



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

THIRD SECTION

CASE OF GRZINČIČ v. SLOVENIA

(Application no. 26867/02)

JUDGMENT

STRASBOURG

3 May 2007

FINAL

03/08/2007

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 Grzinčič v. Slovenia,

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

Mr C. BÎRSAN, *President*,

Mr B.M. ZUPANČIČ,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 26867/02) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Boštjan Grzinčič (“the applicant”), on 1 July 2002.

2. The applicant was represented by Mrs M. Nosan, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, the State Attorney-General.

3. On 9 June 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1967 and lives in Celje.

A. Background to the case

5. On 15 September 1995 the applicant was taken into police custody on suspicion of committing “extortion and blackmail” and “causing a public danger”.

6. On 17 September 1995 the applicant was brought before an investigating judge of the Celje District Court (*Okrožno sodišče v Celju*), who opened a judicial investigation against him and remanded him in pre-trial detention.

7. During the judicial investigation proceedings, it was reported in several newspaper articles that the applicant had committed a number of criminal acts.

8. The judicial investigation against the applicant was discontinued on 2 October 1995 for lack of evidence and the applicant was released on that day.

9. On an unspecified date, and in accordance with the Criminal Procedure Act, the applicant lodged a request with the Ministry of Justice for compensation in respect of the damage sustained. On 30 October 1996 the Ministry offered to pay the applicant 75,000 Slovenian tolar (SIT – approximately 310 euros (EUR)), which the applicant did not accept.

B. Civil proceedings related to compensation for unjustified detention

10. On 16 October 1996 the applicant instituted civil proceedings against the Ministry of Justice and the Ministry of the Interior in the Celje District Court seeking compensation in the amount of SIT 4,000,000 (approximately EUR 16,500) for non-pecuniary damage. He also requested to be exempted from payment of court fees.

11. On 2 February 1999 the court held a hearing.

12. In addition, on 6 July 2000 the applicant was arrested on charges of drug trafficking. He remained in pre-trial detention until 26 September 2000 when the Celje District Court found him guilty as charged.

13. A hearing in the civil proceedings scheduled for 28 September 2000 had to be postponed because of the applicant's detention. Subsequently, a hearing was held on 5 December 2000.

14. As regards the criminal proceedings, on 10 April 2001 the Celje Higher Court (*Višje sodišče v Celju*) allowed the applicant's appeal against the first-instance court's judgment and remitted the case for re-examination. On 9 October 2001 the applicant was acquitted. On an appeal by the public prosecutor, the judgment was upheld by the Celje Higher Court on 9 April 2002.

15. Moreover, in 2000 and 2001, the applicant was accused of drug trafficking in two other sets of criminal proceedings. The proceedings were discontinued as the public prosecutor withdrew the bills of indictment.

16. On 10 June 2002 the applicant filed written submissions in the civil proceedings which he had instituted on 16 October 1996 before the Celje District Court and increased the amount of his compensation claim.

17. The court held a hearing on 15 October 2002. The applicant did not appear at that hearing.

18. On 15 November 2002, after a hearing, the Celje District Court handed down a judgment in which it awarded the applicant SIT 1,500,000 (approximately EUR 6,250). Both parties appealed.

19. On 11 November 2004 the Celje Higher Court allowed the defendant's appeal and reduced the amount of the award to SIT 1,200,000 (approximately EUR 5,000). That judgment became final.

C. Criminal proceedings

20. On 2 July 1999 the Krško Public Prosecutor's Office requested the Krško District Court (*Okrožno sodišče v Krškem*) to open a criminal investigation against the applicant and two other individuals for drug trafficking.

21. According to the Government, the applicant was not available to the prosecuting authorities during the investigation stage, although he had promised the police in a telephone conversation that he would report for questioning. In addition he had not accepted the summons – substitute notification had thus been served on 28 July 1999. The investigating judge issued two orders for the applicant to appear before the court, but to no avail.

22. On 4 November 1999 the Krško Public Prosecutor's Office indicted the applicant and two other individuals in the Krško District Court, accusing the applicant of drug trafficking.

23. On 30 September 1999 the court ordered the applicant's arrest and issued an arrest warrant.

24. At a hearing held on 11 November 1999, the applicant's proceedings were separated and transferred to the Celje District Court. However, they were eventually transferred back to the Krško District Court. In addition, the proceedings directed against the other two individuals were joined to the applicant's proceedings.

