



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

THIRD SECTION

CASE OF OBERWALDER v. SLOVENIA

(Application no. 75567/01)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

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 Oberwalder 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 C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 75567/01) 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 three Slovenian nationals, Mr Jože Oberwalder, Mr Jože Oberwalder junior (“jr.”) and Mr Andrej Oberwalder (“the applicants”), on 10 February 2000.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicants alleged *inter alia* under Article 6 § 1 of the Convention that the length of the civil proceedings before the domestic courts to which they were a party was excessive.

4. On 24 March 2005 the Court decided to communicate the complaint concerning the length of the second set of proceedings to the Government and to declare the remainder of the application inadmissible. Under Article 29 § 3 of the Convention, it decided to examine the merits of the remaining complaint at the same time as its admissibility.

THE FACTS

5. The applicants were born in 1931, 1959 and 1967 respectively and live in Domžale.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 8 July 1970 and 11 March 1971 respectively, four plots of land were sold to the Municipality by H.O., the late wife of the first applicant J.O. and the mother of the second and third applicants, J.O. jr. and A.O.

8. On 5 July 1973 and 4 June 1974, respectively, three plots of land were sold to the Municipality by the second applicant (J.O. jr.) and his brother (A.O.), the third applicant.

9. On 23 November 1973 and 10 September 1976 two plots of land were sold to the Municipality by J.O.

10. On 6 May 1992 the applicants lodged a request for the return of nine plots of land with the Domžale Administrative Unit on the basis of the 1991 Denationalisation Act, claiming that they had signed the contracts of sale under duress which was tantamount to expropriation.

11. On 7 June 1993 the Administrative Unit transferred their request to the Domžale Local Court (*Okrajno sodišče v Domžalah*) as the competent authority.

12. On 13 July 1994 a hearing was held. The court requested the applicants to complete their request and submit further documents.

13. On 28 September and 29 November 1994, 16 February 1995, 23 March, 23 May and 17 July 1995 the court sent a letter to the applicants' lawyer, reiterating its request. The court also informed the new lawyer representing the applicants that it had received no reply.

14. On 18 September 1997 the court summoned the applicants to complete their request within 30 days, or else it would reject it or consider it withdrawn.

15. On 3 November 1997 the applicants filed the requested document through their representative and enlarged their claim, directing it also against the Slovenian Compensation Corporation (the "SCC"). On 20 January 1998 the latter replied to the applicants.

16. Further to their reply, on 10 December 1998, 11 February and 26 April 1999 the court requested the lawyer to submit further documents.

17. On 14 May 1999 the applicants through their representative filed the requested documents which were forwarded to the SCC. The latter replied on 5 July 1999.

18. On 7 February 2001 the applicants specified the amount of compensation claimed.

On 14 February 2001 a hearing was held. Since some of the requested documents were still missing, the applicants' representative obliged himself to reply to the SCC's statements.

19. On 20 February 2001 the Municipality of Domžale filed a reply.

On 14 September 2001, further to the court's additional request, the applicants' representative filed submissions.

20. On 13 December 2001, after a hearing, the Local Court rejected the claim.

21. On 28 January 2001 the applicants lodged an appeal with the Ljubljana Higher Court (*Višje sodišče*).

22. On 15 January 2003 the Ljubljana Higher Court rejected their appeal. On 6 February 2003 the decision was served on the applicants. That decision became final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicants complained about the excessive length of the civil proceedings. They 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...”

A. Admissibility

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

25. The applicants contested that argument, claiming that the remedies available were not effective.

26. 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 applicants' 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.

27. 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.

28. 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

29. 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 ended on 6 February 2003, the day the Ljubljana Higher Court's decision was served on the applicants. It therefore lasted about 8 years and 7 months for 2 levels of jurisdiction.

30. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. In the Government's view, the proceedings at stake were rather complex, since denationalisation claims are professionally demanding for a judge. The applicants themselves also contributed to their complexity, course and duration because they belatedly replied to the court's requests to submit the documents. In addition, in 1998 they enlarged their claim. The domestic courts could not be reproached negligence in dealing with the proceedings in question. Moreover, the second-instance judge treated the case with priority. Delays in examining the case occurred primarily for the reasons for which the applicants were responsible. The Government contend that a decision on the restitution of ownership rights is undoubtedly of great importance to the applicants. However, they should have exercised their procedural rights with greater care.

32. The applicants contested those arguments.

33. The Court notes that the period after 28 June 1994, when the Convention entered into force for Slovenia, until 3 November 1997 when the applicants finally replied to the court's repeated requests is entirely incumbent on the applicants. Similarly, the periods between 10 December 1998 and 14 May 1999 and between 14 February and 14 September 2001 are also attributable to the applicants. Therefore, the period which could be attributed to the domestic courts amounts to approximately 4 years and 2 months.

34. Nevertheless, 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.

35. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicants claimed non-pecuniary damage for the suffering sustained in the course of the proceedings, but left the matter to the Court's discretion.

38. In addition, they claimed compensation for the material loss amounting to 57,200 DEM, which would be the value of the bonds of the Slovenian Compensation Corporation for the expropriated land, plus the interest, in respect of non-pecuniary damage.

39. The Government contested these claims.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 2,000 under that head.

B. Costs and expenses

41. The applicants also claimed reimbursement of the costs of their attorney, without specifying the amount.

42. The Government contested their claim.

43. 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. 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 applicants the sum of EUR 200 for the proceedings before the Court.

C. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 200 (two 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 January 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President