



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

THIRD SECTION

CASE OF ŠUBINSKI v. SLOVENIA
(Application no. 19611/04)

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 Šubinski 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. 19611/04) 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 Goran Šubinski (“the applicant”), on 7 May 2004.

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

3. The applicant alleged that he had been denied medical aid in respect of an injury to his finger (Article 3). He further complained that had been deprived of a fair trial, that his defence rights had been breached and that the length of the criminal proceedings instituted against him was excessive (Article 6 §§ 1 and 3 (b) and (d)). In addition, he alleged that the secrecy of the proceedings had been breached (Article 8) and that he had been discriminated against in the proceedings (Articles 14 and 6). In substance, he also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13).

4. On 15 February 2006 the Court decided to communicate to the Government the complaints concerning the length of both sets of proceedings and the lack of remedies in that connection. 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Mirna.

6. The application concerns two sets of criminal proceedings. In both sets of proceedings, the hearings were closed to the public for the purpose, among others, of protecting the rights of the alleged victims and – as regards some of the hearings – the private life of the applicant.

A. The first set of proceedings (K 107/2000)

7. On 13 March 1998 an official police report (*uradni zaznamek*) was prepared concerning the applicant's attitude towards children he had taught in a primary school. It contained a statement given by one of the school teachers which had been obtained in accordance with section 148/2 of the Criminal Procedure Act (*Zakon o kazenskem postopku* – see paragraph 44 below). The teacher stated that she had not noticed anything strange in the applicant's attitude towards children. She also described an incident where the parents of a boy who the applicant had allegedly abused had come to the school to complain about the applicant's conduct and stated that the applicant had resigned following this incident.

8. On 31 August 1998 the Murska Sobota District Public Prosecutor (*Okrožno državno tožilstvo v Murski Soboti*) lodged a request for a criminal investigation on the basis of reasonable suspicion that the applicant had committed two criminal offences of sexual assault on a minor under the age of 15 (*spolni napad na osebo, mlajšo od petnajst let*). The request was based on findings from the preliminary proceedings.

9. On 4 May 1999, after questioning the applicant, the investigating judge of the Murska Sobota District Court (*Okrožno sodišče v Murski Soboti*) decided to open a criminal investigation, and that decision became final on 12 May 1999.

10. An examination of witnesses scheduled for 25 May 1999 was adjourned at the applicant's request.

On 3 June 1999, 9 December 1999 and 21 December 1999 the investigating judge examined several witnesses, mostly for the prosecution.

On 4 and 18 April 2000 the court examined several defence witnesses.

On 21 April 2000 the applicant proposed a re-examination of certain witnesses. The investigating judge, disagreeing with the proposal, requested the interlocutory-proceedings chamber of three judges (*zunaj obravnavni senat*) at the Murska Sobota District Court to decide on the issue. On 9 June 2000 the chamber dismissed the proposal.

11. On 29 June 2000 the applicant was indicted for the criminal offence of sexual abuse of a minor. The indictment became final on 17 August 2000.

12. On 30 January 2003 the Murska Sobota District Court held a hearing. The applicant's lawyer requested that the alleged victim, who was a minor, be examined as a witness. The minor was consequently examined by the investigating judge on 13 March 2003.

13. The next hearing was held on 8 April 2003. After the hearing, the Murska Sobota District Court convicted the applicant and sentenced him to two years' imprisonment. The written judgment was issued on 11 April 2003.

14. The applicant appealed on 22 May 2003.

On 24 March 2004 the Maribor Higher Court (*Višje sodišče v Mariboru*) dismissed the appeal.

Consequently, the first-instance court's judgment became final on 24 March 2004.

15. On 13 July 2004 the applicant lodged a request for the protection of legality (*zahteva za varstvo zakonitosti*).

On 11 November 2004 the Supreme Court (*Vrhovno sodišče*) rejected the request.

16. On 31 January 2005 the applicant lodged a constitutional appeal.

The proceedings are pending before the Constitutional Court.