25. On 6 July 2000 the applicant was arrested and taken into police custody.

26. The court held hearings on 12 July, 6 September, 18 October, 15 November and 7 December 2000.

27. On 8 December 2000 the court pronounced a judgment finding the applicant guilty and sentencing him to four years' imprisonment. The court ordered that the applicant remain in detention until he started serving his sentence.

28. The applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*). The court allowed the appeal on 11 April 2001 and remitted the case to the first-instance court for re-examination. The court also ordered the applicant's release.

29. A hearing was scheduled for 1 September 2003 but later postponed since one of the accused could not be summoned. Hearings scheduled for 15 April and 26 May 2005 were also postponed.

30. The court held hearings on 17 June, 8 September and 27 September 2005.

31. Another hearing scheduled for 27 October 2005 was adjourned because two defendants did not appear. Further hearings were then held on 8 December 2005 and 24 January 2006.

32. After a hearing on 9 March 2006, the court handed down a judgment in which it acquitted all three defendants.

33. The public prosecutor lodged an appeal.

34. The proceedings are pending before the Ljubljana Higher Court.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution

35. The following provisions of the 1991 Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*, Official Journal no. 33/91) are relevant to the present case:

Article 23

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

Article 26

“Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a State or local authority or as a holder of public office. ...”

Article 160

“The Constitutional Court shall hear:

... constitutional appeals in which specific acts are alleged to have infringed a human right or fundamental freedom;

...

Unless otherwise provided by law, the Constitutional Court shall hear a constitutional appeal only if legal remedies have been exhausted. The Constitutional Court shall decide whether a constitutional appeal is admissible for adjudication on the basis of statutory criteria and procedures.”

B. The Lukenda Project

36. Following the *Lukenda v. Slovenia* judgment of 6 October 2005 (no. 23032/02, ECHR 2005-X) and decision no. U-I-65/05 of the Constitutional Court (22 September 2005), both obliging the Slovenian State to establish conditions in which the right to a trial without undue delay must be afforded, the Slovenian Government adopted on 12 December 2005 a Joint State Project on the Elimination of Court Backlogs, the so-called Lukenda Project. Its goal is the elimination of backlogs in Slovenian courts and prosecutor's offices by the end of 2010, by providing for structural and managerial reform of the judiciary.

37. The preparation of the Act on the Protection of the Right to a Trial without undue Delay was part of the Lukenda Project.

C. The Act on the Protection of the Right to a Trial without undue Delay

38. Since 1 January 2007 the Act on the Protection of the Right to a Trial without undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal no. 49/2006 – the “2006 Act”) has been implemented. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed for parties to court proceedings, participants in non-contentious proceedings and injured parties in criminal proceedings.

39. Section 3 provides for two remedies to expedite pending proceedings – a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) – and, ultimately, for a claim for just satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*).

40. Section 4 defines the criteria that domestic authorities should take into account when assessing the complaints:

Section 4 - Criteria for decision-making

“When deciding on the legal remedies under this Act, the circumstances of the particular case shall be taken into account, namely: its complexity in terms of facts and law; actions of the parties to the proceedings, in particular as regards the use of procedural rights and fulfilment of obligations in the proceedings; compliance with rules on the set order for resolving cases, or with statutory deadlines for fixing preliminary hearings or for giving court decisions; the manner in which the case was heard before a supervisory appeal or a motion for a deadline was lodged; the nature and type of case and its importance for a party.”

41. The supervisory appeal is governed by sections 5 and 6, which provide as follows:

Section 5 - Supervisory appeal

“(1) If a party considers that the court is unduly protracting the decision-making, he or she may lodge a supervisory appeal in writing before the court hearing the case; the decision thereon shall be taken by the ... president of the court (hereinafter 'the president of the court').

(2) For the purposes of decision-making concerning the protection of the right to a trial without undue delay, the supervisory appeal shall contain the following elements:

- personal or corporate name or any other name of the party, with address of permanent or temporary residence or registered office;
- personal or corporate name or any other name of the representative or lawyer, with address of permanent or temporary residence or registered office;
- indication of the court hearing the case;
- reference number of the case or date on which the case was filed in the court;
- indication of circumstances or other particulars concerning the case, which demonstrate that the court is unduly protracting the decision-making;
- handwritten signature of the party, representative or lawyer.”

Section 6 - Decision on supervisory appeal

“(1) If the supervisory appeal is manifestly unfounded having regard to the timetable for resolution of the case concerned by the supervisory appeal, the president of the court shall dismiss the appeal by a ruling.

(2) If the supervisory appeal does not contain all the required elements referred to in section 5(2) of this Act, the president of the court shall dismiss it by a ruling. No appeal shall lie against that ruling.

