



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

THIRD SECTION

CASE OF TRATAR v. SLOVENIA

(Applications nos. 76141/01, 25387/02 and 5925/05)

JUDGMENT

STRASBOURG

4 October 2007

FINAL

04/01/2008

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 Tratar 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,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 13 September 2007,

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

PROCEDURE

1. The case originated in three applications (nos. 76141/01, 25387/02 and 5925/05) 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 Silvo Tratar (“the applicant”), on 7 November 2001, 11 June 2002 and 10 March 2003 respectively.

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

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he was a party was excessive. In substance, he 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 16 September 2003 and 10 March 2005 respectively, 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 applications at the same time as their admissibility.

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

5. The applicant was born in 1959 and lives in Koper.

6. The applicant was a director of the company named *Kovinar Hrpelje* p.o. (“*Kovinar*”).

On 21 January 1992 the applicant was first suspended for having grossly abused his position in the company. He was eventually dismissed. The applicant instituted several proceedings against *Kovinar* in this respect.

On 17 October 1994 bankruptcy proceedings were instituted against *Kovinar*. The applicant took part in these proceedings, which terminated on 15 January 2003. On 17 January 2003 *Kovinar* ceased to exist.

7. In the meanwhile, on 1 March 1995, the applicant had started working as an army officer for the Ministry of Defence of the Republic of Slovenia. He was employed as an instructor in an army training centre. However, no contract of employment was made, because the applicant refused five times to sign the contract. As a result, the *de facto* employment relationship was terminated by a decision of the Ministry of Defence on 6 November 1995.

1. First set of proceedings (No. Pd 217/95)

8. On 18 March and 16 April 1992 the applicant instituted three sets of proceedings in the Koper Court of Associated Labour (*Sodišče združenega dela v Kopru*) against *Kovinar*. The applicant sought the annulment of *Kovinar*'s decisions concerning his suspension and dismissal, payment of unpaid salaries, damages for wrongful dismissal and damages for illegal dismissal. The court decided to examine the cases jointly.

On 24 September 1992 the Court of Associated Labour of the Republic of Slovenia (*Sodišče združenega dela Republike Slovenije*) transferred the case to the Nova Gorica Court of Associated Labour (*Sodišče združenega dela v Novi Gorici*).

On 28 January 1993 the court delivered a judgment upholding the applicant's claims in part.

9. Both parties appealed against this decision to the Court of Associated Labour of the Republic of Slovenia.

On 20 May 1993 the latter allowed both appeals in part, because the first-instance court had failed to rule on one of the applicant's requests, and remitted the case in part to the first-instance court. Following this decision, the part of the first-instance court's judgment referring to the illegal dismissal became final. As a consequence, *Kovinar* called the applicant back to work.

10. On 22 September 1993 the Nova Gorica Court of Associated Labour upheld the applicant's claim concerning the annulment of the dismissal and dismissed the claims for compensation and continuation of his employment.

11. Both parties appealed against this decision to the Court of Associated Labour of the Republic of Slovenia.

On 21 April 1994 the court dismissed the applicant's appeal and allowed *Kovinar*'s appeal in part.

12. On 16 June 1994 the applicant lodged an appeal on points of law with the Supreme Court.

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

On 5 September 1995 the Supreme Court allowed the applicant's appeal on points of law in part and remitted the case in this respect to the first-instance court for re-examination.

13. On 27 November 1995 the Koper Labour Court, Nova Gorica Unit (*Delovno sodišče v Kopru, Oddelek v Novi Gorici*) (the renamed Nova Gorica Court of Associated Labour), was informed that bankruptcy proceedings had been instituted against *Kovinar*. Therefore, on 29 November 1995 the court decided to stay the proceedings while the bankruptcy proceedings were pending.

On 4 November 1997 the applicant instituted a new set of proceedings in order to establish his claim in the bankruptcy proceedings.

On 13 May 1999 the case was transferred to a new judge who, on 20 May 1999, issued a decision to continue the proceedings.

On 8 September 1999 the first-instance court dismissed the applicant's claims.

14. At an undetermined time, the applicant lodged an appeal with the Higher Labour and Social Court (*Višje delovno in socialno sodišče*). The judgment of 19 October 2001, dismissing the applicant's appeal, was served on the applicant on 6 November 2001.