B. The second set of proceedings (K 127/2003)

17. On 14 April 2003 the applicant was arrested by the police.

On 16 April 2003 he was brought before the investigating judge at the Murska Sobota District Court on suspicion of having committed another criminal offence. On the same day the investigating judge remanded him in custody.

18. On 17 April 2003 the public prosecutor applied for a criminal investigation.

19. On 18 April 2003 the applicant appealed against his detention. On the same day the interlocutory-proceedings chamber dismissed the appeal as unfounded.

20. On 24 April 2003 the investigating judge examined the applicant and opened a criminal investigation against him.

21. On 12 May 2003 the detention was prolonged for two months by the interlocutory-proceedings chamber. An appeal by the applicant against the prolongation was dismissed by the Maribor Higher Court on 19 May 2003.

22. On 15 May and 6 June 2003 the investigating judge examined witnesses.

On 19 May 2003 the investigating judge appointed two medical experts. The experts submitted their opinions on 26 May and 23 June 2003 respectively.

23. On 9 July 2003 the public prosecutor indicted the applicant for the criminal offences of sexual assault on a minor and of presenting and manufacturing pornographic material concerning minors (*prikazovanje in izdelava pornografskega gradiva z zlorabo mladoletne osebe*).

24. On 10 July 2003 the applicant's detention was prolonged by a decision of the interlocutory-proceedings chamber. An appeal of 14 July 2003 was dismissed on 16 July 2003 and a request for the protection of legality, lodged on 25 July 2003, was rejected by the Supreme Court on 21 August 2003. It appears that the applicant's detention was subsequently prolonged every two months, the last time on 11 November 2004 (see paragraph 38 below). The applicant's appeals against the prolongation of his detention were dismissed by the second-instance court.

25. On 21 July 2003 the applicant appealed against the indictment. The interlocutory-proceedings chamber dismissed the appeal on 23 July 2003.

26. On 23 September 2003 the court held a hearing.

27. The hearing scheduled for 21 October 2003 was cancelled because the applicant requested the withdrawal of the public prosecutor, all members of the chamber (*senat*) and the president of the Murska Sobota District Court. The requests were dismissed by the president of the Murska Sobota District Public Prosecutor's Office and the president of the Maribor Higher Court on 23 October 2003 and 5 November 2003 respectively.

28. The hearing scheduled for 4 December 2003 was also cancelled since the applicant requested the withdrawal of the president of the chamber and the president of the court. On 12 December 2003 the requests were dismissed by the president of the Maribor Higher Court.

29. The hearing scheduled for 20 January 2004 was cancelled at the request of the applicant's lawyer owing to her commitments in another – unrelated – case.

30. The hearing scheduled for 5 February 2004 was cancelled owing to a new request for withdrawal based essentially on the same reasons as the previous one. The request was rejected on 17 February 2004.

31. The next hearing was scheduled for 16 March 2004. Before the hearing, the court dismissed a new request for the withdrawal of judges, finding that it was a delaying tactic. As more than three months had elapsed since the last hearing, the court had to conduct the trial *ab initio* with, in particular, a fresh examination of the applicant and the reading of testimony. The applicant requested that the witnesses and experts be examined again.

32. Before the hearing on 1 April 2004, the applicant again filed a request for the withdrawal of judges, but it was rejected. The applicant requested that the alleged victim be examined again.

On 12 April 2004 the alleged victim was examined by the investigating judge.

33. On 22 April 2004, before the scheduled hearing, at around 8 a.m., the applicant injured his finger while opening the window of his cell. At 8.30 a.m. the officers took him to the court intending to ask the judge whether he should be taken to see a doctor immediately or at the end of the hearing. At the court, the applicant requested that jurisdiction in the case be transferred to another court and the hearing was consequently adjourned.

Subsequently, on the same day at about 9.30 a.m., the officers offered to take the applicant to see a doctor but he refused to go. At the applicant's subsequent request, made at 1.30 p.m., he was taken to see the doctor at 2 p.m. According to the letter sent by the prison authorities to the Murska Sobota Police, the doctor did not consider the injury to be serious.

