



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

THIRD SECTION

CASE OF JAZBEC v. SLOVENIA

(Application no. 31489/02)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Jazbec 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 23 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 31489/02) 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 Nada Jazbec (“the applicant”), on 14 August 2002.

2. Since 18 October 2005, the applicant was represented by Mr M. Štrtak, a lawyer practising in Trbovlje. 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 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 1951 and lives in Trbovlje.

6. On 20 July 1993 the applicant was discharged from the company ABCT as a result of disciplinary proceedings.

7. Her appeal of 3 August 1993 was rejected by the board of executives of the ABCT on 17 August 1993. The decision was served on the applicant on 27 August 1993. Her employment with ABCT was thus ended.

8. On 30 August 1993 she lodged a request for protection of rights with the then Ljubljana Labour Court (*Sodišče združenega dela v Ljubljani*). In substance, she was contesting the decision concerning termination of her employment with ABCT.

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

10. Following a reform of the judicial system, the court before which the case was pending was renamed to Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*).

11. The hearing scheduled for 14 September 1995 was cancelled at the respondent's request.

12. On 18 October 1995 the applicant lodged a request for an interim measure.

13. On 19 October 1995 the court held the first hearing and the second hearing was held on 16 November 1995.

14. On 27 November 1995 the applicant submitted new evidence.

15. On 30 November and 7 December 1995 the court held hearings. The last hearing was adjourned for an indefinite period of time and the case was transferred to the criminal court.

16. On 11 December 1995 the court dismissed the applicant's request for an interim measure. The applicant's appeal against this decision was dismissed by the Higher Labour and Social Court (*Višje delovno in socialno sodišče v Ljubljani*) on 3 January 1996.

17. On 13 February 1996 the Ljubljana Labour and Social Court decided to stay the proceedings because criminal proceedings were instituted against the applicant.

18. The applicant appealed to the Higher Labour and Social Court which allowed the appeal on 8 May 1997 and remitted the case to the first-instance court for further examination.

19. The Ljubljana Labour and Social Court scheduled a hearing for 12 June 1997. This hearing was adjourned at the applicant's request, because she was living abroad at the time.

20. On 18 September 1997 the court held a hearing which was adjourned in order to summon witnesses.

21. The hearing scheduled for 18 November 1997 was cancelled at the request of the applicant, because her lawyer was defending a minor in a different set of proceedings.

22. On 13 and 18 November 1997 the applicant lodged preliminary written submissions and increased her claim.

23. As the hearing held on 27 November 1997 the applicant lodged preliminary written submissions and alleged new violations. As a result, the

court adjourned the hearing to acquire evidence related to the newly raised allegations.

24. On 1 December 1997 the applicant lodged preliminary written submissions.

25. On 22 January 1998 the court held a hearing, decided to hear additional witnesses and that it would issue a judgment on the merits.

26. On 28 June 1999 the court held a hearing. It decided on its own motion that the case needed further examination and heard some witnesses.

27. On 7 July 1999 the respondent informed the court that composition proceedings had been terminated against it and that the applicant did not raise her claims in those proceedings.

28. On 23 September 1999 the court held a hearing and dismissed the applicant's complaints. The written judgment was delivered on 9 June 2000.

On 19 June 2000 the applicant appealed to the Higher Labour and Social Court.

29. On 14 June 2001 the court allowed the appeal in part, set aside a part of the impugned judgment and remitted the case to the first-instance court for fresh examination.

30. On 31 August 2001 the applicant lodged preliminary written observations with the Ljubljana Labour and Social Court.

31. The hearing scheduled for 19 November 2001 was cancelled because the applicant challenged the president of the senate. The challenge was dismissed on 3 November 2001 by the Higher Labour and Social Court.

32. The hearing scheduled for 11 February 2002 in the Ljubljana Labour and Social Court was re-scheduled at the respondent's request.

33. On 11 March and 22 April 2002 the court held hearings.

34. On 27 May 2002 the applicant again requested the court to issue an interim measure. The request was dismissed as ill-founded on 30 May 2002. The Higher Labour and Social Court dismissed the applicant's appeal against this decision on 20 June 2002.