2. Second set of proceedings (No. Pd 98/95)

15. On 20 and 30 August and 7 September 1993 respectively the applicant instituted three sets of proceedings against *Kovinar* in the Koper Court of Associated Labour. He sought the declaration that his contract of employment was illegal, compensation for illegal dismissal from the post of director and the annulment of *Kovinar*'s decision that he was temporarily a redundant worker. The court decided to examine the cases jointly. On 20 September 1993 the applicant withdrew the first and the third claims.

On 13 October 1993 the court held a hearing and decided to deliver a written judgment. On 26 December 1993 the judgment, dismissing the applicant's claim, was delivered.

16. On 28 January 1994 the applicant appealed against this judgment.

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

On 16 February 1995 the Higher Labour and Social Court allowed the appeal, set aside the judgment of the first-instance court and remitted the case for re-examination.

17. On 14 June 1995 the applicant requested the continuation of the proceedings before the first-instance court, which had been stayed due to the bankruptcy proceedings pending against *Kovinar*.

On 11 April and 25 May 2000 the court held hearings. At the latter hearing, the court decided to deliver a written judgment and upheld the applicant's claims in part.

18. On 10 November 2000 the applicant appealed to the Higher Labour and Social Court.

On 15 March 2001 the court dismissed the applicant's appeal. The decision was served on the applicant on 10 April 2001.

19. On 9 May 2001 the applicant lodged an appeal on points of law with the Supreme Court, which was rejected on 14 May 2002 because the applicant had failed to assess the amount of damages at stake.

3. *Third set of proceedings (No. Pg 211/2000)*

20. On 26 October 1993 *Kovinar* informed the applicant that it would no longer transfer his salaries to his bank account opened at bank A.

On 24 December 1993 *Kovinar* paid salaries to its employees and claimed that it had also transferred the applicant's salary to his bank account at bank B, although the applicant had not had an account with that bank since 21 December 1993.

21. On 4 January 1994 the applicant instituted civil proceedings against *Kovinar* in the Koper Local Court (*Okrajno sodišče v Kopru*), requesting a written apology and claiming damages in the amount of 10,000 German marks (DEM) for disclosing his personal data to a bank.

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

On 29 February 2000 the court rejected the applicant's claim for an apology and transferred the compensation claim to the Koper District Court (*Okrožno sodišče v Kopru*).

22. On 12 March 2001 the applicant appealed to the Koper Higher Court (*Višje sodišče v Kopru*) against this decision in the part concerning the costs and expenses.

On 17 February 2002 the court decided on the appeal.

On 13 December 2000 the Koper District Court held a hearing in the proceedings concerning the compensation claim. This hearing was adjourned until 12 February 2001 to allow the court the time to acquire the file on the bankruptcy proceedings pending against *Kovinar*.

The hearing scheduled for 12 February 2001 was adjourned, because neither of the parties appeared before the court, even though the summons had been served on them.

On 4 April 2001 the court held a hearing. At the hearing, the applicant modified his claim and requested that the court find a violation of the Personal Data Protection Act and award him appropriate damages.

On 26 June 2001 the court rejected both claims, because they were not specified as required by the law, although the applicant had been requested to amend them. The decision was served on the applicant on 1 September 2001. Before this date, he had failed to retrieve the written

decision from the post office, although he had been duly informed of this possibility.

23. On 10 September 2001 the applicant appealed to the Koper Higher Court.

On 6 December 2001 the court upheld the first-instance court's decision. This decision was served on the applicant on 3 January 2001.

24. On 1 February 2002 the applicant lodged an appeal on points of law with the Koper District Court.

On 27 May 2002 the court rejected the applicant's request because the sum at issue was below 5,000,000 Slovenian tolar (SIT) and the appeal on points of law was therefore not allowed. This decision became final on 21 June 2002.

4. Fourth set of proceedings (No. Pd 354/94)

25. On 27 September 1993, 4 November 1993 and 7 July 1994 the applicant instituted four proceedings against his former employer, *Kovinar*, in the Koper Labour Court (*Delovno sodišče v Kopru*). The applicant raised complaints concerning the offer of employment, the work classification, the allegedly illegal dismissal and the payment of interest on salaries. The court decided to examine the four applications jointly.

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

On 30 December 1994, following the institution of bankruptcy proceedings against *Kovinar*, the court decided to stay the proceedings.