34. On 19 May 2004 the Maribor Higher Court dismissed the request for transfer of jurisdiction. On 3 June 2004 the applicant lodged a request for the protection of legality against that decision. The case file was thus sent to the Supreme Court and the first-instance court cancelled the scheduled hearings. On 24 June 2004 the Supreme Court rejected the request.

35. On 23 August 2004 the president of the chamber himself requested to stand down from the proceedings. He expressed doubts as to his ability to conduct the proceedings properly owing to the conduct of the applicant and his lawyer.

On 26 August 2004 the case was referred to a new judge.

36. On 14 September 2004 a hearing was held. Before the hearing, the court dismissed the request for the withdrawal of judges and the transfer of jurisdiction, noting that the applicant had abused his procedural rights.

On 13 October 2004 a hearing was held at which several witnesses and experts were heard.

On 27 October 2004 another hearing was held and the following hearing was scheduled for 11 November 2004.

37. On 10 November 2004 the applicant was taken to the hospital where it was discovered that he had swallowed ten coins. However, the court refused to cancel the scheduled hearing.

38. After the hearing held on 11 November 2004 the court delivered a judgment finding the applicant guilty and sentenced him to twelve years' imprisonment, inclusive of the sentence imposed in the previous set of proceedings (see paragraphs 7-16 above). The written judgment was issued on 29 November 2004.

39. On 14 December 2004 the public prosecutor lodged an appeal.

On 16 December 2004 the applicant appealed and on 17 December 2004 the applicant's lawyer appealed.

On 17 March 2005 the Maribor Higher Court increased the sentence to fourteen years' imprisonment. The judgment became final on that day.

40. On 8 July 2005 the applicant lodged a request for the protection of legality with the Supreme Court.

On 20 April 2006 the court rejected the request.

41. On 16 June 2006 the applicant lodged a constitutional appeal.

The proceedings are pending before the Constitutional Court.

II. RELEVANT DOMESTIC LAW

42. In Slovenia, criminal proceedings before district courts (*okrožna sodišča*) are divided into three stages – preliminary proceedings (*predkazenski* or *predhodni postopek*), conducted by the police and the public prosecutor; a criminal investigation (*preiskava*), conducted by the investigating judge of a District Court; and the trial (*glavna obravnava*), held before a mixed chamber (*senat*) of professional and lay judges.

43. A trial is preceded by a formal indictment, which normally follows a criminal investigation (*preiskava*). Prior to that, however, are the preliminary proceedings in which the police prepare a criminal complaint (*ovadba*) and the public prosecutor then lodges a request for a criminal investigation (*zahteva za preiskavo*).

44. Section 148 of the Criminal Procedure Act (*Zakon o kazenskem postopku*, Official Gazette no. 63/94, “the CPA”) reads, as far as relevant:

“(1) If there are reasons to suspect that a criminal offence liable to mandatory prosecution has been committed, the police shall take the necessary steps to pursue the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or abscond, discovering and securing traces of the offence or objects of value as evidence, and collecting all information that may be useful for the successful conduct of criminal proceedings.

(2) In order to fulfil the above duty the police may seek information from citizens, inspect vehicles, passengers and luggage, restrict movement within a specific area for a limited period of time, carry out what is necessary to identify persons and objects; send out a wanted notice concerning persons and objects; inspect in the presence of the responsible person any facilities, premises and documentation of enterprises or other legal entities, and take other necessary measures. The findings of facts and circumstances relevant to the criminal proceedings, as well as the objects found or seized, shall be recorded in writing or an official report shall be prepared in that connection.

(3) Police may summon individuals but must inform them of the reasons. They may forcibly bring an individual who has failed to appear after being summoned, if he has been alerted to that possibility in the summons. In taking measures under this section, police may not examine citizens as defendants, witnesses or experts.

...

(6) On the basis of the information collected the police shall draw up a criminal complaint in which it shall set out the evidence discovered in the process of gathering information... .”

45. In principle, the request for an investigation is based on the information gathered by the police in the preliminary proceedings (see paragraph 44 above). However, prior to the opening of an investigation, the investigating judge can, if necessary, take individual investigative measures (section 166 of the CPA).

