



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

THIRD SECTION

CASE OF ŠVARC AND KAVNIK v. SLOVENIA

(Application no. 75617/01)

JUDGMENT

STRASBOURG

8 February 2007

FINAL

08/05/2007

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 Švarc and Kavnik 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-LEFÈVRE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 18 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 75617/01) 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 two Slovenian nationals, Mrs Anita Švarc and Mr Ivan Kavnik (“the applicants”), on 26 July 2000.

2. The applicants were represented by the Verstovšek lawyers, members of the Slovenian Bar. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicants alleged under Article 6 § 1 of the Convention that they did not have a fair trial by an impartial tribunal because their constitutional complaint was decided by a panel of judges that included a judge who had issued an expert opinion in the proceedings before the first-instance court. They further alleged that the length of the proceedings to which they were a party before the domestic courts had been excessive. In substance, they 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 11 October 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

I. THE CIRCUMSTANCES OF THE CASE

5. Mrs Anita Švarc was born in 1968 and lives in Vuzenica. Ivan Kavnik was born in 1956 and lives in Topolščica.

6. On 30 October 1989 the applicants were injured in a car accident in Austria. The accident resulted in the premature birth of their son, who sustained *in utero* injuries in the accident. The son died in hospital in Slovenj Gradec (Slovenia) on 28 December 1989. The perpetrator of the accident had taken out insurance with the insurance company Wiener Allianz Versicherungs Aktiengesellschaft (“WA”).

7. On 27 October 1992 the applicants instituted civil proceedings against WA in the then Celje Basic Court, Velenje Branch (*Temeljno sodišče v Celju, Enota v Velenju*), seeking damages of 3,237,900 Slovenian tolar for the injuries sustained in the car accident and the non-pecuniary damage sustained following the death of their son.

On 4 January 1993 Mr Lojze Ude, a professor at the Faculty of Law in Ljubljana, delivered an expert opinion in the case at the request of WA. He stated that the Slovenian courts had no jurisdiction to examine the applicants' claims. At the time, Mrs Dragica Wedam-Lukić was a work colleague of Mr Ude.

On 6 January 1993 WA lodged preliminary written submissions arguing that the case was not within the court's jurisdiction. They attached the opinion prepared by Mr Ude to the submissions, which were included in the file and served on the applicants.

On 25 May 1993 Mr Ude was appointed as a justice at the Constitutional Court (*Ustavno sodišče*).

On 22 February 1994 the Celje Basic Court, Velenje Branch, held a hearing.

On 18 and 25 February 1994 the applicants lodged preliminary written submissions contesting Mr Ude's opinion and WA's arguments.

On 22 April 1994 a decision dated 22 February 1994, the date on which the hearing was held, was served on the applicants. The court decided that the case was not within its jurisdiction, but made no explicit reference to Mr Ude's opinion.

8. On 4 May 1994 the applicants lodged an appeal with the Celje Higher Court (*Višje sodišče v Celju*).

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

On 23 August 1994, on a request by the Celje Higher Court, the first-instance court delivered a supplementary decision concerning the costs of the proceedings.

On 1 September 1994 the applicants appealed against the decision concerning costs.

On 14 December 1994 the Celje Higher Court dismissed both applicants' appeals.

9. On 14 February 1995 the applicants lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*) against the decision of 14 December 1994.

On 27 February 1997 the Supreme Court dismissed the appeal on points of law against the judgment of 22 February 1994 and rejected the appeal against the decision of 23 August 1994 as inadmissible.

10. On 22 May 1997 the applicants lodged a constitutional appeal with the Constitutional Court (*Ustavno sodišče*). In their appeal, they made no reference to Mr Ude's opinion.

On 1 April 1998 Mrs Wedam-Lukić was appointed as a justice at the Constitutional Court.

On 24 March 2000 the Constitutional Court declared the appeal inadmissible as manifestly ill-founded. Mr Ude was the president of the three-judge bench which examined the admissibility of the case and Mrs Wedam-Lukić was also a member of that bench. The applicants learned of the composition of the panel on 20 April 2000, the date on which the decision was served on them.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution

11. The relevant provision of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads as follows:

Article 23

“Everyone has the right to have any decision regarding his or her rights, obligations and any charges brought against him or her made without undue delay by an independent, impartial court constituted by law.

