



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

THIRD SECTION

CASE OF TOMAŽIČ v. SLOVENIA

(Application no. 38350/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

02/06/2008

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 Tomažič 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. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 38350/02) 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 Bogomir Tomažič (“the applicant”), on 14 October 2002.

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

3. The applicant alleged, *inter alia*, that the length of the proceedings he had instituted before the domestic courts was in breach of Article 6 § 1 of the Convention. 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 28 September 2006 the Court decided to give notice of the application 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.

5. On 2 May 2007 the Court decided to invite the Government to submit further written observations on the admissibility of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1946 and lives in Maribor.

7. On 10 May 1993 the applicant instituted civil proceedings against a company, SCT, and the Ministry of Transport and Communications (“the MTC”) in the Maribor Basic Court (*Temeljno sodišče v Mariboru*) seeking compensation and *restitutio in integrum* in respect of damage caused by the construction of a motorway near real estate he owned.

8. On 28 June 1994 the Convention entered into force in respect of Slovenia. Thereafter, the (renamed) Maribor District Court (*Okrožno sodišče v Mariboru*) held four hearings in the case. The hearing held on 18 September 1995 was adjourned *sine die* in order for the applicant to submit further submissions. The next hearing scheduled for 27 January 1997 was called off at the applicant’s request due to a change in his legal representation. Subsequently, the hearing held on 9 April 1997 was adjourned *sine die* since the parties were given sixty days to reach an out-of-court settlement. On 20 October 1997 the applicant informed the court that the settlement had not been reached. The next hearing, held on 23 September 1998, was adjourned until 11 November 1998 (see paragraph 11 below) in order for the applicant to reply to the MTC’s late submissions. However, due to another change in his legal representation, the applicant failed to submit his reply.

9. During the proceedings, the court appointed three experts in construction science. The first expert, appointed on 10 August 1994, withdrew on 23 August 1994. The following day, the court appointed the second expert, who submitted a report on 22 December 1994. The third expert was appointed on 22 January 1998 and submitted a report on 23 May 1998.

10. Between 22 January 1997 and 29 September 1998 the applicant submitted four preliminary written submissions.

11. At the hearing held on 11 November 1998 the court decided to deliver a written judgment. The judgment, upholding the applicant’s claim in part, was served on the applicant on 7 January 1999.

12. On 20 January 1999 the applicant appealed to the Maribor Higher Court (*Višje sodišče v Mariboru*). In his appeal, the applicant referred, *inter alia*, to the building permits obtained by the MTC in 1990 and 1991, which allegedly obliged the MTC to compensate the damage caused as a result of the construction work on the motorway.

On 5 June 2001 the court allowed the applicant’s appeal in part and remitted the respective part of the case to the first-instance court for re-examination.

13. On 24 August 2001 the applicant lodged a constitutional appeal against the second-instance judgment. The appeal was dismissed by the Constitutional Court on 25 April 2002 due to non-exhaustion.

14. Meanwhile, in the remitted part of the proceedings, the applicant lodged, between 2 October 2001 and 11 May 2004, six preliminary written submissions and adduced evidence.

15. On 15 October 2001 the court held the first hearing in the remitted proceedings, which was then adjourned *sine die*. Although the reasons for the adjournment were not stated in the records of the hearing, it appears that the applicant asked the court to allow him a sixty-day time-limit to prepare his answer to the MTC's preliminary written submissions of 11 October 2001 which he had received only at the hearing. He further asked the court to adjourn the hearing until the Constitutional Court had decided on his constitutional appeal (paragraph 13 above). At the same time he also made a request for the withdrawal of the sitting judge. That request was rejected on 7 December 2001.

16. On 27 May 2003 the court forwarded a document concerning an assessment of certain plots of the relevant real estate to the parties. They submitted their pleadings in reply by 9 July 2003.

17. On 21 October 2003 the court appointed another expert in construction science and an agricultural expert. The experts submitted their reports on 24 February and 25 March 2004 respectively.

18. The court held hearings on 1 June and 20 September 2004.

19. At the hearing held on 20 September 2004 the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on him on 21 October 2004.

20. On 3 November 2004 the applicant appealed to the Maribor Higher Court.

On 14 June 2005 the court dismissed the applicant's appeal.