46. The request for an investigation must include, *inter alia*, a description of the alleged acts and their legal characterization, the identification of the suspect and the evidence substantiating a reasonable suspicion (*utemeljeni sum*) that the suspect has committed the alleged acts. The public prosecutor can also propose that a suspect be detained on remand. The relevant provisions of section 168 of the CPA provide:

“(3) The request for investigation shall specify: the person against whom an investigation is requested, the description of the acts constituting a criminal offence, the statutory designation of the criminal offence, the circumstances establishing the reasonable suspicion, and evidence already collected. The public prosecutor shall indicate in the request which particular circumstances should be explored in the investigation and which particular measures should be taken, and may propose that the person against whom investigation is requested be detained.

(4) The public prosecutor shall send to the investigating judge the report and all documents and records of the measures taken. At the same time, he shall send to the investigating judge any items to be adduced as evidence or shall notify him of their whereabouts.

(5) If the public prosecutor withdraws a request for an investigation before the decision on investigation is rendered, the investigating judge shall decide that the request is dismissed and inform the aggrieved party that he or she may take over the prosecution (sections 60 and 62).”

47. There is no provision in the CPA requiring the applicant to be notified at this stage. A copy of the request for an investigation is normally sent to the applicant later, together with a summons to appear before the investigating judge (section 169/4 of the CPA).

48. The public prosecutor's request for an investigation requires a decision by the investigating judge. The investigating judge may comply with the request and open a criminal investigation or, if he does not agree with it, refer it to the interlocutory-proceedings chamber of three judges (*zunaj obravnavni senat*) for them to decide. Appeals may be lodged against the decision dismissing or upholding the request (section 169 of the CPA).

49. After the closure of the criminal investigation the public prosecutor prefers a formal indictment or otherwise drops the charges (sections 184 and 268 of the CPA).

50. As regards the guarantee of the right to a trial within a reasonable time, the CPA, as far as relevant, provides (sections 15, 185 and 286 respectively):

“The court shall use its best endeavours to ensure that the proceedings are conducted without unnecessary delay and that any abuse of the rights of participants in the proceedings is prevented.

(1) If the criminal investigation is not completed within six months, the investigating judge shall inform the president of the court of the reasons.

(2) The president of the court shall take the necessary measures to complete the investigation.

(3) The presiding judge shall schedule the main hearing within a maximum period of two months after an indictment has been referred... Should he fail to schedule the main hearing within the said period, he shall inform the president of the court of the reasons for not doing so. The president of the court shall take the necessary measures to schedule the main hearing.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that he had been denied medical aid when he had injured his finger on 22 April 2004.

Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

52. The Court notes that the documents in the case file show that the applicant was injured while opening the window of his cell at 8 a.m. and that officers offered to take him to see a doctor immediately after the hearing had been cancelled, that is to say, two and a half hours after the incident. He however refused to go until 1.30 p.m. It appears that the doctor examining the applicant did not consider the injury to be severe (see paragraph 33 above).

53. The Court considers that the documents in the case file do not demonstrate that the treatment complained of reached the threshold of severity required to bring it within the scope of Article 3 of the Convention.

54. The Court does not find it necessary to determine whether the applicant has fulfilled the condition of exhaustion of domestic remedies in respect of this complaint because it is in any event manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

55. The applicant complained under Article 6 § 1 that both sets of criminal proceedings had been excessively long.

Articles 6, as far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

56. He also complained that the remedies available for excessive legal proceedings in Slovenia were ineffective.

Article 13 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. The first set of proceedings

1. Admissibility

57. In respect of the complaint concerning the length of the first set of proceedings, the Court notes that it is similar to that in 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 reiterates 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.

58. As regards the instant complaint, 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.

59. The Court further notes that this complaint is also 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.

2. Merits

(a) Article 6 § 1

(i) Arguments of the parties

60. The Government argued that the period to be taken into consideration had run from 4 May 1999, the day the investigating judge issued the decision opening the criminal investigation against the applicant, until the Supreme Court's judgment of 11 November 2004.

The Government further maintained that the proceedings had been very complex, which was also related to the fact that the alleged victims were minors. In addition, the applicant's conduct had caused a number of delays.

