



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

THIRD SECTION

**CASE OF UMEK v. SLOVENIA**

*(Application no. 35463/02)*

JUDGMENT

STRASBOURG

8 January 2009

**FINAL**

*08/04/2009*

*This judgment may be subject to editorial revision.*



**In the case of Umek 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,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 December 2008,

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

## PROCEDURE

1. The case originated in an application (no. 35463/02) 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 Darija Umek (“the applicant”), on 20 August 2002.

2. The applicant was represented by Mr Golovrški, a lawyer practising in Ljubljana. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged, *inter alia*, under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive and, under Article 13 of the Convention, that no effective domestic remedy was available in respect of the length of the proceedings.

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. According to 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 1954 and lives in Litija.

6. Since 1979 the applicant was engaged as a typist at Slovenian Railways – “SZ” (*Slovenske železnice*). In 1983 a fire broke out on the premises. However, the work continued in the offices that were not directly affected by the fire. In 1984 the applicant was diagnosed as suffering from asthma and was advised to avoid dust and contact with certain material. She subsequently received daily injections. In 1985 she was recognised as suffering from level three invalidity. Subsequently, she was transferred to an administrative post. In August 1985 she stopped working, only returning for a period of eight days in 1988. In 1990 she retired owing to her invalidity.

7. On 23 November 1989 the applicant lodged a claim for compensation and loss of earnings against SZ.

8. On 31 October 1991 the second-instance court upheld a judgment by the Ljubljana Court of Associated Labour (*Sodišče združenega dela v Ljubljani*) that partly rejected the applicant’s claim for compensation against SZ. On 24 April 1992 the Ljubljana Court of Associated Labour decided the remainder of her claim.

Several hearings were held in the above proceedings.

9. On 19 November 1993 the applicant lodged a request for the reopening of the proceedings on the basis of new evidence, in particular new scientific findings concerning the effect on the respiratory system of certain gaseous emissions during a fire. The request was upheld on 14 February 1994.

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

11. On 5 July 1994 SZ lodged an appeal, which was rejected on 17 October 1995 by the Higher Labour and Social Court. On the latter date the decision to reopen the case became final and the proceedings were subsequently reopened.

12. On 25 November 1996 the court appoint an expert, which produced a report on 26 March 1997.

Between 9 January 1996 and 27 May 1997 the court held 7 hearings.

On 27 May 1997 the renamed Ljubljana Labour and Social Court (*Delovno in socialno sodišče v Ljubljani*) delivered an interim judgment in which it found SZ liable for the damage caused by the work-related disease – bronchial asthma.

13. On 9 September 1997 SZ appealed to the Higher Labour and Social Court (*Višje delovno in socialno sodišče*).

On 18 December 1997 the court allowed the appeal on the grounds, *inter alia*, that the interim judgment contained insufficient reasoning, and remitted the case to the first-instance court for re-examination.

14. In the re-examination proceedings, the expert produced an additional opinion on 18 June 1998.

15. The court held five hearings between 24 February 1998 and 23 March 1999.

On 23 March 1999 the first-instance court delivered an interim judgment in which it found SZ liable for 50% of the damages suffered by the applicant due to the asthma.

16. Both parties appealed.

On 19 November 1999 the Higher Labour and Social Court delivered a judgment rejecting the applicant's claim for compensation.

17. On 16 February 2000 the applicant lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

On 10 October 2000 the Supreme Court allowed the applicant's appeal on the grounds that the law had been wrongly applied, with the result that the facts had not been established sufficiently. It quashed the lower courts' judgments and remitted the case to the first-instance court for re-examination.

18. In the re-examination proceedings, the applicant replied to two sets of submissions by SZ.

Hearings were held on 20 June, 10 October and 5 December 2001 and 31 January 2002.

On 31 January 2002 the Ljubljana Labour and Social Court delivered an interim judgment in which it found SZ liable for 70% of the damage suffered by the applicant due to the asthma. The judgment was served on the applicant on 25 February 2002.

19. Both parties appealed.

On 26 September 2002 the Higher Labour and Social Court allowed the appeals on the grounds of, *inter alia*, insufficient reasoning and again remitted the case to the first-instance court for re-examination.

20. On 30 January 2003 a hearing was held. On the same date the first-instance court requested the Faculty of Medicine to prepare an expert report. The expert appointed by the Faculty produced the report on 4 February 2004.

A request lodged by SZ on 10 February 2004 for the expert to stand down was rejected by the court on 18 March 2004.

On 4 May 2004 the court received a reply from the expert to the defendant's objections to the findings in the report.

On 14 September 2004 the court held a hearing and delivered a judgment rejecting the applicant's claim which was served on the parties on 21 October 2004.

21. On 2 November 2004 the applicant appealed.

On 27 January 2005 the Higher Labour and Social Court rejected the appeal.

