applicant's claim, annulled the contested decision and ordered that the applicant be reinstituted to the post of head of financial department. The determination of the amount of damages was adjourned. The decision was served on the applicant on 19 August 1996.

8. On 2 September 1996 IPA lodged an appeal with the Higher Labour and Social Court (*Višje delovno in socialno sodišče*).

On 7 May 1998 the court allowed the appeal in part and ordered that the applicant be reemployed and appointed to a post corresponding to his knowledge and skills. The judgment was served on the applicant on 5 June 1998.

9. On 1 July 1998 IPA lodged an appeal on points of law against the judgment of the second-instance court with the Supreme Court (*Vrhovno sodišče*), which was amended on 3 July 1998.

On 22 July 1998 the applicant was withheld from work with reduced pay (*čakanje na delo*), because the composition proceedings (*postopek prisilne poravnave*) had started against IPA and the company was reducing the number of employees.

10. In the meanwhile, on 1 July 1998, the Ljubljana Labour and Social Court held a hearing with regard to the remainder of the applicants claims. The hearing was adjourned while the proceedings before the Supreme Court were pending.

On 8 June 1998 IPA reinstituted the applicant to his post.

On 22 December 1998 the court dismissed the appeal. The decision was served on the applicant on 18 February 1999.

On 7 August 1998 the applicant was made redundant.

On 3 March 1999 the Ljubljana Labour and Social Court held a hearing and ordered the respondent to calculate the amount of unpaid salaries owed to the applicant.

On 15 April 1999 the applicant lodged preliminary written submissions.

On 16 April 1999 the court held a hearing where the applicant amended his claim. Consequently, the hearing was adjourned to give the respondent time to prepare a reply.

On 19 May 1999 the court held a hearing and decided to appoint a financial expert to calculate the amount of salaries due. The appointed expert delivered the opinion on 29 June 1999.

On 19 July 1999 the applicant lodged preliminary written submissions.

On 20 October 1999 the court held a hearing and, upon request of the respondent, sought an additional opinion from the appointed expert. The expert delivered the amended opinion on 16 November 1999.

On 26 January 2000 the court held a hearing and the applicant amended his claim.

On 18 February 2000 the court held a hearing and delivered a judgment upholding the applicant's claims in part.

11. On 14 March 2000 IPA appealed to the Higher Labour and Social Court.

On 24 November 2000 the court allowed the appeal in part and remitted the case to the first-instance court for fresh examination.

12. On 14 March 2001 the Ljubljana Labour and Social Court held a hearing and delivered a judgment reaffirming the ruling of 18 February 2000.

13. On 7 June 2001 IPA appealed to the Higher Labour and Social Court which, on 17 September 2001, allowed the appeal and again remitted the case for fresh examination.

14. The hearing in the Ljubljana Labour and Social Court scheduled for 16 January 2002 was adjourned because the respondent and its representative did not attend.

On 6 and 29 March 2002 the court held hearings and, among other things, heard the appointed expert. The court delivered a judgment reaffirming the ruling of 18 February 2000.

15. On 4 June 2002 IPA appealed against this judgment, but failed to pay the court fees. Consequently, on 1 July 2002, the court found that the appeal had been withdrawn.

16. On 5 July 2002 IPA appealed against this decision to the Higher Labour and Social Court, which dismissed the appeal on 17 October 2002. The decision was served on the applicant on 12 November 2002 and became final one month later.

17. On 4 September 2002 bankruptcy proceedings were instituted against IPA.

18. On 9 March 2006, in the bankruptcy proceedings, the Ljubljana District Court (*Okrožno sodišče v Ljubljani*), decided that 0.806% of the creditors' claims could be paid from the bankrupt's estate.

THE LAW

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

19. 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...”

20. 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

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

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

23. 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.

24. 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.

25. 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

26. The period to be taken into consideration began on 24 November 1994, the day the applicant instituted proceedings with the Ljubljana Labour and Social Court, and ended on 12 November 2002, the day the Higher Labour and Social Court's decision became final. It therefore lasted nearly eight years and one month for three levels of jurisdiction. Due to remittals, decisions were rendered, in total, in ten instances.

27. 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).

28. The Court notes the level of instances involved in deciding the case and, consequently, cannot conclude that the courts were inactive in the present case. On the contrary, the delay in the present case was caused also by the re-examination of the case. Although the Court is not in a position to analyse the juridical quality of the case-law of the domestic courts, it 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 (see, e.g., *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

29. 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

30. 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.

31. 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

32. 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

33. The applicant claimed 73,806 euros (EUR) in respect of pecuniary damage.

34. The Government contested the claim.

35. The Court notes that the proceedings complained of are no longer pending. The Court further recalls that the applicant was able to seek damages for material damage incurred due to excessively long proceedings after the proceedings at issue were terminated (*Lukenda* cited above, §§ 54 and 59).

36. The Court considers that the applicant can pursue his claim for pecuniary damage in domestic courts, and therefore rejects his claim under this head.

B. Non-pecuniary damage

37. In the submission concerning claims for just satisfaction the applicant sought non-pecuniary damage, but left the matter open to the court as to its quantum.

38. The Government argued that the claim was not adequately quantified and supported by documents.

39. 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.

C. Costs and expenses

40. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court.

41. The Government argued that the claim was inadequately itemised.

42. 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. The Court notes that the applicant, who had legal representation since his complaints were communicated to the Government, omitted to itemise particulars of his claims and provide the necessary supporting documents as required by Rule 60 of the Rules of Court.

43. The Court finds that the applicant must have incurred some costs and expenses in the proceedings. 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 800 for the proceedings before the Court.

D. 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 800 (eight 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