(3) If no ruling as provided for in subsections 1 or 2 of this section is given, the president of the court shall, in the framework of his court management competence under the statute governing the court system, forthwith request the judge or chair of a court panel (hereinafter 'the judge') to whom the case has been assigned for resolution to submit a report indicating reasons for the duration of proceedings, not later than fifteen days after receiving the request of the president of the court or after obtaining the file, if necessary for drawing up the report. The report shall include the declaration in respect of criteria referred to in section 4 of this Act and the opinion on the time-limit within which the case may be resolved. The president of the court may also require the judge to submit the case file if he assesses that, in the light of allegations of the party indicated in the supervisory appeal, its examination is necessary.

(4) If the judge notifies the president of the court in writing that all relevant procedural acts will be performed or a decision issued within a time-limit not exceeding four months following the receipt of the supervisory appeal, the president of the court shall inform the party thereof and thus conclude the consideration of the supervisory appeal.

(5) If the president of the court establishes that in view of the criteria referred to in section 4 of this Act the court is not unduly protracting the decision-making in the case, he shall dismiss the supervisory appeal by a ruling.

(6) If the president of the court has not informed the party in accordance with subsection 4 of this section and if, in view of the criteria referred to in section 4 of this Act, he establishes that the court is unduly delaying the decision-making in the case, he shall, depending on the status and nature of the case and by a ruling, order a deadline for the performance of certain procedural acts, and may also order that the case be resolved as a priority owing to the circumstances of the case, particularly when the matter is urgent. If he orders that appropriate procedural acts be performed by the judge, he shall also set the time-frame for their performance, which may not be less than fifteen days and not longer than six months, as well as the appropriate deadline for the judge to report on the acts performed.

(7) If the president of the court establishes that the undue delay in decision-making in the case is attributable to an excessive workload or an extended absence of the judge, he may order that the case be reassigned. He may also propose that an additional judge be assigned to the court or order other measures in accordance with the statute governing the judicial service.

(8) A judge may be assigned by the annual schedule of allocation to act in place of or together with the president of the court in exercising the court management competence for decision-making in respect of the supervisory appeal.”

42. Sections 8, 9 and 11 define the motion for a deadline and provide for measures that may be applied by the court dealing with the motion. They read, in so far as relevant, as follows:

Section 8 - Motion for a deadline

“(1) If, under section 6(1) or (5) of this Act, the president of the court dismisses the supervisory appeal or fails to respond to the party within two months or fails to send the notification referred to in section 6(4) of this Act within the said time-limit or if appropriate procedural acts have not been performed within the time-limit set in the notification or ruling of the president of the court, the party may lodge a motion for a deadline under section 5(1) of this Act with the court hearing the case.

...

(3) The party may lodge the motion for a deadline within fifteen days after receiving the ruling or after the time-limits provided for in subsection 1 of this section.”

Section 9 - Competence for decision-making

“(1) The president of the higher court in the judicial area covering the local court, district court or other court of first instance, shall be competent to decide on the motion for a deadline concerning cases heard by the local court, district court or other court of first instance.

...”

Section 11 - Decision on the motion for a deadline

“(1) If the motion for a deadline is manifestly unfounded, having regard to the timetable for the resolution of the case and the actions of the party, the president of the court shall dismiss it by a ruling.

...”

(4) If the president of the court establishes that, in view of the criteria referred to in section 4 of this Act, the court is unduly protracting the decision-making in the case, he shall order, by a ruling, that the appropriate procedural acts be performed by the judge and shall also set the time-frame for their performance, which may not be less than fifteen days and not longer than four months, as well as set the appropriate deadline for the judge to report on the acts performed. According to the circumstances of the case, particularly when the matter is urgent, the president of the court may also order that the case be resolved as a priority and propose to the president of the court referred to in section 5(1) of this Act that the measures referred to in section 6(7) of this Act be implemented.

(5) The president of the court shall decide on the motion for a deadline within fifteen days after receiving it.”

43. Section 14 governs the competence of the Ministry of Justice in cases where a supervisory appeal has been lodged with the Ministry rather than with the court of competent jurisdiction:

Section 14 - Competence of the Ministry of Justice

“(1) If the supervisory appeal is lodged with the Ministry responsible for justice (hereinafter referred to as 'the Ministry'), the Minister ... responsible for justice (hereinafter referred to as 'the Minister') shall refer it to the president of the court of competent jurisdiction to hear it in accordance with this Act and shall ask to be kept informed of the findings and decision.