35. The hearing scheduled for 10 June 2002 was cancelled at the respondent's request.

36. On 12 July 2002 the applicant lodged preliminary written submissions.

37. The hearing scheduled for 8 July 2002 was re-scheduled for 30 September 2002, because the president of the senate was absent.

38. The hearing scheduled for 30 September 2002 was cancelled at the request of the respondent, because her lawyer was hospitalised.

39. The hearing scheduled for 18 November 2002 was cancelled at the request of the applicant, because her lawyer was representing another client at the time in a different set of proceedings.

40. Between 3 December 2002 and 5 September 2003 the court held six hearings, heard several witnesses and examined the documents related to the

case. At the last hearing the court delivered the judgment upholding the applicant's claims in part.

41. On 20 October 2003 the applicant appealed to the Higher Labour and Social Court. On 5 December 2003 the respondent cross-appealed.

42. The respondent's appeal was rejected by the Ljubljana Labour and Social Court for being too late on 20 October 2004.

43. On 2 November 2004 the respondent appealed against the decision concerning the rejection and sought leave for *restitutio in integrum*.

44. On 10 March 2005, the Higher Labour and Social Court dismissed the respondent's appeal against the decision of 20 October 2004.

45. On 21 April 2005 the respondent lodged an appeal on points of law with the Supreme Court (*Višje sodišče*) against this decision.

46. In the meanwhile, on 21 March 2005 the Ljubljana Labour and Social Court dismissed the leave for *restitutio in integrum*.

47. On 6 April 2005 the respondent appealed against this decision to the Higher Labour and Social Court.

48. The court dismissed the appeal on 12 May 2005. At the same time it also upheld the applicant's appeal of 20 October 2003 in part and increased the damages awarded to the applicant. It further decided that a part of the appeal should be considered as a request for issuing an additional decision to the judgment of 5 September 2003. In this respect it remitted the case to the first-instance court.

49. On 18 July 2005 the respondent lodged an appeal on points of law with the Supreme Court.

50. On 21 July 2005 bankruptcy proceedings were instituted against the respondent in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*).

51. The Ljubljana Labour and Social Court scheduled a hearing for 6 September 2005 in order to continue proceedings following the instructions of the second-instance court. The hearing was cancelled at the request of the applicant who sought that the bankruptcy administrator be invited to intervene in the proceedings.

52. On 3 October 2005 the bankruptcy administrator informed the court that the applicant sought payment of her claims in the bankruptcy proceedings. On 10 October 2005 the bankruptcy court upheld the applicant's claim on the merits.

53. On 18 October 2005 the Ljubljana Labour and Social Court held a hearing and decided to deliver a written judgment. This judgment became final on 20 December 2005.

54. The case is pending before the Supreme Court due to the respondent's appeals on points of law of 21 April 2005 and 18 July 2005.

THE LAW

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

55. 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...”

56. 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

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

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

59. 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.

60. 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.

61. 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

62. The Government acknowledged that the proceedings at issue were of considerable importance for the applicant. They argued that the proceedings were factually and procedurally complex because they required hearing of many witnesses and an examination of large number of documents. The courts involved in the proceedings examined the case promptly. The first instance court, for example, held twenty hearings and the adjournment of only one of the scheduled hearings was attributable to the court. Besides, the courts also issued fines to two witnesses because they failed to appear promptly before the court. However, the applicant and her adversary in the domestic proceedings failed to exercise their procedural rights with all due diligence. Many of the scheduled hearings were re-scheduled at their request. In addition, they lodged many requests for interlocutory decisions, which were manifestly ill-founded and they appealed against the decisions which were not in their favour even though they had no ground for appeal. Besides, the submissions the applicant lodged at the hearings resulted in adjournments in order to give time to the respondent to prepare a reply. Moreover, the applicant could have raised all the claims and adduced all the relevant evidence at the onset of the proceedings. Since she failed to do so, she substantially contributed to the overall length of the proceedings.