21. On 5 September 2005 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 13 July 2006 the latter dismissed the appeal as unfounded in so far as the compensation was concerned and as inadmissible in respect of the remainder.

22. On 7 November 2006 the applicant lodged a constitutional appeal. The proceedings are currently pending before the Constitutional Court.

II. RELEVANT DOMESTIC LAW

23. The Act on the protection of the right to a trial without undue delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Gazette, no. 49/2006 – “the 2006 Act”) became operational on 1 January 2007. It provides for two remedies to expedite pending proceedings – a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) – and, under certain conditions, for a claim for just satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*). The relevant provisions read 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 is taken by the ... president of the court

...”

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.

...”

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.

(2) The president of the Supreme Court of the Republic of Slovenia shall have the competence to decide on the motion for a deadline concerning cases heard by a higher court or a court having the status of higher court.

(3) The president of the Supreme Court of the Republic of Slovenia shall have the competence to decide on the motion for a deadline concerning cases heard by the Supreme Court of the Republic of Slovenia.

...”

Section 10 - Decision on the motion for a deadline

“The president of the court hearing the case shall forthwith refer the motion for a deadline together with the case file and the supervisory appeal file to the president of the court competent to decide on the motion for a deadline.”

Section 15 - Just satisfaction

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

...”

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 a motion 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 motion within nine months of the final resolution of the case. The State Attorney's Office shall rule on the motion 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 paragraph 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 motion for settlement, or the State Attorney's Office and the party fail to negotiate an agreement within three months of the date of the motion 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 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 to exist 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 of 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 of 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 of receiving notification from the State Attorney's Office 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."

24. The relevant provisions of the Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette, no. 83/2001) provide:

Section 319

“A judgment, against which an appeal can no longer be lodged, shall become final (*pravnomočen*), in so far as the party’s claim or counter-claim has been decided therein.

...”

Section 333

“The parties may lodge an appeal against a judgment delivered at first instance within thirty days from the service of its written grounds...

An appeal, lodged on time, precludes the judgment from becoming final in the part which has been challenged in the appeal.”

Section 367

“The parties may lodge an appeal on points of law against a final judgment, delivered at second instance, within thirty days from the service of its written grounds.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLES 6 § 1 (length) AND 13 OF THE CONVENTION**

25. 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...”

26. In substance, the applicant further complained that the remedies available for excessively long 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. *The parties' submissions*

27. In their observations, the Government argued that the applicant had failed to exhaust domestic remedies in that he had not availed himself of the remedies available prior to the implementation of the 2006 Act, in particular, a motion for the preliminary settlement of a dispute under section 14 of the Public Attorney Act and a compensation claim under section 26 of the Slovenian Constitution. They also informed the Court that, further to its judgment in *Lukenda v. Slovenia* (no. 23032/02, 6 October 2005) binding the Slovenian State to adopt appropriate legal measures and administrative practices in order to secure the right to a trial within reasonable time, the 2006 Act had been enacted and had become operational on 1 January 2007. The 2006 Act had established effective remedies in respect of length-of-proceedings complaints.

28. Following the implementation of the 2006 Act, the Court invited the Government to explain the relevance of the new legislation to the issue of exhaustion of domestic remedies in the present case, particularly in the light of the fact that the respective proceedings had been “finally resolved” before 1 January 2007 and subsequently continued before the Constitutional Court.

29. The Government submitted in reply that, according to section 19 of the 2006 Act, a just satisfaction claim can only be awarded in respect of excessive delays which occurred in first or second-instance proceedings.

30. As to the acceleratory remedies, the Government submitted that, under sections 9 and 10 of the 2006 Act, an aggrieved party can also use the acceleratory remedies in proceedings before the Supreme Court. In this connection it is irrelevant whether the case had been “finally resolved” before or after 1 January 2007. Moreover, referring to the Court’s judgments in *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI) and *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-...), the Government argued that the State should enjoy a certain margin of appreciation as to the manner of providing a domestic remedy in respect of the “reasonable time” requirement. The Government also referred to the Court’s opinion that by choosing to introduce only a compensatory remedy for length-of-proceedings complaints the State would still comply with the requirements of Article 13. In the Government’s view, there was no reason why the same conclusion should not apply to the reverse situation where the domestic law provided only for remedies designed to expedite proceedings, especially when this possibility was open in respect of proceedings before the Supreme Court.

