



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

THIRD SECTION

CASE OF GERŠAK v. SLOVENIA

(Application no. 35475/02)

JUDGMENT

STRASBOURG

27 May 2008

FINAL

27/08/2008

This judgment may be subject to editorial revision.

In the case of Geršak v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Ineta Ziemeļe,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 35475/02) 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 David Geršak (“the applicant”), on 19 September 2002.

2. The applicant was represented by 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 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Velenje.

6. On 13 August 1996 the applicant was injured in a car accident. The person responsible for the accident had taken out insurance with the insurance company ZT.

7. On 29 December 1997 the applicant instituted civil proceedings against ZT in the Celje District Court (*Okrožno sodišče v Celju*) seeking damages in the amount of 14,330,442 Slovenian tolar (SIT) (approximately 62,000 euros) for the injuries sustained.

8. Between 1 July 1998 and 18 April 2000 the applicant made seven requests that a date be set for a hearing.

9. Between 20 October 1999 and 23 September 2002 he lodged eleven preliminary written submissions and/or adduced evidence.

10. On 21 September 2000 the court appointed four medical experts to prepare expert reports in the case.

11. Three hearings were held between 21 September 2000 and 17 October 2002.

12. On 17 October 2002 the court decided to deliver a written judgment. The judgment, upholding the applicant's claim in part, was served on the applicant on 18 November 2002.

13. On 28 November 2002 the applicant appealed to the Celje Higher Court (*Višje sodišče v Celju*) and requested that the first-instance court to correct its judgment.

14. On 8 July 2003 the first-instance court corrected its judgment as regards legal costs.

15. On 23 December 2004 the Celje Higher Court delivered a judgment allowing the applicant's appeal in part and amending the first-instance court's judgment accordingly.

The judgment was served on the applicant on 10 January 2005.

16. On 19 January 2005 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 7 December 2006 the court delivered a judgment. It partly upheld the applicant's appeal on points of law and changed the second-instance court's judgment accordingly. The Supreme Court's judgment was served on the applicant on 18 January 2007.

II. RELEVANT DOMESTIC LAW

17. 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) was enacted on 1 January 2007. Under sections 1 and 2 of the Act, 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.

18. 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 a party has 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 of 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 parties fail to negotiate an agreement within four months of the date on which the party made 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 the State Attorney’s Office reply that the party’s proposal referred to in the previous paragraph has not been 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

19. The applicant complained of excessive length of 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...”

20. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

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

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

23. 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 (cited below) that the conditions laid down in that section had not been 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).

24. The Court therefore notes that the present application, which concerns proceedings that terminated with the Supreme Court’s judgment of 7 December 2006, 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.

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

26. 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

27. The period to be taken into consideration began on 29 December 1997, the day the applicant instituted proceedings with the Celje District Court, and ended on 18 January 2007, the day the Supreme Court decision was served on the applicant. It therefore lasted about nine years for three levels of jurisdiction.

28. 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).

29. The Government argued that the length of the proceedings was due to the complexity of the case and due to the fact that several expert opinions had been requested by the court. They further maintained that neither the courts nor the applicant could have been blamed for the length of the proceedings.

30. Although expert opinions were requested in the case, the Court notes that it does not appear from the case-file that the proceedings were procedurally or factually particularly complex (see, for example, *Novina v. Slovenia*, no. 6855/02, 26 October 2006). Moreover, for example, the appointment of the experts does not explain why more than 2 years and 8 months elapsed between the day the applicant lodged his claim and the day the first hearing was held (see paragraphs 7, 10 and 11, above).

31. 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 was excessive and failed to meet the “reasonable time” requirement.

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

2. Article 13

32. 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.

33. 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

34. 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

35. In his application form, the applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. After having been requested by the Court to submit his claim for just satisfaction, the applicant stated in his observations that he maintained his initial claim.

36. The Government commented on the applicant’s claim. They argued that it was unsubstantiated and, in alternative, excessive.

37. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,800 under that head.

B. Costs and expenses

38. The applicant also claimed approximately EUR 1,216 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.

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

40. 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 are reasonable as to quantum. The Court also notes that the applicant’s lawyers, who also represented the applicant in *Lukenda* (cited above), lodged hundreds of 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

41. 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 according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 27 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President