



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

THIRD SECTION

CASE OF JELENC v. SLOVENIA

(Application no. 37166/02)

JUDGMENT

STRASBOURG

15 November 2007

FINAL

15/02/2008

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 Jelenc 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. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 18 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 37166/02) 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 Ivan Jelenc (“the applicant”), on 26 September 2002.

2. The applicant was represented by Mrs M. K. Verstovšek, a lawyer practising in Celje. 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 9 June 2006 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

5. The applicant was born in 1968 and lives in Celje.

6. On 12 January 1997 the applicant was injured in a car accident. The perpetrator of the accident had taken out insurance with the insurance company ZT.

7. On 24 September 1997 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 5,887,277 Slovenian tolars (approximately 24,500 euros) for the injuries sustained.

Between 18 February 1998 and 27 September 1999 the applicant made five requests that a date be set for a hearing.

Between 4 September 1998 and 19 September 2000 he lodged three preliminary written submissions and/or adduced evidence.

Three hearings were held between 15 February 2000 and 26 October 2000.

During the proceedings the court appointed a medical expert.

At the last-mentioned hearing the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 21 December 2000.

8. On 3 January 2001 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*). ZT cross-appealed.

On 4 July 2001 the court dismissed both appeals.

The judgment was served on the applicant on 3 October 2001.

9. On 2 November 2001 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*). The applicant also made a request for the withdrawal of one of the judges.

On 25 February 2002 the president of the Supreme Court dismissed the applicant's request for the withdrawal.

On 11 December 2002 the court allowed the applicant's appeal on points of law in part and increased the amount of the damages awarded. The judgment was served on the applicant on 30 January 2003.

II. RELEVANT DOMESTIC LAW

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

10. 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.

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

12. 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...”

13. In substance, the applicant further complained that the remedies available for excessive length of court 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

14. 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.

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

16. The Court notes that section 25 of the 2006 Act explicitly refers to proceedings before international courts initiated before 1 January 2007 and provides for certain remedies in cases of domestic proceedings which had terminated. 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 one (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

17. The Court therefore notes that the present application is 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.

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

19. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

20. The period to be taken into consideration began on 24 September 1997, the date on which the applicant instituted proceedings in the Celje District Court, and ended on 30 January 2003, the date on which the Supreme Court's judgment was served on the applicant. It therefore lasted more than five years and four months for three levels of jurisdiction.

21. 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).

22. 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, in particular before the first-instance court, was excessive and failed to meet the “reasonable time” requirement.

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

2. Article 13

23. 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 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 case.

24. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 700 under that head.

B. Costs and expenses

29. The applicant also claimed approximately EUR 1,210 for the costs and expenses incurred before the Court.

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

31. 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. The Court also notes that the applicant's lawyer is one of the Verstovšek lawyers, who lodged approximately 850 applications which, apart from the facts, are essentially the same as this one. Accordingly, in the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

32. 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;
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 700 (seven hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Corneliu BÎRSAN
President