63. The applicant contested these arguments. She asserted that she did all she could to accelerate the proceedings and alleged that the reasons for the entire length of the proceedings lay with the domestic courts.

64. 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 nearly twelve years and five months for three levels of jurisdiction. In total sixteen decisions have been rendered.

65. 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). The Court further reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

66. First, the Court notes that three scheduled hearings were either cancelled or rescheduled at the applicant's request (see paragraphs 19, 21 and 39 above). The applicant also challenged the president of the senate (see paragraph 31 above), sought two interim decisions and lodged two

interlocutory appeals (see paragraphs 16 and 34 above). In this respect the Court recalls that while the applicant is entitled to make use of her procedural rights, she must bear the consequences when her exercise leads to delays (see, *inter alia*, *Malicka-Wąsowska v. Poland* (dec.), no. 41413/98, 5 April 2001, and *Peryt v. Poland*, no. 42042/98, 2 December 2003). In the circumstances of this case the Court agrees with the Government that the applicant's conduct had an adverse affect on the length of the proceedings.

67. Next, the Court observes that there were some delays in the proceedings which cannot be imputable on the applicant or her adversary. For example, the period of nearly one year and three months elapsed since the beginning of the relevant period, before the court scheduled the first hearing; no court activity occurred for more than one year and five months, the period between the hearings of 22 January 1998 and 28 June 1999; and it took the court nearly eleven months to reject the respondent's appeal of 5 December 2003, which was too late.

68. Lastly, the Court is of the view that what was at stake in the impugned proceedings was of pronounced importance for the applicant and that the proceedings were somewhat complex.

69. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the particular circumstances of 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

70. 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.

71. 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

72. 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

73. The applicant claimed 174,414.01 euros (EUR) in respect of pecuniary damage.

74. The Government contested the claim.

75. The Court recalls that the applicant, claiming to have suffered material damages due to an excessive delay in proceedings, can institute civil proceedings against the State seeking compensation for these damages. The court has already found that this remedy is in principle effective (see *Lukenda*, cited above, § 59).

76. In the present case, the applicant neither availed herself of the said remedy, nor alleged that this remedy was ineffective in the circumstances of her case. The applicant thus failed to exhaust domestic remedies.

B. Non-pecuniary damage

77. The applicant claimed EUR 4,172.92 in respect of non-pecuniary damage she sustained and EUR 2,086.46 for the damage each of her sons sustained.

78. The Government contested the claim. They argued that the applicant's sons lacked victim status and therefore could not claim any damage.

79. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,400 under that head.

80. As for the damage the applicant claimed for her sons, the Court notes that they were neither a party to the impugned proceedings nor the applicant's in the proceedings before the Court. The Government's objection that the applicant's sons lack victim status within the meaning of Article 34 of the Convention should therefore be upheld and this part of the claim rejected.

C. Costs and expenses

81. The applicant claimed EUR 1,176.04 for the costs and expenses of her legal representative in the proceedings before the Court, EUR 8,227.80 for the costs and expenses of her representation in the domestic courts, EUR 1,004 for costs for translation and EUR 36.30 for postage.

82. The Government argued that the claim was too high and that, in any event, the applicant cannot seek reimbursement of costs she incurred in domestic courts when the impugned proceedings were not aimed at remedying the violations of the Convention rights alleged by the applicant before the Court.

83. 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.

84. The Court notes that the proceedings before the domestic courts were not at all 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-...). It therefore accepts the Government's argument that the applicant cannot claim the reimbursement of costs incurred before the domestic courts.

85. As for the costs for translation, the Court observes that the applicant did not establish how these costs were incurred. The documents and observations submitted by the applicant were in Slovenian and no translation was provided. Apart from one letter, which the applicant apparently drafted herself, her written correspondence was also in Slovenian.

86. As to the other costs and expenses, the Court took notice of the Ljubljana District Court's decision of 18 October 2005. The court decided awarding the applicant legal assistance (*brezplačna pravna pomoč*), in order to cover the costs and expenses of legal representation in the proceedings before the Court.

Accordingly, the Court decides not to award the applicant any sum under this head.

D. Default interest

87. 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, 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 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President