61. The applicant disagreed. He argued that the first set of proceedings had started on the day the public prosecutor lodged his request for a criminal investigation, namely on 31 August 1998, and had not yet ended since the Constitutional Court was still to rule on his appeal.

The applicant submitted that the length of the proceedings was excessive because of the conduct of the domestic courts.

(ii) The Court's assessment

(α) Commencement of the period to be taken into account

62. The prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 12-13, § 24) prompts the Court to prefer a “substantive”, rather than a “formal”, conception of the “charge” contemplated by Article 6 § 1. The “charge”, for the purposes of Article 6 § 1, may in general be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”. This may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he was to be prosecuted or the date when the preliminary investigations were opened (*Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 41, § 18; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, §§ 52-53; and *G.K. v. Poland*, no. 38816/97, § 98, 20 January 2004). However, in some instances the “charge” may take the form of other measures which carry the implication of such an allegation and which, likewise, substantially affect the situation of the suspect (see, among other authorities, *Eckle*, cited above, § 73).

63. Therefore, the Court is compelled to look behind the appearances and investigate the realities of the procedure in question (*Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, § 44).

64. In the instant case, the Court finds that neither the Government nor the applicant provided an explanation in support of their position regarding the beginning of the period to be taken into consideration (see paragraphs 60 and 61 above). The Court will thus base its examination on the information in the case file and the provisions of Slovenian law as they were applied in the proceedings against the applicant (see paragraphs 42-50 above).

65. The Court notes that in the preliminary proceedings the police must collect enough evidence to enable the public prosecutor to substantiate all the elements of the request for an investigation (see paragraphs 44-46 above). In the instant case, the Court observes that one of the steps taken for that purpose was the questioning of one of the school teachers (see paragraph 7 above). Given the content of her statement and in view of the fact that a request for an investigation concerning the criminal offence of sexual abuse of a minor was ultimately lodged against the applicant, the Court presupposes that the police must also have taken other measures in order to gather evidence in support of the reasonable suspicion against him. Clearly, any such measures resulted in interference with the applicant's right to respect for his private life, it being precisely this aspect of his life that the police and the prosecution authorities had to scrutinise. The Court thus concludes that the activities of the police in the preliminary proceedings must have substantially affected the applicant's situation at the material time (see, *mutatis mutandis*, *Casse v. Luxembourg*, no. 40327/02, §§ 31-33, 27 April 2006; *Diamantides v. Greece*, no. 60821/00, § 21, 23 October 2003; and *Amann v. Switzerland* [GC], no. 27798/95, §§ 65-67, ECHR 2000-I).

66. However, the Court points out that, in the applicant's submission, the relevant period had started to run with the request for an investigation (see paragraph 61 above). In this connection, the Court notes that, in cases such as the present, the request for an investigation is a formal act of prosecution performed by the public prosecutor, that is to say, the State's authority responsible for the prosecution of criminal offences, on the reasonable suspicion that an individual has committed a criminal offence. This standard of proof appears to correspond, in theory, to that required by Article 5 § 1 of the Convention (see paragraph 46 above).

The Court is not convinced by the Government's view that such a request does not represent a "charge" but that the investigating judge's decision upholding the request does.

It finds that, at the moment the request for an investigation was made, the applicant was clearly suspected of committing a crime (see, *mutatis mutandis*, *Casse*, cited above, § 33). Moreover, the request for an investigation did not just reflect the public prosecutor's position as to the existence of reasonable suspicion that the applicant had committed a crime, but also set in motion the proceedings before the investigating judge and as

such represented a procedural step against the applicant which was directly relevant to the criminal investigation and to the determination of a “charge”.

67. The Court observes that there is no indication in the case file that notice of the request for an investigation was officially served on the applicant, nor is there any provision in the relevant domestic law requiring the suspect to be notified at that stage of the proceedings (see paragraph 47 above). The Court reiterates that it is not its function to assess the national law, unless and in so far as it may have infringed rights and freedoms protected by the Convention (see, *mutatis mutandis*, *Garcia Ruiz v. Spain*, [GC], no. 30544/96, § 28, ECHR 1999-I). However, a mere possibility that such notification was not required, or was not provided to the applicant, should not lead the Court to reach a different conclusion as to the beginning of the period to be taken into consideration. Otherwise it would be possible for the State, in relation to the fulfilment of its undertaking to comply with Article 6, to seek refuge behind the possible failure of its own domestic law or administration of justice.

