



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

THIRD SECTION

CASE OF BUNČIČ v. SLOVENIA

(Application no. 42852/02)

JUDGMENT

STRASBOURG

24 January 2008

FINAL

24/04/2008

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

Corneliu Bîrsan, *President*,
Boštjan M. Zupančič,
Elisabet Fura-Sandström,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele,
Isabelle Berro-Lefèvre, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 42852/02) 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, Mrs Marija Bunčič (“the applicant”), on 28 November 2002.

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

3. The applicant alleged, *inter alia*, that the length of the proceedings before the domestic courts had been excessive and in breach of Article 6 § 1 of the Convention. In substance, she 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 communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Portorož.

6. In 1984 the applicant was injured in a car accident caused by an employee of a company TOP Portorož, subsequently renamed Clothes Cleaning Company Lucija ("the Lucija"). Allegedly since the accident, the applicant has suffered from a mental illness.

7. On 15 April 1988 the applicant instituted civil proceedings against the Lucija in the Koper Basic Court (*Temeljno sodišče v Kopru*) seeking damages for the injuries sustained.

8. On 28 June 1994 the Convention entered into force with respect to Slovenia. By then, the court had scheduled four hearings. At least two of them were adjourned due to the applicant.

9. Subsequently, the hearing held on 7 July 1994 was adjourned until 15 July 1994 due to the parties' attempt to reach an out-of-court settlement. Since no settlement had been reached, the court held a hearing on 15 July 1994 and appointed a medical expert to determine the extent to which the applicant's illness had resulted from the injuries sustained in the accident.

10. On 24 October 1994 the expert informed the court that the applicant had refused the examination.

11. The hearing scheduled for 25 November 1994 was cancelled at the applicant's request.

12. Further to the reform of the judicial system in Slovenia, the renamed Koper District Court (*Okrožno sodišče v Kopru*) held a hearing on 25 September 1995. The hearing, as it appears from the minutes, was adjourned due to the applicant's husband's continuous disturbance of the proceedings.

13. On 27 September 1995 the applicant requested the judge to stand down. On 28 November 1995 the request was rejected as manifestly ill-founded by the President of the Koper District Court.

14. The hearing scheduled for 22 December 1995 was adjourned until 22 January 1996 at the applicant's request.

15. On 10 January 1996 the applicant lodged an application with the Supreme Court (*Vrhovno sodišče*) complaining that the Koper District Court had been conducting the proceedings unlawfully. On 15 January 1996 the applicant was advised by the Koper District Court to appoint an advocate to represent her instead of her husband. Subsequently, on 18 January 1996, the applicant's husband informed that court that the applicant would not attend further hearings until her application was examined by the Supreme Court. On 15 April 1996 the Supreme Court, treating the application as a request for withdrawal of the judge, sent it to the Koper District Court. On 17 June 1996 the request was rejected as manifestly ill-founded by the President of that court.

16. Meanwhile, on 22 January 1996 the Koper District Court held a hearing. Since none of the parties appeared at the hearing, the court stayed the proceedings (*mirovanje postopka*). The court tried several times to serve

the decision on the applicant by regular mail, which was returned stamped with a comment “away”, and through the court process server. On 10 April 1997 the decision was finally served on the applicant.

17. On 10 June 1997 the applicant's request to resume the proceedings was upheld by the court. The Lucija lodged an appeal, a copy of which was, after at least two unsuccessful attempts, served on the applicant on 25 August 1997. On 23 December 1997 the Koper Higher Court (*Višje sodišče v Kopru*) rejected the appeal. The decision was served on the applicant on 29 January 1998.

18. On 9 February 1998 the court held a hearing and decided to appoint a new medical expert.

19. On 14 February and 26 February 1998 the applicant lodged two preliminary written submissions.

20. On 16 June 1998 the expert submitted his report.

21. On 28 July 1998 the court issued a decision concerning the expert fees. Further to the applicant's appeal, the Koper Higher Court quashed the decision and on 21 June 1999 the Koper District Court issued a new decision.

22. On 28 September 1999 the applicant, for the first time represented by a lawyer, lodged preliminary written submissions whereby she modified and extended her claim.

23. The hearings scheduled for 19 October 1999 and 18 October 2000 were called off, the former due to the assignment of the sitting judge to the Higher Court and the latter at the applicant's request.

24. In the meantime, on 28 October 1999, the court received information regarding the applicant's situation from the Pension and Disability Insurance Institute of Slovenia (*Zavod za pokojninsko in invalidsko zavarovanje Slovenije*).

25. The hearing held on 8 December 2000 was adjourned until 17 January 2001 due to the applicant's proposal to reach an out-of-court settlement in the case. The settlement has apparently not been reached.