Only a judge appointed pursuant to rules pre-established by law and in accordance with normal judicial practices shall try such a person.”

B. The Constitutional Court Act 1994

12. The relevant provisions of the Constitutional Court Act (*Zakon o ustavnem sodišču*) read as follows:

Section 31

“In deciding on a particular case, the Constitutional Court may disqualify a judge of the Constitutional Court by applying, *mutatis mutandis*, the applicable reasons for disqualification in court proceedings.

The following shall not serve as reasons for disqualification from the proceedings:

- participation in legislative procedures or in adoption of other general acts (including those issued for exercise of public powers) that have been challenged prior to election as a judge of the Constitutional Court,
- expressing a scientific opinion on a legal matter which may be relevant for the proceedings.”

Section 32

“Immediately after a judge of the Constitutional Court learns of any reasons for his or her disqualification in accordance with the preceding section, he or she must cease ... work on the case and notify the president of the Constitutional Court.”

Section 33

“A request for disqualification may be submitted by the parties to the proceedings up until the start of a public hearing, if such hearing is due to be held, or until the beginning of the in camera session of the Constitutional Court at which the matter is to be decided. The request must be substantiated.

The judge of the Constitutional Court whose disqualification is sought shall have the right to comment on the statements in the request, but may not participate in the decision on his or her disqualification. The Constitutional Court shall decide in camera upon the disqualification of a judge. If the number of votes for and against is equal, the president shall have the casting vote.”

Section 50

“Anyone who believes that his or her human rights and basic freedoms have been infringed by a particular act of a state body, local body or statutory authority may lodge a constitutional appeal with the Constitutional Court, subject to compliance with the conditions laid down by this Act. ...”

Section 51

“A constitutional appeal may be lodged only after all legal remedies have been exhausted.

Before all special legal remedies have been exhausted, the Constitutional Court may exceptionally hear a constitutional appeal if a violation is probable and the appellant will suffer irreparable consequences as a result of a particular act.”

Section 54

“A decision on whether to accept a constitutional complaint and begin proceedings shall be taken by the Constitutional Court, sitting in a three-judge bench, at an in camera session...”

C. The Civil Procedure Act 1999

13. The relevant provisions of the Civil Procedure Act (*Zakon o pravdnem postopku*) read as follows:

Section 70

“A judge or a lay judge shall be prohibited from exercising judicial functions:

- (1) if he or she is a party to the civil proceedings, is a representative or an advocate of a party... or was heard as a witness or an expert in the same proceedings...
- (5) if he or she participated in the same proceedings before a lower court...
- (6) if other circumstances raise doubt about his or her impartiality.”

Section 72

“The parties to the proceedings may also seek the disqualification of a judge.

A party must seek the disqualification of a judge or a lay judge as soon as he or she learns of the reason for disqualification, but no later than by the end of the hearing in the competent court or, when no hearing was held, by the time the decision is rendered.

In the disqualification request, the party must state the circumstances on which his or her request for disqualification is based.”

Section 74

“As soon as a judge or a lay judge learns of the request for his or her disqualification, he or she must cease any activity in the proceedings concerned; if the challenged is lodged under point 6 of section 70, he or she may continue examination of the case.

If a judge is disqualified in accordance with point 6 of section 70 of this Act, the procedural activities he or she performed after the request for disqualification was lodged shall have no legal effect. ”

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

14. The Government claimed that the application had been lodged out of the prescribed six months time-limit. They submitted that the impugned proceedings had actually ended on 20 March 1997, the date on which the Supreme Court's decision had been served on the applicants. In their view, that had been the last ordinary legal remedy available to the applicants. The present application was lodged after 20 September 1997, the date on which the deadline for submitting the application had expired.