68. Therefore, having regard to the circumstances of the present case, in particular to the measures undertaken by the police in the preliminary proceedings and the social stigma attached to the alleged criminal offence, the Court considers that the applicant's situation must already have been substantially affected in the preliminary proceedings. However, given the applicant's argument (see paragraph 61 above) and having been unable to ascertain the exact point at which he began to be affected by the proceedings, the Court concludes that he was “charged” for the purposes of Article 6 at the latest on 31 August 1998, when the request for an investigation was lodged against him by the public prosecutor.

(β) End of the period to be taken into account

69. The Court notes that the first set of proceedings is still pending before the Constitutional Court. It points out that, according to its established case-law, the proceedings before the Constitutional Court, which could influence the outcome of the proceedings before the lower courts, should be included in the relevant period (see *Metzger v. Germany*, no. 37591/97, § 34, 31 May 2001). The Government did not submit anything that would lead the Court to reach a different conclusion in the present case (see paragraph 60 above).

70. The relevant period in respect of the first set of proceedings has therefore lasted more than eight years and three months for four levels of jurisdiction.

(γ) The reasonableness of the length of the proceedings

71. The Court reiterates that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law,

in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case, as well as what was at stake for the applicant (see, among other authorities, *Klamecki v. Poland*, no. 25415/94, § 87, 28 March 2002).

72. The Court accepts that the authorities in the domestic proceedings were faced with some difficulties in obtaining evidence owing to the status of the alleged victims. It, however, cannot disregard the fact that the first set of proceedings was pending for more than four years and seven months at the first level of jurisdiction. The Court attaches importance to two periods of inactivity for which the State was essentially responsible, between the request for an investigation and the investigating judge's decision (see paragraphs 8 and 9 above) and, in particular, the delay of two years and seven months between the bill of indictment and the first hearing (see paragraphs 11 and 12 above). The Court notes in this connection that the domestic authorities did not comply with the time-limits set out in domestic legislation (see paragraph 50 above) and that there is no information in the case file explaining the measures taken in this connection.

73. As to the applicant's conduct, it does not appear that the applicant caused any significant delays in the first set of proceedings.

74. The Court therefore considers that the above-mentioned delays and the overall length of more than eight years for four levels of jurisdiction were not justified or reasonable in the circumstances of the case. Having regard to its case-law on the subject, the Court finds that there has been a violation of Article 6 § 1 on account of the length of the first set of proceedings.

(b) Article 13

75. 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).

76. In the present case, the Court has found a violation of Article 6 § 1 in respect of the first set of proceedings.

77. The Court notes that the objections and arguments put forward by the Slovenian Government as to the existence of an effective legal remedy in respect of complaints concerning the right to a trial within a reasonable time have been rejected in earlier cases (see *Lukenda*, cited above) and sees no reason to reach a different conclusion in the present case.

78. 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 by which the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as guaranteed by Article 6 § 1.

B. The second set of proceedings

79. As regards the complaint concerning the length of the second set of proceedings, the Court considers that it should be declared inadmissible for the following reasons.

80. In the Court's view, the relevant period started to run on 14 April 2003, the day the applicant was arrested and subsequently brought to the investigating judge, who remanded him in custody (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, § 19). The proceedings are currently pending before the Constitutional Court (see, *mutatis mutandis*, paragraph 69 above). They have therefore lasted about three years and seven months for four levels of jurisdiction.

81. As to the reasonableness of the length of the proceedings, the Court points out that it must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law (see paragraph 71 above).

82. The Court notes that the applicant was detained during the period in question. It reiterates that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24).