31. In addition, while acknowledging that the 2006 Act did not cover the proceedings before the Constitutional Court, the Government submitted that

amendments to the Constitutional Court Act (Official Gazette, no. 51/07) were introduced in July 2007 with the aim of simplifying and shortening the procedure before that court. These changes were expected to have an effect in practice at the end of 2008.

32. Finally, the Government submitted that section 25 of the 2006 Act concerned only proceedings where the violation has fully ceased to exist.

33. The applicant argued that the 2006 Act became operational only on 1 January 2007.

2. The Court's assessment

(a) Relevant principles deriving from the Court's case-law

34. The Court reiterates, firstly, that by virtue of Article 1 of the 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.

35. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Kudła*, cited above, § 152). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (*ibid.*).

36. Under Article 35, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, p. 11, § 27).

37. The Court reiterates that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (*ibid.*, § 159). The same is necessarily true of the concept of "effective" remedy within the meaning of Article 35 § 1 (see *Mifsud v.*

France (dec.) [GC], no. 57220/00, ECHR 2002-VIII). However, for countries where length-of-proceedings violations already exist, a remedy designed to expedite the proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long (*Scordino (no. 1)*, cited above, § 185).

38. Finally, the Court has already had occasion to reiterate that, subject to compliance with the requirements of the Convention, the Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision (*Scordino (no. 1)*, cited above, §188).

(b) The Court's findings in the *Grzinčič* judgment and *Korenjak* decision

39. On 3 May 2007 the Court delivered a judgment in the case of *Grzinčič v. Slovenia* (no. 26867/02, 3 May 2007) followed by the decision in *Korenjak v. Slovenia* ((dec.) no. 463/03, § 62, 15 May 2007) in which the applicants complained, *inter alia*, about the length of proceedings which were pending at second instance. Further to its assessment of the 2006 Act, the Court was satisfied that the aggregate of remedies provided by the new legislation in cases of excessively long proceedings pending at first and second instance were effective in the sense that the remedies were in principle capable of both 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 had already occurred (see *Grzinčič*, cited above, § 98). The Court therefore concluded that the applicants should have exhausted the new remedies in order to comply with Article 35 § 1 of the Convention. The Court further found that this conclusion was valid not only for those 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 (see *Grzinčič*, cited above, § 102).

(c) Application to the present case

40. It should first be observed that the Maribor Higher Court dismissed the applicant's appeal against the first-instance judgment on 14 June 2005 (see paragraph 20 above). At that point the proceedings became "finally resolved" (see paragraph 24 above), that is, no further ordinary appeal lay against the judgment. Subsequently, the applicant availed himself of an appeal on points of law. The Supreme Court decided on his appeal on points of law on 13 July 2006. On 7 November 2006 the applicant lodged a constitutional appeal and the proceedings have since then been pending before the Constitutional Court (paragraphs 21 and 22 above). Having regard to these circumstances, the Court notes that the present case is significantly different from the *Grzinčič* (cited above, §§ 77-111) and

Korenjak (cited above) cases, which concerned proceedings that were pending at second instance on the date the 2006 Act became operational (paragraph 39 above).

41. The Court takes note of the Government's statement that under the 2006 Act just satisfaction can be claimed in respect of first and second-instance proceedings (paragraph 29 above). The Court however observes that, pursuant to section 15 of the 2006 Act, for the claim to be admitted, a party must successfully avail himself of a supervisory appeal or lodge a motion for a deadline as provided by the 2006 Act. Moreover, the request for just satisfaction in respect of non-pecuniary damage – initially in the form of a motion for a settlement – must be lodged within nine months of the final resolution of the proceedings (see section 19 – paragraph 23 above), which in the present case was the Maribor Higher Court's decision of 14 June 2005. The Court therefore finds that the applicant could not have used the just satisfaction claim under section 15 taken in conjunction with sections 19 and 20 of the 2006 Act, which became operational only on 1 January 2007, that is to say about a year and a half after the final resolution of the case. Moreover, there is nothing in the 2006 Act to warrant an assumption of retroactive application.

