



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

THIRD SECTION

CASE OF ACIKGÖZ v. SLOVENIA

(Application no. 28936/02)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/05/2008

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 Acikgöz 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,
Alvina Gyulumyan,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 28936/02) 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 Turkish national, Ali Acikgöz (“the applicant”), on 8 January 2001.

2. The applicant was represented by the Verstovšek lawyers. 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 had been 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 18 October 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.

5. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Registrar informed the Government of Turkey of their right to submit written comments. They did not indicate that they wished to exercise this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings

6. The applicant, Mr Ali Acikgöz, is a citizen of Turkey who was born in 1945 and lives in Austria.

7. On 5 April 1987 the applicant was involved in a serious car accident in which one person died.

8. Consequently, criminal proceedings were instituted against the applicant and, on 7 April 1987, the Kranj Basic Court (*Temeljno sodišče v Kranju*) ordered him to pay a bail of 5,000 DEM.

9. During the investigation, the investigating judge acquired forensic expert reports and examined a witness.

10. On 13 April 1988 the Public Prosecutor filed an indictment against the applicant for causing the accident by negligent driving. On 14 November 1991 the Kranj Basic Court dismissed the applicant's objection against the indictment.

11. On 30 December 1991 the applicant assigned a new lawyer to represent him in the proceedings and informed the court about his address in Austria.

12. On 30 June 1992, a hearing was cancelled due to the applicant's absence. Subsequently, the court examined several witnesses in the presence of the applicant's representative.

13. On 20 October 1992 the applicant's lawyer proposed that the next hearing be held in the absence of the applicant.

14. On 28 March 1994, further to the court's request, the applicant's lawyer informed the court that he had lost contact with the applicant. On 30 March 1994 the court asked the local police to inquire about the applicant's address. The police did not reply.

15. On 28 June 1994 the Convention entered into force in respect of Slovenia.

16. On 1 February 1995 the Kranj District Court (*Okrožno sodišče v Kranju*) gained jurisdiction in the case due to the reform of the Slovenian judicial system. The case was assigned to a judge, who did not deal with it.

17. On 26 August 1996 the case was assigned to a new judge.

18. On 14 November 1996 the Kranj District Court inquired about the applicant's address. The lawyer knew that the applicant had moved to Turkey but was not aware of his new address. It appears that the applicant notified his lawyer about his address on 30 December 1996.

19. On 14 May 1998 the applicant was summoned for a hearing through an assistance of the Ministry of Justice. On 27 October 1998 a hearing was held in the absence of the duly summoned applicant. The only witness examined at the hearing referred to his testimony given in the earlier stages of the proceedings and was not asked any further questions. No other evidence was taken at the hearing. The court subsequently convicted the applicant. A written judgment was served on him on 17 November 1998.

20. On 19 November 1998 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*).

21. On 19 October 1999 the Ljubljana Higher Court acquitted the applicant. The judgment was served on the applicant on 30 December 1999.

22. On 31 December 1999 the applicant asked the Kranj District Court to reimburse him the bail (see paragraph 8 above) together with the default interest and sought reimbursement of the costs and expenses he had incurred in the proceedings.

23. On 23 February 2000 the Kranj District Court ordered the reimbursement of the costs and expenses.

24. On 10 March 2000 the Kranj District Court, relying on section 198 of the Criminal Procedure Act (see paragraph 30 below), ordered the reimbursement of the bail, but refused to reimburse the interests.

25. On 15 March 2000 the applicant appealed against that decision.

26. On 11 May 2000 the Ljubljana Higher Court rejected the appeal. The decision was served on the applicant on 29 August 2000.

B. Civil proceedings concerning the reimbursement of the interests

27. On 19 March 2001 the applicant instituted civil proceedings in the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*) seeking reimbursement of the interests incurred in respect of the bail paid in 1987. The proceedings are currently pending on appeal.

II. RELEVANT DOMESTIC LAW

28. 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) became operational on 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.

29. 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.”

30. Section 198 of the Criminal Procedure Act (*Zakon o kazenskem postopku*, Official Gazette no. 63/94) provides that the bail should be reimbursed once the criminal proceedings terminate with a final decision or a final judgment.