15. The Court points out that, in several cases against Slovenia, the Government have argued that a constitutional appeal to the Constitutional Court is an effective legal remedy. In the present case also, the Government argued that the applicants should have availed themselves of this remedy with regard to their complaints concerning the excessive length of proceedings (see paragraph 19 below). It further recalls that it has dismissed complaints which applicants failed to raise in due form and substance in proceedings before the Constitutional Court. (see, for example, *Tričković v. Slovenia*, no. 39914/98, Commission decision of 27 May 1998). In addition, the constitutional appeal was considered an ineffective remedy only in the context of length-of-proceedings complaints (see *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001; and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

16. The Court does not see any reason to depart from its established case-law. In the present case, the applicants lodged a constitutional appeal challenging the constitutionality of the lower courts' decisions, which was declared inadmissible on 24 March 2000 and served on the applicants on 20 April 2000. They lodged their application with the Court on 20 July 2000, which is well within the prescribed six-month time-limit.

The Court therefore dismisses the Government's preliminary objection.

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

17. The applicants complained that the bench of the Constitutional Court which decided on the admissibility of their constitutional appeal was biased because Mr Ude and Mrs Dragica Wedam-Lukić were sitting on it. They further alleged that the proceedings to which they were a party were excessively long. They relied on Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [an] ... impartial tribunal...”

18. In substance, the applicants further complained that the remedies available in respect of 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

1. *As to the length of the proceedings*

19. The Government maintained that the domestic remedies had not been exhausted. They submitted, *inter alia*, that, under the Constitutional Court Act 1994, any person may lodge a constitutional complaint alleging a breach of his or her human rights.

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

21. The Court notes that the present application is similar to the cases of *Belinger* and *Lukenda* (see *Belinger v. Slovenia* (dec.), cited above; and *Lukenda v. Slovenia*, cited above). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies, finding that the legal remedies at the applicants' disposal were ineffective.

22. The Court finds that the Government have not submitted any convincing arguments in the instant case which would require the Court to distinguish it from its established case-law.

23. The Court further notes that this part of 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.

2. *As to the impartiality*

24. The Government maintained that the domestic remedies had not been exhausted. They claimed that the applicants neither referred in their constitutional appeal to the fact that Mr Ude's expert opinion was submitted to the first-instance court, nor did they attach that opinion to their appeal. Although the composition of the Constitutional Court had been known to the public, and therefore also to the applicants, they had never sought Mr Ude's withdrawal. Their concern about possible bias on the part of the said justice was raised for the first time in their application to the Court. Since they had failed to challenge Mr Ude in accordance with the applicable domestic provisions, this complaint should be declared inadmissible.

Further on in their observations, however, the Government argued that Mr Ude's opinion was merely a scientific opinion in the case. They alleged

that, according to section 31 of the Constitutional Court Act 1994, such an opinion was not a reason for a judge to step down.

25. The applicants made no reply.

26. The Court recalls that, in accordance with Article 35 of the Convention, it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation, unless all domestic remedies have been exhausted according to the generally recognised rules of international law (see, for example, *Tričković*, cited above). It falls to a Government pleading non-exhaustion to prove that the remedy in question was available to the applicant in theory and in practice at the material time. Once this burden of proof has been discharged, it is incumbent on the applicant to establish that the remedy relied on by the Government was in fact exhausted or was inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Lukenda*, cited above, §§ 43 and 44).

Furthermore, the applicant is generally required to raise in substance and in due form in the domestic proceedings the complaints addressed to the Court, including the procedural means that might have prevented a breach of the Convention (see *Barberà, Messegue and Jabardo v. Spain*, judgment of 6 December 1988, Series A no. 146, § 59).

27. In the present case, the Court notes that the applicants neither challenged the impugned judge in their constitutional appeal nor called the Constitutional Court's attention to Mr Ude's prior role in the proceedings. Even though the applicants did not know which of the Constitutional Court's judges would examine the admissibility of their complaints, they could have sought in their constitutional appeal that Mr Ude be excluded from reviewing their appeal, in accordance with the relevant domestic legislation. In this much, the Court allows the Government's arguments.

However, the Court observes that the Government have also submitted that, in application of section 31 § 2 of the Constitutional Court Act 1994, it would have been futile to seek Mr Ude's withdrawal on the ground that he had delivered an opinion in this particular case when it was pending before the first-instance court. In the absence of any argument or case-law that would prove the opposite, the Court accepts this line of reasoning. In such circumstances, it is the Court's opinion that the Government have not shown that, in the circumstances of this case, seeking Mr Ude's withdrawal, was a remedy which the applicants were requested to exhaust for the purposes of Article 35 § 1 of the Convention.