42. With regard to the Government's argument that the 2006 Act established acceleratory remedies which can also be used in proceedings before the Supreme Court (paragraph 30 above), the Court notes that in the present case the proceedings before the Supreme Court ended on 13 July 2006 (paragraph 21 above) which was before the date on which the new legislation became operational.

43. The Court also notes that, as the Government acknowledged, the 2006 Act does not provide any remedies in respect of proceedings before the Constitutional Court. The new amendments to the Constitutional Court Act, which should bear fruit in practice only at the end of 2008 (paragraph 31 above), cannot, in the Court's view, be regarded as redressing the situation in the present case.

44. The Court observes that the 2006 Act includes a special provision under section 25 addressing cases lodged with the Court before 1 January 2007 in which the violation of the "reasonable time" requirement had already ceased to exist. Pursuant to that provision the State Attorney's Office shall offer the applicant a settlement in respect of just satisfaction within four months of communication of the application to the Government. Once this condition has been satisfied and if no settlement has been reached, it is open to the applicant to lodge a just satisfaction claim with the domestic courts. The Court further observes that the notion of "a violation of the right to a trial without undue delay has already ceased" refers to terminated proceedings (see *Grzinčič*, cited above, § 66).

In the instant case, the Court finds that the applicant had no possibility of obtaining relief under section 25 of the 2006 Act. The Court notes in this

connection that the impugned proceedings have continued after 28 September 2006, the day the application was communicated to the Slovenian Government, and that the State Attorney's Office has made no proposal to the applicant for a settlement under section 25 of the 2006 Act (*mutatis mutandis*, *Grzinčič*, § 66).

45. In conclusion, the Court finds that the Government have failed to demonstrate that the applicant could obtain relief – either preventive or compensatory – by having recourse to the new remedies available under the 2006 Act. The Court therefore notes that the only remedies at the applicant's disposal were the remedies available prior to the implementation of the 2006 Act (paragraph 27 above). These remedies were considered ineffective by the Court in its earlier judgment in *Lukenda* (cited above, §§ 66-71). There is nothing in the present case which would lead the Court to reach a different conclusion from the one in that judgment (see, *mutatis mutandis*, *Grzinčič*, cited above, § 68).

46. The Government's objection must therefore be dismissed. The Court further notes that the applicant's complaint relating to the length of the proceedings 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

(a) The parties' submissions

47. The Government argued that the proceedings before the Constitutional Court should not be taken into account when calculating the length of the proceedings in the present case. They submitted that the constitutional appeal of 24 August 2001 had been dismissed due to non-exhaustion of legal remedies and that the applicant's constitutional appeal of 7 November 2006 had no prospects of success.

48. The Government further maintained that the case was a complex one. The courts had dealt with it diligently and as promptly as possible. Referring to *Wiesinger v. Austria* (judgment of 30 October 1991, Series A no. 213, § 57), the Government argued that the applicant had availed himself of numerous procedural means and remedies, which had prolonged the proceedings. Although the applicant had a right under the national law to use these avenues, their use should constitute at least an objective fact not capable of being attributed to the State. Furthermore, the Government argued that the domestic courts should not, as in the judgment of *Deželak v. Slovenia* (no. 1438/02, 6 April 2006), be blamed for remitting the case for

re-examination. Relying on *Bock v. Germany* (judgment of 29 March 1989, Series A no. 150, § 43-44), the Government averred that the national courts were in the best position to judge whether the case should be remitted for re-examination.

49. In addition, the Government submitted that the hearings had been adjourned on many occasions because of the applicant or because of the attempts to reach a settlement between the parties. In the Government's view, the applicant had not shown the required diligence in the proceedings and his contribution to the length of the proceedings had been very high, if not exclusive.

50. The applicant argued that the domestic courts were to be blamed for the delays in the proceedings. He furthermore stressed that the decision as to whether a hearing should proceed or should be adjourned is made by the judges and not by the parties to proceedings.

(b) The Court's assessment

(i) Period to be taken into consideration

51. The period to be taken into consideration began on 28 June 1994, the date the Convention entered into force with respect to Slovenia.