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

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

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

32. 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

33. 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.

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

35. 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).

36. 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.

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

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

B. Merits

1. Article 6 § 1

a) Period to be taken into consideration

39. 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).

40. As regards the end of the period concerned, the Government maintained that it had ended on 29 August 2000, when the applicant had received the Ljubljana Higher Court's decision concerning the reimbursement of the bail and related interest in the criminal proceedings.

41. The Court, having regard to its findings in *Mamič v. Slovenia* (no. 2) (no. 75778/01, §§ 25-30, 27 July 2006), sees no reason to disagree. It will limit itself to observing that the issue of the bail was determined in the context of criminal proceedings under section 198 of the Criminal Procedure Act, under which the bail must be reimbursed when the criminal proceedings are terminated (see paragraph 30 above). Thus, the proceedings culminated on 29 August 2000 when the Ljubljana Higher Court's decision was served on the applicant (see paragraph 26 above).

42. As regards the civil proceedings concerning the reimbursement of the interest, the Court notes that neither the applicant nor the Government argued that they should have been taken into account when calculating the relevant period. The Court further notes that these proceedings were instituted separately, before a different court and on the basis of the legislation governing civil disputes. Hence, the Court will only examine the length of the criminal proceedings which, as noted above, ended on 29 August 2000.

43. The period to be taken into consideration therefore lasted six years and two months. In that period the merits of the case and, subsequently, the issue of the bail were considered at two instances each.

b) The reasonableness of the length of proceedings

44. The Government argued that the applicant's lack of cooperation in the proceedings contributed to the delays and that the applicant was not available to his lawyer in the period between 17 February 1994 and 30 December 1996, which matched the period of the reorganization of the judicial system.

45. The applicant contested the Government's arguments.

46. The Court recalls that 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 other authorities, *Klamecki v. Poland*, no. 25415/94, § 87, 28 March 2002).

47. The Court reiterates that Article 6 does not require the applicant actively to co-operate with the judicial authorities in the criminal proceedings. Nonetheless, the applicant's conduct may constitute an objective fact, not capable of being attributed to the respondent State, which 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, *mutatis mutandis*, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 82, and *Šubinski v. Slovenia*, no. 19611/04, § 83, 18 January 2007).

48. In the present case, the Court considers that the issue at stake did not present special difficulties with regard to facts or law. In addition, the Court

notes that only one hearing was held in the period under the Court's temporal jurisdiction (paragraph 19 above) and that no important steps to obtain evidence appears to have been taken in that period. While it is true that the applicant failed to appear at the mentioned hearing and was unavailable for certain period of time, the Government failed to show the impact this fact had on the first-instance proceedings, which had lasted over four years and four months in the relevant period. In this connection, the Court observes that further to the ratification date (28 June 1994) the first attempt to reach the applicant was made only on 14 November 1996 (paragraph 18 above). Moreover, although the applicant's address was known since 30 December 1996, the hearing in the case was scheduled only in May 1998 (see paragraphs 18 and 19 above).

49. In these circumstances, the Court considers that 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

50. 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 case.

51. 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

52. 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

53. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. The applicant also claimed that he had suffered a

financial loss because he had been unable to use the funds paid as a bail through the long period of time.

54. The Government contested the claim.

55. As far as the applicant's claim may relate to pecuniary damage, the Court notes that the applicant did not specify it. The Court further observes that, in any event, the proceedings instituted with a view to determining the applicant's entitlement to the interest are currently pending before the second-instance court (see above paragraph 27). The Court therefore rejects the claim for pecuniary damage, but considers that the applicant must have sustained non-pecuniary damage as a result of the length of the criminal proceedings. Ruling on an equitable basis, it awards him 1,200 EUR under this head.

B. Costs and expenses

56. The applicant also claimed approximately 1,005 euros (EUR) for the costs and expenses incurred before the Court, in particular for the lawyer's fees which were specified in the documents submitted to the Court by his lawyer.

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

58. 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. 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 full sum claimed.

C. Default interest

59. 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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 1,005 (one thousand and five 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 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Corneliu Bîrsan
President