...”

44. Further to section 15, just satisfaction may be provided by payment of monetary compensation, a written statement of the State Attorney's Office or the publication of a judgment:

Section 15 - Just satisfaction

“(1) If the supervisory appeal lodged by the party has been granted or if a motion for a deadline has been lodged, the party may claim just satisfaction under the present Act.

(2) Just satisfaction shall be provided by:

i. payment of monetary compensation for damage caused by a violation of the right to a trial without undue delay;

ii. a written statement from the State Attorney's Office that the party's right to a trial without undue delay has been violated;

iii. the publication of a judgment to the effect that the party's right to a trial without undue delay has been violated.”

45. Section 16 provides for a compensatory remedy and fixes the maximum amount that could be awarded:

Section 16 - Monetary compensation

“(1) Monetary compensation shall be payable for non-pecuniary damage caused by a violation of the right to a trial without undue delay. Strict liability for any damage caused shall lie with the Republic of Slovenia.

(2) Monetary compensation in respect of individual, finally decided cases shall be awarded in an amount of between 300 and 5,000 euros.

(3) When deciding on the amount of compensation, the criteria referred to in section 4 of this Act shall be taken into account, in particular the complexity of the case, actions of the State, actions of the party and the importance of the case for the party.”

46. Sections 19, 20 and 21 govern just satisfaction proceedings and proceedings in respect of pecuniary damage:

Section 19 - Proceedings before the State Attorney's Office

“(1) Proceedings to enforce a claim for just satisfaction, provided that the condition referred to in section 15(1) of this Act is met, shall be instituted by a party by means of an application for settlement lodged with the State Attorney's Office with a view to reaching an agreement on the type or amount of just satisfaction. The party may lodge such application within nine months after the final resolution of the case. The State Attorney's Office shall rule on the application of the party within a period of three months if it establishes that the just satisfaction claim is substantiated. Until the expiry of the above-mentioned period, the party may not assert any claim for monetary compensation by way of just satisfaction by bringing an action before the competent court.

(2) If, in accordance with subsection 1 of this section, the agreement has been reached with the party, the State Attorney's Office shall enter into an out-of-court settlement with the party.”

Section 20 - Proceedings in a court

“(1) If no agreement under section 19 of this Act is reached upon the application for settlement, or the State Attorney's Office and the party fail to negotiate an agreement within three months of the date of the application being lodged, the party may bring an action for damages.

(2) An action for damages against the Republic of Slovenia shall be brought not later than eighteen months after the final resolution of the party's case.

...”

Section 21 - Action in respect of pecuniary damage

“(1) Action in respect of pecuniary damage caused by a violation of the right to a trial without undue delay may be brought by the party within eighteen months of the final ruling of the court on the party's case in accordance with the provisions of the Obligations Code concerning pecuniary damage.

... ”

47. Sections 22 and 23 further provide for payment of compensation:

Section 22 – Payment of monetary compensation

“(1) The State Attorney's Office shall pay monetary compensation on the basis of the settlement referred to in section 19(2) of this Act and for all appropriate costs incurred by the party in connection therewith.

(2) The State Attorney's Office shall pay monetary compensation and the party's costs of the proceedings on the basis of a final court decision which has established the violation of the right to a trial without undue delay in the proceedings, under section 20 or section 21 of the present Act.”

Section 23 - Provision of funds

“Funds ... shall be earmarked in the Budget of the Republic of Slovenia within the framework of the financial plan of the State Attorney's Office.”

48. Section 25 lays down the following transitional rules in relation to the applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months after the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months after the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within a period of four months at the latest. ...

(2) If the proposal for settlement referred to in subsection 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months after the date on which the party filed its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months after receiving the reply from the State Attorney's Office that its proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

THE LAW

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

49. The applicant complained about the excessive length of the civil proceedings which began on 16 October 1996 and ended on 11 November 2004 with the Celje Higher Court's decision. He further complained that the criminal proceedings, which are currently pending before the Ljubljana Higher Court, had been unduly long. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...”

50. In substance, the applicant also complained that the remedies available for excessively lengthy legal proceedings in Slovenia were ineffective. He relied on Article 13 of the Convention, which 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 concerning the civil proceedings

1. The parties' submissions

51. Relying on the *Selmouni v. France* judgment ([GC], no. 25803/94, § 74, ECHR 1999-V), the Government objected that domestic legal remedies had not been exhausted with regard to the complaints under Articles 6 § 1 and 13 of the Convention, arguing that the applicant had not availed himself of the effective remedies at his disposal for the purpose of expediting the judicial proceedings and/or claiming compensation.