52. As far as the end of the period is concerned, the "time" whose reasonableness is to be reviewed covers in principle the entirety of the litigation, including the appeal proceedings (*Deumeland v. Germany*, judgment of 29 May 1986, Series A no. 100, § 77). The proceedings further to the second constitutional appeal are to be taken into account in this connection since they are, in principle, able to influence the outcome of the proceedings before the lower courts (see *Tričković v. Slovenia*, no. 39914/98, §§ 27-29 and 36-41, 12 June 2001, *Šubinski v. Slovenia*, no. 19611/04, § 69, 18 January 2007, and *Antolič v. Slovenia*, no. 71476/01, § 17, 1 June 2006). The Court notes in this connection that the Government did not claim that the applicant's second constitutional appeal was wholly inadmissible on procedural grounds. As regards the substance of the applicant's complaints submitted to the Constitutional Court, the Court is not in a position to speculate about the outcome of those proceedings.

As regards the first – premature – constitutional appeal, the Court notes that the Government have failed to explain why it should have interrupted the proceedings which were at that time pending before the first-instance court (see paragraphs 12 to 15 above).

53. Accordingly, the period to be considered has not yet ended and has therefore lasted more than thirteen years for four levels of jurisdiction, and due to the remittal the case has been considered at six instances.

(ii) Relevant criteria

54. As to the reasonableness of the length of the proceedings, the Court reiterates that it 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).

55. As regards the nature of the case, the Court notes that the domestic courts obtained fresh expert reports four times (see paragraphs 9 and 17 above). It could therefore be accepted that the case was of a certain, though limited, complexity.

56. Concerning the applicant's behaviour, the Court notes that the applicant took some steps that slowed the progress of the proceedings, particularly as regards the first examination of the case before the first-instance court. Three hearings held within that period were adjourned at the applicant's request. In addition, the hearing held on 9 April 1997 was adjourned so as to give the parties sixty days to negotiate a settlement, but the applicant informed the court that the settlement had not been reached only in October 1997 (paragraph 8). Likewise, the applicant requested the adjournment of the hearing held on 15 October 2001, during the re-examination proceedings (paragraph 15 above). The Court agrees with the Government (paragraph 49 above) that some of these adjournments and the resulting delays could have been avoided had the applicant acted more diligently. It must, however, add that the decision to adjourn the hearing *sine die* was taken by a judge whose responsibility it was to schedule a new hearing (see, *mutatis mutandis*, *Lesar v. Slovenia*, no. 66824/01, § 31, 30 November 2006).

57. The Court further notes that while it could be accepted that the applicant could have avoided lodging his premature constitutional appeal (see paragraph 13 above), it has, however, not been explained by the Government why this fact could have affected the progress of the main proceedings in any significant way (paragraph 47 above).

58. As regards the fact that the applicant made use of all available appeals with a view to challenging the outcome of the proceedings, it is noted that he succeeded with his first appeal to the Higher Court and, as a result, the case was remitted for re-examination. His remaining appeals have, however, so far been unsuccessful. As the Government agreed, it cannot be said that the applicant abused his procedural rights in this respect (paragraph 48). However, as the Court has held on many occasions, the applicant's use of remedies should be considered as constituting an objective fact not capable of being attributed to the respondent State, and this is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 6 § 1 (see, for example, *Lesar*, cited above, §§ 28-30).

59. With respect to the conduct of the domestic courts, the Court considers that both at first instance and in the appeal proceedings there were substantial delays. It notes at least four periods of lack of activity, for which the State was essentially responsible.

Firstly, there was a period of more than one year and four months between the hearings scheduled for 18 September 1995 and 27 January 1997.

Secondly, it took almost a year for the court to schedule a new hearing following the adjournment of the hearing of 9 April 1997 and the applicant's letter informing the court that no settlement had been reached (see paragraph 8 above).

Thirdly, in the first set of appeal proceedings before the Maribor Higher Court, it took more than two years and four months for the second-instance court merely to decide on the applicant's appeal (paragraph 12 above).

