CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME

EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF NOSE v. SLOVENIA

(Application no. 21675/02)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Nose v. Slovenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr C. Bîrsan, *President,*
Mr B.M. Zupančič,
Mr V. Zagrebelsky,
Mrs A. Gyulumyan,
Mr David Thór Björgvinsson,
Mrs I. Ziemele,
Mrs I. Berro-Lefèvre, *judges,*
and Mr V. Berger, *Section Registrar,*

Having deliberated in private on 30 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 21675/02) 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 Jožef Nose ("the applicant"), on 22 May 2002.

2. Since 11 July 2006, the applicant was represented by the Verstovšek lawyers. 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 14 December 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 1953 and lives in Kamnik.

6. In early 1990s the applicant established a company called Hipec d.o.o., which bought a shop in Domžale, Slovenia. On 25 November 1993 a

fire broke out in the building where the shop was located. The shop's premises and their contents were destroyed.

7. On 18 August 1995 the applicant and Hipec instituted civil proceedings in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*) against five companies who had built the premises where the applicant had his shop and had been responsible for the maintenance of the building. They were seeking damages in the amount of 160.770.941,20 tolars (approximately 670.000 euros) for the destruction caused by the fire.

None of the thirteen hearings held between 14 February 1996 and 20 September 2000 was adjourned at the request of the applicant. At the hearings, the court heard seven witnesses.

Between 23 February 1996 and 14 June 2000 the applicant lodged fourteen preliminary written submissions and/or adduced evidence. He withdrew the claims against two of the respondents. In this time, the respondents lodged twenty-seven written submissions.

During this time the applicant made seven requests that a date be set for a hearing or that the court continue examining the case.

In the course of the proceedings the court appointed a fire-safety expert. Since the originally appointed expert had moved to an unknown address, a new expert was appointed. The court also heard the appointed expert and requested him to submit two amendments to his opinion.

At the last hearing the court decided to issue a written judgment. The judgment, dismissing the applicant's claim, was served on the applicant on 22 November 2000.

8. On 28 November 2000 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

On 21 August 2001 the applicant's company Hipec d.o.o. ceased to exist and was deleted from the Register of Companies.

On 12 July 2002 the court allowed the appeal in part, set aside a part of the first-instance court's judgment and remitted the case for fresh examination.

9. On 22 January 2003 the Ljubljana District Court held a hearing in the proceedings pending against three respondents.

Between 22 January 2003 and 18 November 2005 the applicant lodged nine preliminary written submissions and/or adduced evidence. The respondents lodged seven preliminary submissions.

He also made a request for priority treatment of his case, which was upheld.

None of the seven hearings held between 19 March 2003 and 18 January 2006 was adjourned at the request of the applicant.

In the course of the proceedings the court appointed a fire-safety expert. The court also sought an additional opinion from the appointed expert.

The court also appointed a financial expert, who was dismissed at the applicant's request, because the expert had participated in the criminal investigation following the burning down of the building at issue. The court appointed a new financial expert.

At the last hearing the court decided to issue a written judgment. The judgment, dismissing the applicant's claim, was served on the applicant on 16 February 2006.

10. On 23 February 2006 the applicant appealed to the Ljubljana Higher Court.

The proceedings are still pending.

THE LAW

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

11. 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..."

12. 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

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

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

15. 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.

16. 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.

17. 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

18. The period to be taken into consideration began on 18 August 1995, the day the applicant instituted proceedings with the Ljubljana District Court, and has not yet ended. The relevant period has therefore lasted over eleven years and three months for two levels of jurisdiction. Due to a remittal, four instances have been involved.

19. 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).

20. First, the Court, noting all the circumstances of the present case, finds the impugned proceedings somewhat complex.

21. Next, the Court observes that the first instance court held in total twenty-one hearings. Even so, some noticeable delays occurred in the proceedings. For example, nearly one year and three months elapsed between the eight and the ninth hearing; and over one year and six months between the nineteenth and the twentieth hearing.

22. 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

23. 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.

24. 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

25. 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

26. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

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

B. Costs and expenses

29. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court.

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

31. 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 had legal representation only during a part of the proceedings. The Court also notes that the applicant's lawyers, who also represented the applicant in *Lukenda* (cited above), lodged nearly 400 applications which, apart from the facts, are essentially the same as this one. 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 600 for the proceedings before the Court.

C. 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 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 600 (six 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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Corneliu BÎRSAN President