52. The Government further submitted that the right to a trial within a reasonable time was guaranteed by Article 23 of the Constitution and that Article 26 of the Constitution guaranteed the right to compensation for damage caused by the unlawful acts of a person performing a function or engaged in an activity on behalf of a State authority.

53. Following the *Lukenda v. Slovenia* judgment (cited above) and the Constitutional Court's decision of 22 September 2005, with the finding in both cases that there were no effective legal remedies in Slovenia to guarantee a trial within a reasonable time, the Act on the Protection of the Right to a Trial without undue Delay (the “2006 Act”) had been enacted in

April 2006 and implemented from 1 January 2007. The Government argued that this Act now certainly provided for effective legal remedies in Slovenia. In addition, the Ministry of Justice had commenced preparation of a comprehensive programme for the clearance of court backlogs.

54. In any event, until the 2006 Act became operational, the applicant had had the possibility of lodging an application for the preliminary settlement of a dispute under section 14 of the Public Attorney Act. While the proceedings were pending, the applicant could have brought an action in the administrative courts and/or a request for supervision under section 72 of the Judicature Act 1994 as then in force. If the proceedings had come to an end, meaning that their unreasonable duration could no longer be rectified or that the violation had already ceased, the applicant could have brought an action for damages under the general rules of the Code of Obligations. The applicant had also had the possibility of lodging a constitutional appeal under Article 160 of the Constitution. In the Government's view, the aggregate of these remedies constituted an effective legal remedy even before the 2006 Act became operational.

55. Since the applicant had failed to avail himself of the domestic legal remedies in order to comply with the exhaustion requirement, the Government invited the Court to reject the application as being inadmissible.

56. The applicant did not submit any comments on the Government's observations.

2. The Court's assessment

(a) General observations

57. The Court observes at the outset that new legislation, namely the 2006 Act, has been introduced in Slovenia with the intention of guaranteeing the right to a trial within a reasonable time at domestic level. It has been implemented since 1 January 2007.

58. Since the 2006 Act became operational, claimants have had at their disposal various legal avenues, depending on the stage of the proceedings in question, in order to seek redress for a violation of their right to a speedy trial.

59. The Court observes that there are currently some 1,700 cases against Slovenia pending before the Court which concern the length of proceedings. A certain number of cases have already been notified to the Slovenian Government whereas the vast majority of cases are awaiting the first examination by the Court.

60. The Court further notes that the civil proceedings in the present case ended on 11 November 2004 and that notice of the present application was given to the Slovenian Government on 9 June 2006, both dates being prior to 1 January 2007 when the 2006 Act became operational.

(b) Cases concerning proceedings which ended before the 2006 Act became operational

61. As to the Government's argument that the applicant should have availed himself of the remedies afforded by the 2006 Act in respect of those proceedings, the Court notes that section 25 of the 2006 Act explicitly refers to proceedings before international courts. However, the conditions laid down in that section have to be fulfilled for the resulting remedy to be used.

62. That section provides that in cases where, firstly, a violation of the right to a trial without undue delay has already ceased and, secondly, the party filed a claim for just satisfaction with the international court before the 2006 Act became operational, the State Attorney's Office must offer the party a settlement in respect of just satisfaction within four months after the date of receipt of the case referred by the international court for the settlement procedure. The party must reply to the State Attorney's proposal within two months. If no settlement is reached, the party may initiate court proceedings for compensation within four months after replying to the State Attorney or within six months after receiving a negative reply from the State Attorney.

(c) Application to the applicant's complaints about civil proceedings which were notified to the Slovenian Government before 1 January 2007

63. The Court observes, firstly, that the interpretation of the expression "the violation of the right to a trial without undue delay has already ceased" in the Government's observations and in Slovenian law in general implies that a claimant can no longer complain about a violation of his right to speedy process in cases of terminated proceedings, since their unreasonable duration can no longer be rectified (see paragraph 54 above). According to the usual meaning of this notion in Slovenian law, it is clear that the civil proceedings in question, which ended on 11 November 2004, fall into this category.

64. Secondly, the applicant also filed a just satisfaction claim with the Strasbourg Court before 1 January 2007.

65. However, section 25 of the 2006 Act provides that the settlement procedure in respect of such cases has to start within four months after the notification of the case to the respondent Government.