26. On 3 January 2001 the applicant requested that her husband be invited to hearings.

27. On 8 January 2001 the applicant filed preliminary written submissions.

28. On 17 January 2001 a hearing was held.

29. On 29 January 2001 the applicant informed the court that she had cancelled the power of attorney to her lawyer. In addition, she requested the judge to stand down. On 1 February 2001 the request was refused as unfounded by the President of the Koper District Court.

30. Of the five hearings scheduled between 16 March 2001 and 16 November 2001 two were called off at the applicant's request and two because the notice inviting the applicant or her husband to a hearing could not be served on them.

31. On 13 December 2001 the court held a hearing but none of the parties appeared despite being invited. Consequently, the court decided to stay the proceedings.

32. On 18 December 2001 the Lucija appealed, claiming that the proceeding should be terminated. A copy of the appeal was served on the applicant on 24 January 2002.

33. On 3 September 2003 the Koper Higher Court quashed the first-instance decision and remitted the case for re-examination.

34. On 18 September 2003 the Koper District Court issued a new decision terminating the proceedings (*ustavitev postopka* – see paragraphs 37 and 38 below). The decision became final on 7 November 2003.

II. RELEVANT DOMESTIC LAW

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

35. 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.

36. 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.”

2. *The Civil Procedure Act*

37. According to section 216 of the Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4-37/77), the court should stay the proceedings if, *inter alia*, none of the parties have appeared at a hearing. A party to proceedings can request the court to resume the proceedings after three months have passed from the day the proceedings were stayed and no later than four months from that day (Section 217). Section 216 furthermore provides that when, in the same set of proceedings, the conditions for staying the proceedings are again satisfied, it shall be presumed that the plaintiff has withdrawn his claim.

38. Equivalent provisions can be found in sections 209 and 210 of the new Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette of the Republic of Slovenia no. 83/2001) which replaced the old Act on 14 July 1999.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 (AS REGARDS THE LENGTH OF PROCEEDINGS) AND 13 OF THE CONVENTION

39. The applicant complained about the excessive length of the proceedings. She 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...”

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

41. 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.

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

43. 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 one (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

44. The Court therefore notes that this part of the present application is similar to 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.

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

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

B. Merits

1. Article 6 § 1

a) Period to be taken into consideration

47. The period to be taken into consideration began on 28 June 1994, the day when the Convention entered into force with respect to Slovenia. However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 28 June 1994 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999).

48. The relevant period ended on 7 November 2003, the day the Koper District Court's decision became final. It therefore lasted about nine years and four months. Within that period, the decisions were rendered at two levels of jurisdiction and the case was once remitted for re-examination.

b) Applicable criteria

49. 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).

50. The Government argued that the case had been a very complex one, in particular because of the procedural complications resulting from the applicant's behaviour. They further submitted that the matter at stake had obviously not been particularly important for the applicant.

51. The Court considers that the subject matter did not by itself present special difficulties with regard to the facts or the law and finds that the issue at stake in the proceedings could, in principle, be regarded as of particular importance for the applicant. As regards the applicant's conduct referred to by the Government, the Court considers that this issue should be separately assessed (see paragraphs 54 to 59 below).

52. In the Government's submission, the delays were caused due to the applicant's numerous requests for adjournments, challenges of judges and settlement proposals. Above all, the court unsuccessfully tried to serve its decisions, summonses and copies of the Lucija's submissions on the applicant on several occasions. This caused long delays and resulted in adjournments of hearings. The applicant also refused one medical examination and failed to appear at two hearings. The Government therefore argued that the length of the proceedings was attributable exclusively to the applicant and indeed not to the judicial authorities which had displayed great diligence in handling her case.

53. The applicant contested these arguments and stressed that the judicial authorities had obstructed the proceedings. Firstly, the court deliberately scheduled hearings on the days the applicant's representative was absent. Secondly, for three years the court's decisions and summonses were sent to a wrong address although the right one had been properly notified to the court. Finally, the authorities handled the applicant's case in an inefficient manner.

54. The Court reiterates that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see, *Ciricosta and Viola v. Italy*, judgment of 4 December 1995, Series A no. 337-A, § 28).

55. In the instant case, the relevant courts appear to be responsible for a certain delay between 25 November 1994 and 25 September 1995 (between two hearings, but the first was adjourned at the applicant's request), between 19 October 1999 and 18 October 2000 (substitution of a judge) and between 18 December 2001 and 3 September 2003 (proceedings on appeal). In addition, it took the courts about eleven months to decide on the applicant's appeal concerning expert fees and, further to the remittal, to issue a new decision in that respect (see paragraph 21 above).

