



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

THIRD SECTION

CASE OF ČUDEN AND OTHERS v. SLOVENIA

(Application no. 38597/03)

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 Čuden and Others 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,

Mr E. MYJER,

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. 38597/03) 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 Mrs Ana Čuden, Mrs Sonja Hauck, Mrs Antonija Čuden, and Mr Jože Kušar (“the applicants”), on 20 December 1999.

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 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 20 January 2006 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 1932 and lives in Domžale.

6. In 1949, the applicants' parents were convicted of “illegal commerce” and sentenced to imprisonment with forced labour. In addition, their property was forfeited to the State.

7. On 30 September 1991 the Public Prosecutor's Office informed the applicants that it had lodged a request for protection of legality with the

Supreme Court (*Vrhovno sodišče*) challenging the 1949 judgment. On 17 October 1991 the court upheld the request in part and annulled the judgment in the part referring to forced labour and forfeiture of property.

8. On 18 November 1991 the applicants instituted proceedings for restitution of property in the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani, Enota v Ljubljani*) against the Municipality of Ljubljana Vič-Rudnik and the Republic of Slovenia. They also sought compensation for the forced labour their parents were subjected to.

On 22 October 1993 the court delivered a partial decision whereby it ordered the restitution of one of the plots of land claimed by the applicants, which was an unencumbered public property at the time. The decision became final on 9 December 1993.

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

On 19 October 1994 the court delivered another partial decision whereby it awarded compensation in the amount of 5,585,527 tolar (approximately 23,300 euros) to each of the applicants for the remaining confiscated property. The compensation was to be paid by the Municipality Ljubljana Vič-Rudnik.

9. The Municipality Ljubljana Vič-Rudnik appealed against the decision of 19 October 1994 to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*). Applicants cross appealed.

10. At an undetermined time the Municipality Ljubljana Vič-Rudnik rendered a decision concerning the house claimed by the applicant. This decision made possible the restitution of a part of the property *in natura*. The Municipality Ljubljana Vič-Rudnik submitted this decision to the Ljubljana Local Court on 15 November 1994.

On 1 January 1995 the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) gained jurisdiction in the present case as the first-instance court following the reform of the Slovenian judicial system. At the same time, following a reform of the system of local governance, the Municipality Ljubljana became liable for the restitution, instead of the Municipality Ljubljana Vič-Rudnik ("the Municipality").

On 10 February 1995 the Ljubljana Local Court issued a partial decision returning this part of property to the applicants. That property included also a house, except the attics which had been purchased by a company SP and occupied by its employee M.Š.

11. The Municipality, the company SP and M.Š. appealed to the Ljubljana Higher Court.

On 29 November 1995 the Ljubljana Higher Court allowed the appeals lodged against the decisions of 19 October 1994 and 10 February 1995 and remitted the case to the first-instance court for fresh examination.

12. Between 18 January 1996 and 10 March 2006 the applicants lodged eleven preliminary written submissions and/or adduced evidence with the Ljubljana Local Court.

Of the five hearings held between 2 April 1996 and 2 March 2006 none was adjourned at the request of the applicant. However, one of the

scheduled hearings was cancelled at the applicants' request and the scheduling of the next hearing adjourned *sine die*, because they wished to retain a new lawyer.

During the proceedings the court appointed an expert in construction engineering and an expert in geodesy. The court also sought an additional opinion from one of the appointed experts.

On 4 April 2001 and on 23 November 2004 the court requested the applicants to amend their claims as required by the law. The applicants' replied each time within a month and amended their claims.

During the proceedings, the applicants lodged more than fifteen requests for speeding up the proceedings with several institutions, including the Ministry of Justice, the Prime Minister, the Ombudsman, the European Commission and the European Parliament.

On 31 March 2006 the court dismissed the applicants' claims, because they were not duly specified. The decision was served on the applicants on 5 May 2006.

13. On 22 May 2006 the applicants 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

14. 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...”

15. 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

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

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

18. 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.

19. 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.

20. 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

21. 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 for two levels of jurisdiction. Due to a remittal, four instances have been involved.

22. 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).

23. In the light of all the circumstances of the case, the Court considers the impugned proceedings somewhat complex.

24. The Court notes, on the one hand, that there were several periods of inactivity that occurred in the proceedings, for example over six years and eight months elapsed between the hearings of 4 March 1997 and 17 December 2003. On the other hand, the Court notes during this period a hearing was scheduled for 22 September 1998, but was cancelled at the applicant's request.

25. 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

26. 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.

27. 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. ALLEGED VIOLATIONS OF ARTICLE 3 OF PROTOCOL No. 7 AND OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

The applicants complained about the non-enforcement of the Supreme Court's judgment of 17 October 1991 claiming that following this judgment they were entitled to restitution of the property confiscated to their parents and to compensation for their parents' wrongful conviction. They relied on Article 3 of Protocol No. 7, which reads as follows:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned... the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned...”

Finally, the applicants invoked Article 14 of the Convention alleging that not all of the Slovenian citizens participating in the denationalisation process were in an equal position and that priority treatment was given to the applications lodged by persons with connections in the political elites or to those who were members of the public administration. In substance the applicants relied on Article 1 of Protocol No. 1.

Article 14 of the Convention reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground...”

Article 1 of Protocol No. 1 (protection of property) reads as follows

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law...”

A. Admissibility

28. With regard to the alleged violation of Article 1 of Protocol No. 1, the Court notes that there is no right to restitution under the Convention and its case-law. The hope that a long-extinguished property right may be revived cannot be regarded as a “possession”, and neither can the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively, or a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Kopecký v. Slovakia* [GC], no. 44912/98, ECHR 2004-..., and, *mutatis mutandis*, *Sirc v. Slovenia* (dec.), no. 44580/98, 22 June 2006).

It follows that the complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention.

29. In any event, in accordance with the Article 35 of the Convention, the Court may only consider the complaints raised by the applicant, after the applicant had exhausted all domestic remedies.

30. In this respect the Court notes that following the applicants' appeal of 22 May 2006 to the Ljubljana Higher Court, the proceedings are still pending. The applicant's complaints made under Article 1 Protocol No. 1, Article 3 of Protocol No. 7 and Article 14 of the Convention are therefore premature.

It follows that this part of the application must be rejected for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Articles 6 and 13 of the Convention concerning the length of proceedings, 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* that there is no call to award the applicant 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