On 5 November 1997 the applicant lodged two written submissions and amended his initial claims.

In February 2000, the court granted the applicant's request to continue the proceedings. During the stay of the proceedings, the applicant sent several letters and lodged written observations with the court.

On 11 April 2000 the court held a hearing at which the applicant withdrew one of his claims. The proceedings with respect to this claim were therefore terminated.

On 16 May 2000 the court held a hearing and decided to deliver a written judgment. In the judgment, the court upheld the applicant's claim in part. A part of the claim was dismissed as *res iudicata*, since the Nova Gorica Labour Court had already delivered a decision in this respect.

26. On 10 November 2000 the applicant appealed to the Higher Labour and Social Court (*Višje delovno in socialno sodišče*).

On 3 July 2002 the Higher Labour and Social Court upheld the applicant's appeal in part and remitted the case to the Koper Labour Court for re-examination.

27. On 10 February 2003 the Koper Labour Court rejected the applicant's claim because *Kovinar* had ceased to exist on 17 January 2003, following the termination of the bankruptcy proceedings. The decision was

served on the applicant on 11 February 2003 and became final on 24 February 2003.

28. On 8 November 2004 the applicant requested that the proceedings be continued. This request was dismissed that same day. The applicant appealed against this decision to the Higher Labour and Social Court, but to no avail.

5. Fifth set of proceedings (No. Pd 9/2001)

29. On 15 September 1995 the applicant instituted proceedings against the Ministry of Defence of the Republic of Slovenia ("the Ministry") in the Koper Labour Court, Postojna Unit (*Delovno sodišče v Kopru, Oddelek v Postojni*), seeking payment of a portion of his salary on the basis of duty service for July 1995 and unpaid benefits in the amount of 15,868.27 Slovenian tolar (approximately 66 euros).

On 9 April 1996 the court held a hearing which was adjourned because the Ministry had lodged preliminary written submissions at the hearing.

On 10 April 1996 the applicant amended his claim.

On 25 April 1996 the court held a hearing and decided to deliver a written judgment. The court upheld the applicant's claim.

30. On 31 May 1996 the Ministry appealed to the Higher Labour and Social Court.

On 13 July 1998 the court allowed the appeal, set aside the first-instance court's judgment and remitted the case for re-examination, because the applicant had failed to state correctly the name of the defendant.

31. On 9 October 1998 the applicant lodged an appeal on points of law with the Supreme Court, which was rejected by the Koper Labour Court, Postojna Unit as not allowed.

On 2 and 22 December 1998 the Koper Labour Court, Postojna Unit, held hearings. At the latter hearing the Koper Labour Court, Postojna Unit, dismissed the applicant's claim.

32. On 11 February 1999 the applicant appealed to the Higher Labour and Social Court.

On 21 February 2001 the court allowed the appeal, set aside the first-instance court's judgment and remitted the case to the Koper Labour Court, Postojna Unit.

33. On 2 April 2001 the applicant requested that the case be transferred from the Koper Labour Court, Postojna Unit, to a different first-instance court. The request was dismissed on 11 April 2001.

On 22 August 2001 the court held a hearing and decided to deliver a written judgment. At the hearing the applicant withdrew a part of his claim.

The court upheld the applicant's claim in part.

34. On 12 December 2001 the applicant appealed to the Higher Labour and Social Court.

On 14 November 2003 the court dismissed the appeal. The decision was served on the applicant on 4 December 2003.

35. On 8 December 2003 the applicant lodged an appeal on points of law. On 8 December 2003 the Koper Labour Court, Postojna Unit, rejected the appeal as not allowed. This decision became final on 22 December 2003.

6. *Sixth set of proceedings (No. I 875/95)*

36. On 7 April 1995 a company called *Stanovanjsko podjetje d.o.o. Zagorje ob Savi* (“*Podjetje*”) instituted enforcement proceedings against the applicant in the Trbovlje Local Court (*Okrajno sodišče v Trbovljah*), seeking payment of a debt.

On 27 July 1995 the court declared the case outside of its jurisdiction and transferred it to the Koper Local Court (*Okrajno sodišče v Kopru*).

On 12 September 1995 the Koper Local Court issued a decision allowing the enforcement. The decision was served on the applicant on 20 October 1995. The court had attempted to serve the decision on the applicant earlier, but he had failed to collect it at the post office even though he had been notified of the delivery.