Finally, further to the remittal of the case for re-examination, the case was dormant for more than one year and five months (between 7 December 2001 and 27 May 2003 – see paragraphs 15 and 16 above) and, as a result, two years and seven months had passed between the first and second hearings (paragraphs 15 and 18 above).

60. In all, the proceedings at issue have extended over more than thirteen years. Although the applicant should have been more diligent in pursuing his case and despite the fact that the rescheduling of several hearings can, at least in part, be attributed to him, the Court notes that a number of delays can be attributed to the courts, particularly as regards the first-instance proceedings and the first set of appeal proceedings before the Maribor Higher Court.

61. In view of the foregoing and having regard to its case-law on the subject, the Court finds that there has been a breach of Article 6 § 1.

2. Article 13

62. The Government submitted that under the Slovenian law an individual has at his disposal various legal remedies in respect of alleged breaches of the “reasonable time” requirement (see paragraphs 27 to 32 above).

63. The applicant submitted that the new legislation aimed at providing remedies in respect of excessive delays – the 2006 Act – became operational only on 1 January 2007 (paragraph 33 above).

64. The Court reiterates that the standards of Article 13 require a party to the Convention to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant Convention complaint and to award appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions*

1996-V, § 145). The Court also recalls that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention 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 (see paragraph 35 above).

65. In the present case the Government have failed to show that the applicant can use any of the new remedies available under the 2006 Act (see paragraphs 40 to 45 above). As regards the remedies available prior to the implementation of the 2006 Act, the Government have also failed to submit anything that would lead the Court to a different conclusion from the one reached in earlier cases in which these remedies were considered ineffective (see paragraph 45 above and *Lukenda*, cited above, §§ 84 to 88)

66. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 (fairness) OF THE CONVENTION

67. The applicant complained that the outcome of the proceedings had not been fair, submitting that the courts had ignored the building permits obtained by the MTC in 1990 and 1991 (see paragraph 12 above).

The relevant part of Article 6 § 1 of the Convention reads as follows:

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

68. The Court observes that the applicant was able to raise the allegations concerning the alleged unfairness of the proceedings in his appeals following the first-instance court’s judgments. However, the proceedings are still pending before the Constitutional Court (see paragraph 22). It follows that these complaints are premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 32,259 euros (EUR) in respect of pecuniary damage sustained as a result of the construction of a motorway near real estate he owned.

71. The applicant further claimed EUR 20,864 in respect of non-pecuniary damage sustained as a result of the excessive delays and allegedly unfair proceedings.

72. The Government argued that the applicant’s claim in respect of pecuniary damage was totally unfounded. As regards the non-pecuniary damage claimed in respect of the alleged violation of the “reasonable time” requirement, the Government averred that this claim was not substantiated by sufficient evidence. They further submitted that the finding of a violation should represent sufficient just satisfaction in respect of the complaint concerning the length of the proceedings. Alternatively, the Court should determine the appropriate amount on the basis of its case-law.

73. 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 in respect of the excessive length of the proceedings and of the lack of an effective remedy. Ruling on an equitable basis and taking into account the applicant’s contribution to the length of the proceedings (paragraphs 54 to 60 above), it awards him EUR 3,500 under that head.

B. Costs and expenses

74. The applicant also claimed EUR 8,013 for costs and expenses incurred before the domestic courts. In addition, he claimed the reimbursement of the costs and expenses incurred before the Court, but did not specify an amount.

75. The Government submitted that the expenses incurred before the domestic courts were not related to the applicant’s complaints before the Court. As to the claim for expenses incurred before the Court, the Government submitted that an amount had not been specified. It asked the Court to decide on this claim on the basis of its case-law.

76. Under the Court’s case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers that the applicant, who was not represented by a lawyer, must have had to bear expenses in connection with the proceedings before the Court. The Court considers it reasonable to award him the sum of EUR 150 in that connection (see, for example, *Bauer v. Slovenia*, no. 75402/01, § 26, 9 March 2006, and *Vidic v. Slovenia*, no. 54836/00, § 31, 3 August 2006).

C. Default interest

77. 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 complaints concerning the length of the proceedings and the effectiveness of the remedies available in that respect admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings;
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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 150 (one hundred and fifty 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 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Corneliu BÎRSAN
President