66. The Court observes that the present application was notified to the Slovenian Government on 9 June 2006, which was more than six months before the 2006 Act became operational, and that the deadlines for reaching a friendly settlement with the State Attorney, in the framework of the domestic procedure provided for in section 25, have already expired. There is no other provision that would warrant an assumption of retroactive application of the 2006 Act to previously communicated cases concerning terminated proceedings. The parties have also had the opportunity to reach a friendly settlement in the proceedings before the Court but have failed to do

so. In the Court's view, the section 25 remedy cannot therefore be regarded as an effective one in respect of the terminated civil proceedings at issue.

67. As regards applications concerning terminated proceedings which were notified to the Slovenian Government before 1 January 2007, the Court therefore finds that the Government have not submitted any convincing arguments which would require it to depart from its established case-law.

68. The Court observes that this part of the application is similar to the cases of *Belinger* and *Lukenda* (see *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Lukenda*, cited above), which were examined by the Court before the 2006 Act became operational. In those cases the Court dismissed the Government's objection that domestic remedies had not been exhausted, finding that the legal remedies at the applicant's disposal were ineffective.

69. The Court further notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits concerning the civil proceedings

1. Article 6 § 1 of the Convention

70. The period to be taken into consideration began on 16 October 1996, the day the applicant instituted proceedings in the Celje District Court, and ended on 11 November 2004, the day the Higher Court handed down the judgment. It therefore lasted approximately eight years and one month for two levels of jurisdiction.

71. 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).

72. The Government argued that the applicant had contributed to the length of the civil proceedings since the court had not been able to hear representations from him until 15 November 2002, at the fifth scheduled hearing.

73. Having examined all the material submitted to it, and having regard to its case-law in such matters, the Court considers nevertheless that in the instant case the length of the proceedings, in particular before the first-instance court, was excessive and failed to meet the "reasonable-time" requirement.

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

2. Article 13 of the Convention

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). 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.

76. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

C. Admissibility concerning the criminal proceedings

1. The parties' submissions

77. The Government submitted that, under the Slovenian system of legal remedies in length-of-proceedings cases, both before and after the 2006 Act became operational, it had been possible not only to expedite the proceedings but also to make good any damage sustained (see paragraphs 51 to 55 above).

78. The applicant did not submit any comments on the Government's observations.

2. The Court's assessment

(a) General observations

79. The Court notes that the criminal proceedings in the present case are still pending before the Ljubljana Higher Court.

80. The Court observes that since 1 January 2007, when the 2006 Act became operational, the applicant has been entitled to seek their acceleration. In proceedings pending at first or second instance, a party may seek their acceleration under sections 3, 5 and 8 of the 2006 Act by means of a supervisory appeal and a motion for a deadline. The latter constitutes, in substance, an appeal in respect of an unsuccessful supervisory appeal under certain conditions. Moreover, the party may ultimately obtain further redress through a compensatory remedy, namely by bringing a claim for just satisfaction under section 15 of the Act.

81. Given that the applicant may avail himself of the remedies afforded by the 2006 Act, the question therefore arises whether he should be required to use them for purposes of Article 35 § 1 of the Convention.

General principles established under the Court's case-law

82. The Court reiterates that by virtue of Article 1 (which provides: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”), the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is reflected in Articles 13 and 35 § 1 of the Convention.

83. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni*, cited above, § 74; *Kudla*, cited above, § 81; and *Lukenda*, cited above, § 42). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (*ibid.*).

84. In addition, according to the “generally recognised principles of international law”, there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see *Selmouni*, cited above, § 75). However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1212, § 71; *Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, pp. 18-19, § 37; and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

(b) Assessment of the 2006 Act in respect of proceedings pending at first or second instance

85. It should be noted at the outset that under section 2 of the 2006 Act the new remedies available in Slovenia since 1 January 2007 may be used by parties to court proceedings, participants in non-contentious proceedings and injured parties in criminal proceedings.

86. As far as proceedings pending at first or second instance are concerned, the possibility of a supervisory appeal and a motion for a deadline under sections 5 and 8 of the 2006 Act has empowered, firstly, the president of the court examining the case and, secondly, the president of the appellate bench, to examine complaints related to the excessive length of proceedings and to take appropriate action. If such a complaint is justified, they can order time-limits for procedural measures or decide that a case should be treated with priority, reassign a case, and so on (see paragraphs 41 and 42 above).

87. The Court notes in particular that the president of the court examining the case has to decide within two months if a supervisory appeal under section 6 is well-founded. If the judge dealing with the case notifies the president that procedural acts or a decision will be forthcoming within four months, the president informs the party accordingly. If the complaint is justified, procedural acts are to be carried out within a period of up to six months.