The Government did not allege that the applicants should have availed themselves of any other remedies.

Consequently, the objection of non-exhaustion must be rejected.

28. The Court further notes that this part of 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. As to the length of the proceedings

(a) Article 6 § 1

29. In determining the relevant period to be taken into consideration, the Court notes that the proceedings in issue began prior to 28 June 1994, the date on which the Convention took effect with respect to Slovenia. Given its jurisdiction *ratione temporis*, the Court can only consider the period which have elapsed since that date, although it will have regard to the stage reached in the proceedings in the domestic courts on it (see, for instance, *Belinger*, cited above, and *Kudla v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI). The period to be taken into consideration thus began on 28 June 1994, the date on which the Convention entered into force with respect to Slovenia, and ended on 20 April 2000, the day the Constitutional Court's decision was served on the applicants. It therefore lasted nearly five years and ten months for three 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 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).

31. The Court considers that the impugned proceedings were of importance to the applicants and were of no particular complexity. No hearings were held during the relevant period, no additional facts sought, no experts appointed, and no additional evidence taken. The applicants did not contribute to the length of the proceedings. The fact that they availed themselves of domestic legal remedies was not tantamount to a breach of their procedural rights and did not make the proceedings more intricate. In the present case, the entire relevant period is imputable to the State.

32. 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.

(b) Article 13

33. 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 *Kudla*, cited above, § 156). 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.

34. 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 applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as enshrined in Article 6 § 1.

2. As to the impartiality

35. The applicants alleged that the panel of three judges of the Constitutional Court which declared their constitutional appeal inadmissible was biased, in that it had been presided over by Mr Ude and Mrs Wedam-Lukić was a member of it.

36. The Government first emphasised the distinction of the two roles played by Mr Ude in the impugned proceedings. Before the first-instance court, he delivered a scientific opinion, widely accepted in legal theory, on the jurisdiction of the Slovenian courts. As a justice of the Constitutional Court, he was deciding on the admissibility of the applicants' complaints under Article 22 of the Constitution, which guarantees equal protection of rights. The relevant Constitutional Court decision did not concern the merits of the applicants' complaints, nor did it refer to Mr Ude's scientific opinion. In any event, the applicants did not submit the said opinion with their constitutional appeal, nor did any of the decisions by the lower courts refer to it. Moreover, Mr Ude's expert opinion concerned questions that were not the focus of the domestic courts.

The Government have referred to the Court's findings in the case of *Delage and Magistrello v. France* and claimed that the mere fact that a judge actively participated in the preliminary proceedings to which the applicant was a party and had detailed knowledge of the facts of the case was not sufficient to raise any doubts as to his impartiality when he was presiding over the case later on in the proceedings (see *Delage and Magistrello v. France* (dec.), no. 40028/98, ECHR 2002-III). They further emphasised the distinction between the present case and that of *Pescador Valero v. Spain*, because Mr Ude had not been in a close relationship with the applicants' adversary (see *Pescador Valero v. Spain*, no. 62435/00, ECHR 2003-VII).

37. According to the Court's constant case-law, when the impartiality of a tribunal for the purposes of Article 6 § 1 is being determined, regard must

be had to the personal conviction and behaviour of a particular judge in a given case – the subjective approach – as well as to whether it afforded sufficient guarantees to exclude any legitimate doubt in this respect – the objective approach (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 18, ECHR 2005-...; *Thomann v. Switzerland*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 815, § 30; and *Predojević, Prokopović, Prijović, and Martinović v. Slovenia* (dec.), nos. 43445/98, 49740/99, 49747/99, 54217/00, 9 December 2004).

38. Firstly, as to the subjective test, the tribunal must be subjectively free of personal prejudice or bias. In this respect, the personal impartiality of a judge must be presumed until there is proof to the contrary (see, among other authorities, *Padovani v. Italy*, judgment of 26 February 1993, Series A no. 257-B, p. 20, § 26, and *Morel v. France*, no. 34130/96, § 41, ECHR 2000-VI).

In the present case, in the absence of any evidence to the contrary, there is no reason to doubt Mr Ude's personal impartiality.