83. The Court cannot but note that the applicant took a series of steps which complicated and prolonged the proceedings. Whilst it is true that an accused cannot be required to co-operate actively with the judicial authorities, nor can he be criticized for having made full use of the remedies available under the domestic law (*Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 82), it appears in the instant case that the applicant availed himself excessively, if not abusively, of certain remedies during the trial (see, *mutatis mutandis*, *X v. Federal Republic of Germany*, no. 6541/74, Commission decision of 9 July 1975). He lodged various requests for the withdrawal of judges and the transfer of jurisdiction which were ultimately regarded by the domestic courts as constituting an abuse of procedural rights and a delaying tactic (see paragraphs 31 and 36 above).

In any event, the applicant's conduct, notwithstanding his intention, constitutes at least an objective fact not capable of being attributed to the respondent State, and this is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 6 § 1 (see *Eckle*, cited above, § 82).

84. That being said, the Court notes that despite the applicant's conduct, as referred to above, the first-instance proceedings were concluded in only

one year and seven months. In three years and seven months the decisions were given at three instances and the case is currently pending before the Constitutional Court.

The Court therefore considers that the authorities displayed the required diligence in dealing with the applicant's case.

85. Having regard to the Court's case-law, taking into account that the applicant was detained during the period in question and even accepting that the case was one of some complexity, the Court considers that the length of the second set of proceedings did not exceed the "reasonable time" requirement. The complaint must thus be declared inadmissible as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

86. The Court further reiterates that Article 13 requires the State to provide an effective legal remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, 8 June 2006). Considering that the complaint about the excessive length of the second set of proceedings is inadmissible as manifestly ill-founded, the Court finds that the applicant did not have an arguable claim that his right to an effective remedy within the meaning of Article 13 had been breached. Therefore, this complaint does not reveal any appearance of a violation of the Convention provision.

Accordingly, the complaint under Article 13 is also manifestly ill-founded and must be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 14 OF THE CONVENTION AS REGARDS THE FAIRNESS OF THE PROCEEDINGS

87. The applicant complained under Article 6 §§ 1 and 3 (b) and (d) of the Convention that the judge had refused to examine witnesses proposed by him, that he had not had access to the copies of certain documents from the case file and that two judges deciding on his case had been biased.

Articles 6, as far as relevant, reads as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair hearing ... by an independent and impartial tribunal established by law.

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

....”

88. In addition, under Article 14 of the Convention, read in conjunction with Article 6, he complained that his defence rights had been breached because he was of Croatian origin.

Article 14 provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

89. The Court observes that the applicant was able to raise the allegations concerning the alleged unfairness of both sets of proceedings and the alleged discrimination against him in his appeals following the first-instance court's judgments. However, both sets of proceedings are still pending before the Constitutional Court (see paragraphs 16 and 41 above). It follows that these complaints are premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

90. Without relying on any provision of the Convention, the applicant also alleged that owing to media reporting the secrecy of the proceedings had been breached. In substance, this complaint could raise an issue with respect to the protection of the applicant's private life under Article 8 (see paragraph 6 above), which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

91. The Court notes that in his second constitutional appeal, lodged on 16 June 2006, the applicant complained about the breach of the secrecy of the proceedings. The issue of the alleged disclosure of information concerning the applicant's private life is thus yet to be decided by the Constitutional Court.

It follows that this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant did not specify the amount claimed in respect of non-pecuniary damage. He left the matter to the discretion of the Court.

94. The Government left the issue to be decided by the Court on the basis of its case-law.

95. The Court considers that the applicant must have sustained non-pecuniary damage in respect of the excessive length of the first set of proceedings and of the lack of an effective remedy. Ruling on an equitable basis, it awards him 1,200 euros (EUR) under that head.

B. Costs and expenses

96. As the applicant did not submit any claim for costs and expenses incurred in the proceedings before the domestic courts or before this Court, the Court considers that no award should be made to him under that head.

C. Default interest

97. 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 complaint concerning the length of the first set of criminal proceedings and the effectiveness of legal remedies in this connection admissible;
2. *Declares* inadmissible the remainder of the application;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first set of criminal proceedings;
4. *Holds* that there has been a violation of Article 13 of the Convention in respect of the first set of criminal proceedings;
5. *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, 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.

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