56. Having said that, the Court notes that the applicant was primarily responsible for the length of the proceedings in the present case. During the proceedings she and her husband, acting as her representative, took a series of steps which complicated the proceedings and disclosed, if not a wish to obstruct, at least an attitude of non-cooperation (see *Ciricosta and Viola*, cited above).

57. The Court notes in this connection that the applicant and her husband were repeatedly unavailable at the address which, as it transpires from the case-file, they had provided to the courts. This caused considerable delay in the proceedings (see paragraphs 16, 17 and 30 above). The applicant's allegation that the authorities deliberately scheduled hearings on the days the applicant's representative was absent and that the court's decisions and summonses were sent to a wrong address has not been supported by any evidence.

58. The Court further observes that the applicant made three challenges against judges which were all rejected as unfounded (paragraphs 13, 15 and 29 above). At least nine hearings were adjourned due to the applicant and, above all, the proceedings were twice stayed because the applicant, who was a plaintiff in the proceedings, did not appear at the hearings (paragraphs 16 and 31 above). Ultimately, as a result of the applicant's absence at a hearing, for which she submitted no plausible explanation, the court terminated the proceedings based on the presumption that the applicant had withdrawn her claim (paragraphs 31, 37 and 38 above).

59. In conclusion, even though a period of nine years and four months for this kind of civil proceedings, on the face of it, seems unreasonable, the conduct of the applicant, who did not display the diligence to be expected of a plaintiff, leads the Court to conclude that there has been no violation of Article 6 § 1 of the Convention on account of the length of the proceedings in the present case.

2. Article 13

60. Article 13 of the Convention guarantees an “effective remedy before a national authority” to everyone who claims that his rights and freedoms under the Convention have been violated (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 29, § 64). However, Article 13 requires a remedy in domestic law only in respect of an alleged grievance which is an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Hence, the effect of this provision is to require the existence of an effective remedy to deal with the substance of an “arguable complaint” and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

61. The Court further reiterates that the existence of an actual breach of another provision of the Convention (a “substantive” provision) is not a

prerequisite for the application of Article 13 (see the *Klass and Others*, cited above, p. 29, § 64). The fact that the applicant's allegations were not ultimately substantiated does not prevent her claim from being considered an arguable one for the purposes of Article 13 of the Convention (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 330-31, § 107).

62. In the present case, the Court found the applicant's claim under Article 6 § 1 admissible. Hence, the applicant did have an “arguable complaint”, notwithstanding the Court's finding that the length of the proceedings before the domestic courts did not infringe the “reasonable time” requirement. Consequently, the applicant did have the right under Article 13 to be afforded a remedy by the national authorities to determine whether or not the proceedings instituted by her were excessively long.

63. The Court notes that the objections and arguments as to the effectiveness of the domestic remedies put forward by the Government have been rejected in earlier cases (see paragraphs 41 to 45 above and *Grzinčič*, cited above, §§75 -76) and sees no reason to reach a different conclusion in the present case.

64. 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 on whether her case had been heard within a reasonable time, as set forth in Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. The applicant complained that the claim had not been given a “fair hearing” before an “impartial tribunal”. In her submission, the judges exhibited a discriminatory attitude towards her and, as a result, delivered incorrect decisions in her case. The applicant furthermore submitted that the authorities had deprived her representative of the possibility to effectively argue the case.

66. She invoked Articles 6 § 1 and 14 of the Convention. The former, as far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

67. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have

been exhausted. The Court observes that the impugned proceedings terminated with the first-instance court's decision of 18 September 2003. It notes that the applicant did not appeal against that decision and has thus failed to exhaust available domestic remedies.

68. In any event, the Court finds that the applicant has not adduced any evidence capable of supporting her allegations that her right to a “fair hearing” before an “impartial tribunal”, alone or in conjunction with Article 14, was breached in the present case. Hence, these applicant's complaints are also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

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 11,950,282 Slovenian tolar (approximately 50,000 euros – EUR) in respect of unspecified damage.

71. The Government contested the claim.

72. Taking into consideration the finding that the proceedings to which the applicant was a party were not unreasonably long, the Court considers that the finding of a violation of Article 13 of the Convention constitutes in itself sufficient just satisfaction and makes no monetary award under this head.

B. Costs and expenses

73. The applicant also claimed 300,000 Slovenian tolar (approximately EUR 1,250) for the costs and expenses. It appears from the applicant's submissions that her claim concerned both: costs and expenses incurred in the domestic proceedings and those incurred before the Court.

74. The Government contested the claim.

75. Under the Court's case-law, an applicant is entitled to the reimbursement of her 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 her 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

76. 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 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention on the account of the length of the proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered;
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 150 (one hundred 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Corneliu Bîrsan
President