On 27 October 1995 the applicant objected to the enforcement.

On 6 November 1995 the court set aside the decision of 12 September 1995 and requested *Podjetje* to institute contentious civil proceedings to establish the existence of the debt.

37. On 21 May 1999 the Koper Local Court held the first hearing. The court requested the Trbovlje Local Court to take testimony from two witnesses, which it did on 15 September 1999.

On 29 October 1999 the Koper Local Court held the second hearing. The court delivered a judgment upholding the enforcement decision of 12 September 1995.

38. On 29 November 1999 the applicant appealed against this judgment to the Koper Higher Court (*Višje sodišče v Kopru*).

On 23 August 2000 the court dismissed the appeal. The decision became final immediately. It was served on the applicant on 2 November 2000.

II. RELEVANT DOMESTIC LAW

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

39. 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) has been implemented since 1 January 2007. Under its sections 1 and 2, the right to a trial within a reasonable time is

guaranteed for a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

40. Section 25 lays down the following transitional rules in relation to 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 of 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 paragraph 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 State Attorney's Office reply that the party's 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

41. Having regard to the fact that the applications were lodged with the court by the same applicant and concern similar complaints, the Court finds it appropriate to join them (Rule 42 § 1 of the Rules of Court).

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

42. The applicant complained about the excessive length of the proceedings. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

43. In substance, the applicant further complained that the remedies available for excessively lengthy 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 first, second, third, fourth and sixth sets of proceedings

44. The Government pleaded non-exhaustion of domestic remedies, in particular after the implementation of the Act on the Protection of the Right to a Trial without undue Delay (the “2006 Act”) from 1 January 2007.

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

46. The Court notes that section 25 of the 2006 Act explicitly refers to proceedings before international courts and provides for certain remedies in cases of domestic proceedings which had terminated before 1 January 2007. However, the Court found in the *Grzinčič* judgment that the conditions laid down in that section were not fulfilled as regards applications concerning terminated proceedings which had been notified to the Slovenian Government before 1 January 2007, such as the present ones (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

47. The Court therefore notes that the present applications are similar to that examined in the relevant part of the *Grzinčič* judgment (cited above, § 68), in which 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.

48. The Court finds that the Government have not submitted any convincing arguments which would require the Court to depart from its established case-law.

49. The Court further notes that the applications 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.

2. *As to the fifth set of proceedings*

50. The Government contested the applicability of Article 6 to the dispute raised by the applicant. Relying on the Court's judgment in the case of *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), they argued that the complaint brought by the applicant was outside the scope of Article 6 of the Convention, since the proceedings in the domestic courts concerned a dispute between the applicant and his employer, the Ministry of Defence.

51. The applicant did not reply to the Government's arguments.

52. The Court accepts that in the *Pellegrin* judgment it attempted to establish an autonomous interpretation of the term "civil service" and introduced a functional criterion based on the nature of the employee's duties and responsibilities.

53. However, in its recent judgment in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, 19 April 2007), the Court found that the functional criterion, adopted in the *Pellegrin* judgment, did not simplify the analysis of the applicability of Article 6 of the Convention in proceedings to which a civil servant was a party or bring about a greater degree of certainty in this area as intended (*ibid.*, § 55). For these reasons the Court decided to further develop the functional criterion set out in *Pellegrin* and adopted the following approach:

"To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the *Pellegrin* judgment, a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified." (*ibid.*, § 62)

54. Turning to the present case, the Court notes that the applicant had access to a court under national law. He made use of his right and introduced an action against his employer, the Ministry of Defence. In the course of the proceedings, the domestic labour courts examined the merits

of his claim contesting the amount of his salary for July 1995 and seeking payment of unpaid benefits.

55. It is undisputed that the applicant had access to a court under national law. Accordingly, Article 6 is applicable (see *Vilho Eskelinen*, cited above, § 63).