88. As to a motion for a deadline, section 11 provides that a decision on whether the complaint is well-founded must be rendered within fifteen days and, if justified, procedural acts are performed within four months. In the Court's view, these deadlines as they stand in the text comply with the requirement of speediness necessary for a remedy to be effective (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 208, ECHR 2006-V).

89. Furthermore, sections 15 and 16 of the 2006 Act provide that anyone sustaining non-pecuniary damage as a result of a failure to comply with the "reasonable-time" requirement is entitled to just satisfaction if a supervisory appeal lodged by the party has been granted or if a motion for a deadline has been lodged.

90. Just satisfaction will be provided by means of monetary compensation, a written statement from the State Attorney's Office or the publication of a judgment finding a violation of the right to a trial without undue delay. Monetary compensation for each finally decided case is granted in an amount of between 300 and 5,000 euros, payable by the State Attorney's Office (see paragraphs 44 and 45 above). The corresponding funds are earmarked in the Slovenian budget (see paragraph 47 above).

91. If the conditions in section 15 are met, that is if a supervisory appeal lodged by a party has been allowed or if a motion for a deadline has been lodged (see paragraph 89 above), the party may start preliminary proceedings with the State Attorney's Office in order to reach an agreement on the type or amount of just satisfaction (see paragraph 46 above). A request for just satisfaction has to be lodged within nine months after the final resolution of a case – in other words after a decision against which no ordinary appeal lies – and the State Attorney's Office must reply within three months.

92. If no agreement is reached, a party may bring an action for damages in the local court of competent jurisdiction within eighteen months after final resolution of a case. If the claim is granted in the framework of judicial proceedings, the State Attorney's Office will pay monetary compensation on the basis of a final court decision (see paragraph 47 above).

93. Lastly, under section 21 of the 2006 Act, a party may bring an action for pecuniary damage caused by a violation of the right to a trial without undue delay within eighteen months after the final decision. When deciding on pecuniary damage, the court has to take account of the provisions of the

Obligations Act and the criteria referred to in section 4 of the 2006 Act (see paragraph 97 below).

94. The Court recalls that it has given certain indications in the *Scordino* judgment (cited above, §§ 182-189) as to the characteristics which effective domestic remedies in length-of-proceedings cases should have. In this connection, it notes that the purpose of the new Slovenian remedies is twofold.

95. Firstly, a supervisory appeal and a motion for a deadline are designed to obtain acceleration of pending proceedings and/or a finding that time-limits have been exceeded. The Court has stated on many occasions that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino*, cited above, § 183). Since a supervisory appeal and a motion for a deadline, as they stand, consist in different tools for expediting pending proceedings, the Court considers that the test of “effectiveness”, as established by the recent case-law, is satisfied.

96. Secondly, the 2006 Act provides for a compensatory remedy – a request for just satisfaction – through which a party may, where appropriate, be awarded just satisfaction for any non-pecuniary and pecuniary damage sustained. A compensatory remedy is, without doubt, an appropriate means of redressing a violation that has already occurred. According to the Court's recent case-law, a combination of two types of remedies, one designed to expedite the proceedings and the other to afford compensation, seems to be the best solution for the redress of breaches of the “reasonable time” requirement (see *Scordino*, cited above, § 186).

97. As is evident from section 4 of the 2006 Act, in assessing the reasonableness of the length of proceedings the national authorities are in essence required to look at the criteria established by the Court's case-law, namely the complexity of the case, the applicant's conduct and that of the competent authorities which are further specified, and the importance of what is at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

98. In view of the foregoing, basing its conclusions on an assessment of the legislative provisions as they stand, the Court is satisfied that the aggregate of remedies provided for by the 2006 Act in cases of excessively long proceedings pending at first and second instance is effective in the sense that the remedies are in principle capable both of preventing the continuation of the alleged violation of the right to a hearing without undue

delay and of providing adequate redress for any violation that has already occurred.

Exhaustion requirement in respect of applications lodged before the 2006 Act became operational

99. At this point the Court must also address the issue of the existence of domestic remedies at the time the present application was lodged, for purposes of the exhaustion requirement, since the applicant had lodged his application before the entry into force of the 2006 Act and before it became operational.

The Court acknowledges that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged. However, this rule is subject to exceptions which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001).

100. It is true that at the time when the applicant first brought his complaint to the Court, he did not have any effective remedies available in Slovenian law in respect of the length of the pending proceedings in issue (see *Belinger*, cited above, and *Lukenda*, cited above).

101. However, the Court considers that there are several elements which favour an exception from this general rule in the instant case.