39. Secondly, under the objective test, it must be determined whether, quite apart from the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality, since “justice must not only be done; it must also be seen to be done”. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morris v. the United Kingdom*, no. 38784/97, § 58, ECHR 2002-I). Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the party concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see, among many other authorities, *Pescador Valero v. Spain*, cited above, § 23).

40. When determining the objective justification of the applicant's fear, such factors as the judge's dual role in the proceedings, the time which elapsed between the two participations, and the extent to which the judge was involved in the proceedings may be taken into consideration (see, for example, *Walston v. Norway*, no. 37372/97, 3 June 2003; *Wettstein v. Switzerland*, no. 33958/96, ECHR 2000-XII; and *McGonnell v. the United Kingdom*, no. 28488/95, ECHR 2000-II).

41. In this regard, the Court notes that the applicants did not challenge any member of the Constitutional Court at the time they lodged a constitutional appeal, nor did they attach Mr Ude's opinion to the said appeal or refer to it therein. The Court acknowledges that well over four years and four months elapsed between the date on which Mr Ude delivered the opinion and the date on which the applicants lodged a constitutional appeal. An additional two years and ten months passed before the

Constitutional Court delivered a decision on the admissibility of the applicants' appeal. There is no indication in the observations made by the parties that Mr Ude was either reminded of his prior involvement in this particular case or that his opinion was included in the case file before the Constitutional Court.

The Court observes, in general, that there is a risk of problems arising in a system which lacks safeguards to ensure that judges are reminded of their prior involvement in particular cases, above all where such matters rely on the judges' own assessment, which may, inevitably, suffer from a lack of recollection of a particular instance of prior involvement (see *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, § 44, 23 November 2004). However, the Court refers to its findings with regard to the Government's preliminary objections (see paragraph 27 above) and will not expand further on this subject, because its role in the proceedings at hand is confined to the question of whether the applicant's fears about Mr Ude's and Mrs Wedam-Lukić's impartiality were legitimate, given the relations between the two judges and the other party to the proceedings, and whether these relations cast doubt on the judges' objective impartiality.

42. To this end, the Court observes that, at WA's request, Mr Ude delivered an opinion on whether the Slovenian courts had jurisdiction to examine the applicants' claims in the impugned proceedings. This opinion was served on the applicants, who objected to it in their submissions to the first-instance court, and was included in the case file. The outcome of the proceedings was in line with Mr Ude's opinion, although the court's decision made no reference to it. When the applicants received the decision of the Constitutional Court, they were informed that Mr Ude had been the president of the bench and that Mrs Wedam-Lukić also sat on the bench.

43. As to Mrs Wedam-Lukić's alleged partiality, the Court considers that the applicants' fear has no legitimate ground. She had been a colleague of Mr Ude at the Faculty of Law in Ljubljana when the latter delivered his opinion in the applicants' case. She was not directly involved in the impugned proceedings prior to sitting on the Constitutional Court's bench, and the applicants' assertions that she might have had previous knowledge of the case solely by virtue of working in close proximity to Mr Ude at the material time is too vague to procure any objective doubt of her impartiality.

44. On the contrary, Mr Ude did have a detailed knowledge of the facts of the case and had been retained by the applicant's adversaries in the proceedings before the first-instance court, essentially as a professional expert. His role as a justice of the Constitutional Court was, admittedly, quite different, and was limited to determination of the admissibility of the applicants' complaints made under the Constitution. Nonetheless, the Court finds that due to his previous involvement in the proceedings, the impartiality of the "tribunal" was open to doubt, not only in the eyes of the applicants but also objectively.

There has accordingly been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. Mrs Švarc claimed 43,500 euros (EUR) and Mr Kavnik EUR 16,000 in respect of the non-pecuniary damage sustained on account of the unduly long proceedings. They made no claim with regard to their complaints concerning the partiality of the Constitutional Court.

47. The Government contested the claim.

48. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each of the applicants EUR 1,000 under that head.

B. Costs and expenses

49. The applicants also claimed approximately EUR 2,200 for the costs and expenses incurred before the Court.

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

51. 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. 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 1,000 for the proceedings before the Court.

C. Default interest

52. 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 as regards the impartiality of the Constitutional Court;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of proceedings;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 1,000 (one thousand euros) each in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) jointly 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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

John HEDIGAN
President