56. The Government also raised an objection of non-exhaustion. The applicant contested that argument.

57. Recalling its conclusions regarding the admissibility of the first, second, third, fourth and sixth sets of proceedings, dismissing the Government's plea of non-exhaustion (see paragraphs 46-49 above), the Court notes that this complaint is likewise not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

58. The Government first emphasised that the applicant lodged numerous similar or identical claims in various courts, some of which had been joined in a single set of proceedings. In addition, occasionally he had failed promptly to collect the courts' papers which were deposited at the post office, although he was informed of this. It follows that his attitude contributed to the length of the proceedings. They were prolonged also due to the complex bankruptcy proceedings that had been instituted against the defendant, the applicant's former employer. In contrast, the courts examined the cases in accordance with the provisions of the domestic legislation and without any undue delays. However, their normal functioning was disturbed somewhat by the reform of the judiciary which took effect in 1995.

59. The applicant contested the Government's claims and reiterated that the proceedings were evidently excessively long.

60. In determining the relevant period to be taken into consideration, the Court notes that the proceedings at issue started before 28 June 1994, the day the Convention took effect with respect to Slovenia. Given its jurisdiction *ratione temporis*, the Court can only consider the period which has elapsed since that date, although it will have regard to the stage reached in the proceedings in the domestic courts on that date (see, for instance, *Belinger*, cited above, and *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI).

61. The period to be taken into consideration with respect to the first set of proceedings began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 6 November 2001, the day the Higher Labour and Social Court's decision was served on the

applicant. It therefore lasted over seven years and four months for three levels of jurisdiction.

62. The period to be taken into consideration with respect to the second set of proceedings began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 14 May 2002, the day the applicant's appeal on points of law to the Supreme Court was rejected. It therefore lasted nearly seven years and eleven months and three levels of jurisdiction were involved, one of which examined the case twice.

63. The period to be taken into consideration with respect to the third set of proceedings began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 21 June 2002, the day the Koper District Court's decision became final. It therefore lasted nearly eight years for three levels of jurisdiction.

64. The period to be taken into consideration with respect to the fourth set of proceedings began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia, and ended on 24 February 2003, the day the Koper Labour Court's decision became final. It therefore lasted nearly eight years and eight months and two levels of jurisdiction were involved, one of which examined the case twice.

65. The period to be taken into consideration with respect to the fifth set of proceedings began on 15 September 1995, when the applicant started proceedings in the Koper Labour Court, Postojna Unit, and ended on 22 December 2003, the day the decision of the Koper Labour Court, Postojna Unit, rejecting the applicant's appeal on points of law, became final. It therefore lasted over eight years and three months and three levels of jurisdiction were involved, one of which examined the case twice and two of which examined the case three times.

66. The period to be taken into consideration with respect to the sixth set of proceedings began on 7 April 1995, the day the enforcement proceedings were instituted against the applicant in the Trbovlje Local Court, and ended on 2 November 2000, the day the Koper Higher Court's decision was served on the applicant. It therefore lasted nearly five years and seven months and two levels of jurisdiction were involved.

67. 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).

The Court reiterates that special diligence is necessary in employment disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

68. The Court concedes that the bankruptcy proceedings, which had been instituted against the applicant's adversary, rendered the domestic

proceedings more intricate. In addition, it is conceivable that the applicant could have facilitated the examination of his claims against his former employer, had he lodged the claims in a single set of proceedings.

69. Nonetheless, 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 cases the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

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

2. Article 13 of the Convention

70. 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 *Grzinčič*, cited above) and sees no reason to reach a different conclusion in the present cases.

71. Accordingly, the Court considers that in the present cases 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 cases heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 430,740.14 euros (EUR) in respect of pecuniary damage for the loss of profits and inability to receive any payment of damages awarded in domestic proceedings, since *Kovinar* ceased to exist. He further claims EUR 650,000 in respect of non-pecuniary damage.

74. The Government contested the claim.

75. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-

pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,200 under that head.

B. Costs and expenses

76. The applicant also claimed approximately EUR 7,700 for the costs and expenses incurred before the Court and EUR 2,700 for the costs and expenses incurred in the proceedings before the domestic courts to which he was a party.

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

78. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses in the proceedings before the Court only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 under this head.

79. The Court further notes that the proceedings before the domestic courts were not at all aimed at remedying the violations of the Convention rights alleged by the applicant before the Court (see, *Scordino v. Italy (no. 1)* [GC], no. 36813/98, §§ 283/286, ECHR 2006-...). The applicant therefore cannot claim the reimbursement of costs incurred before the domestic courts.

C. Default interest

80. 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. *Decides* to join the applications;
2. *Declares* applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,200 (two thousand two hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Corneliu BÎRSAN
President