102. The Court reiterates its findings in the *Lukenda* judgment that the average length of judicial proceedings in Slovenia reveals a systemic problem that has resulted from inadequate legislation and inefficiency in the administration of justice. By virtue of that judgment, the Slovenian State was bound to provide mechanisms for the effective redress of violations of Convention rights, through both appropriate legal measures and administrative practices (see *Lukenda*, cited above, §§ 93 and 95). That judgment was followed in 2006 by approximately 200 judgments against Slovenia concerning allegations of an excessive length of proceedings before domestic courts.

103. The purpose of the remedies introduced by the 2006 Act as a response to the *Lukenda* judgment is precisely to enable the Slovenian authorities to redress breaches of the “reasonable time” requirement at domestic level. That is valid not only for applications lodged after the date on which the 2006 Act became operational, but also for those concerning domestic proceedings pending at first and second instance which were already on the Court's list of cases by that date.

104. In this connection, the Court notes that there are currently nearly 1,700 applications pending against Slovenia in which the applicants allege a violation of the “reasonable time” requirement as far as both pending and terminated domestic proceedings are concerned.

105. Moreover, the Court has already decided on several occasions, when Contracting Parties have adopted legislative measures in order to

comply with the “reasonable time” requirement under Article 6 § 1 of the Convention, that applicants should exhaust such remedies notwithstanding the fact that their applications had been lodged with the Court prior to the enactment of the legislation in question.

106. Thus, the Court has held that applicants in cases against Italy which concern the length of proceedings should have recourse to the remedy introduced by the “Pinto Act” (see, for example, *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII, or *Brusco*, cited above). A similar decision was taken in respect of cases brought against Croatia, Slovakia and Poland following legislative changes (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). The Court considers that the position as regards the present application is similar in substance to the above-mentioned cases.

(c) Application to the criminal proceedings in the present case

107. Since the impugned criminal proceedings are pending at second instance, the applicant may avail himself of the aggregate of remedies afforded by the 2006 Act, which the Court has found to be effective (see paragraph 98 above).

108. It is true that no long-term practice of domestic authorities applying the 2006 Act can be established at this time. However, it is clear that the Act was specifically designed to address the issue of the excessive length of proceedings before domestic courts and there is no reason to doubt its effectiveness at this stage. However, the Court's position may be subject to review in the future and the burden of proof as to the effectiveness of the remedies in practice remains on the Slovenian Government.

109. The Court draws attention to the general obligation of Contracting States to solve the structural problems underlying violations (see *Broniowski v. Poland* [GC], no. 31443/96, § 191, ECHR 2004-V). The Slovenian authorities should therefore take particular care to ensure that the 2006 Act is applied in conformity with the Convention both as far as future case-law is concerned (see *Scordino*, cited above, §§ 190-192) and as far as the general administration of justice is concerned. As to the latter, appropriate measures should be taken in order to avoid clogging up domestic avenues (see *Belinger*, cited above). In this connection, the Court notes that the Slovenian Government undertook the Lukenda Project in December 2005 in order to address the structural problem from different angles (see paragraphs 36 and 37 above).

110. In view of the foregoing considerations and given that the possibility of using the new remedies in proceedings pending at first and second instance extends to the applicant in the present case, as well as to all

other applicants who have submitted similar complaints under Article 34 of the Convention in respect of Slovenia, the Court finds that the applicant is required by Article 35 § 1 of the Convention to use the remedies available to him under the 2006 Act with effect from 1 January 2007.

111. It follows that the applicant's complaint under Article 6 about the excessive length of the criminal proceedings must be declared inadmissible for failure to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention. As to the applicant's complaint under Article 13 that the remedies at his disposal for excessively lengthy proceedings were ineffective, it should be declared manifestly ill-founded under Article 35 § 3 of the Convention. This part of the application should therefore be rejected under Article 35 § 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. In a letter dated 6 September 2006, the applicant estimated at 8,000 euros (EUR) the compensation due to him for the non-pecuniary damage sustained on account of the length of the proceedings.

114. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

115. The applicant also claimed EUR 1,000 for the costs and expenses incurred in the proceedings before the Court.

116. 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. Regard being had to the information in its possession and to the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 700 for the proceedings before the Court.

C. Default interest

117. 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 excessive length of the terminated civil proceedings admissible 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*
 - (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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 700 (seven hundred euros) in respect of costs and expenses, plus any tax that may be chargeable on those amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Stanley NAISMITH
Deputy Registrar

Corneliu BÎRSAN
President