22. On 17 March 2005 the applicants lodged an appeal on points of law.

On 17 January 2006 the Supreme Court delivered a judgment rejecting the appeal on points of law. This judgment was served on the applicant on 25 January 2006.

23. In the course of the proceedings, the applicant sent numerous requests and complaints concerning the length of the proceedings to the relevant courts and various public bodies, including the Ombudsman for Human Rights (*Varuh človekovih pravic*).

24. On 31 March 2006 the applicant lodged a constitutional appeal complaining of the unreasonable length of the proceedings and the lack of a remedy.

On 3 July 2006 the Constitutional Court rejected her appeal after finding that she should have made a claim for damages under Article 26 of the Slovenian Constitution.

## II. RELEVANT DOMESTIC LAW

25. 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.

26. Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

### **Section 25 - Just satisfaction for damage sustained prior to implementation of this Act**

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney’s Office shall offer the party a settlement on the amount of just satisfaction within four months after the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney’s Office within two months of the date of receipt of the proposal of the State Attorney’s Office. The State Attorney’s Office shall decide on the proposal as soon as possible and within a period of four months at the latest. ...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney’s Office and the party fail to negotiate an agreement within four months after the date on which the party filed its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months after receiving the State Attorney’s Office reply that the party’s proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney’s Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

## THE LAW

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

27. The applicant complained of the 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...”

28. The applicant further complained that the remedies available in respect of the length of legal proceedings in Slovenia were ineffective. She relied on Article 13 of the Convention, which 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

29. The Government pleaded non-exhaustion of domestic remedies. They referred to the remedies which had been available to individuals before the Act on the Protection of the Right to a Trial without Undue Delay (the “2006 Act”) became operational, that is 1 January 2007. In addition they submitted that the 2006 Act afforded effective remedies for length-of-proceedings complaints.

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

31. The Court notes that it has already found that the remedies available prior to the entry into force of the 2006 Act, including a claim for damages under Article 26 of the Slovenian Constitution (see paragraph 24 above), cannot be considered effective (*Lukenda v. Slovenia*, no. 23032/02, ECHR 2005-X). As regards the remedies available under the 2006 Act, the Court notes that section 25 of that Act expressly refers to proceedings before international courts and provides for certain remedies in respect of domestic proceedings which terminated before 1 January 2007. However, the Court found in the *Grzinčič* judgment that the conditions laid down in that section had not been fulfilled in respect of applications concerning terminated proceedings which had been notified to the Slovenian Government before 1 January 2007, as in the present case (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

32. 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.

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

34. 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*

#### **(a) The parties' arguments**

35. The applicant argued that her case could not be regarded as a particularly complex one. The factual issue concerning a casual link between the accident and the deterioration of her health had been dealt with by the experts, while the legal issues were of no particular complexity. Referring to the Court's case-law, she argued that the repeated orders for the re-examination of the case within a single set of proceedings indicated a serious deficiency in the judicial system. Likewise, the length of the proceedings and the remittals of the case brought about, *inter alia*, complications such as changes in the composition of the court hearing the case.

36. As regards her conduct in the proceedings, the applicant submitted that she had not taken any unusual steps and was not to blame for the delays, especially as the case was of a great importance to her.

37. The Government disputed the applicant's submissions. Referring to the Court's case-law on the subject, they argued that Article 6 did not apply to proceedings which determined whether the case was to be re-opened or not. Accordingly, that part of the proceedings, ending with the decision of 17 October 1995, was not to be taken into account when calculating the relevant period.

38. They argued that the case had been very complex both factually and legally. In the course of the proceedings two expert reports and two additional opinions had been obtained. In addition, the domestic court had held 19 hearings after the re-opening of the case.

39. As regards the conduct of the domestic authorities, the Government submitted that the courts had completed the proceedings as quickly as possible. They submitted that the State could not be held responsible for delays caused by the remittal of the case as a result of the parties' use of remedies. Referring to Article 53 of the Convention, they argued that using

the appeals procedure was an exercise of a fundamental right guaranteed by the Slovenian Constitution. The rights to a trial within a reasonable time and to appeal were often in conflict; in order to strike a balance, the Court had to accept that the duration of the proceedings in cases where the applicants had availed themselves of remedies was inevitably longer. Further, the higher courts were bound by domestic law to remit a case for re-examination if the nature of the errors committed by the lower courts so required. In that connection, the Government referred to the Court's case-law affirming that the domestic courts were in the best position to assess whether a case should be remitted to the lower court for re-examination.

40. As regards the conduct of the applicant, the Government argued that she had contributed to the length of the proceedings and that her recourse to remedies showed that she was not interested in a prompt processing of her case.

**(b) The Court's assessment**

41. The Court notes that the Convention entered into force with respect to Slovenia on 28 June 1994. On that date the applicant's request for the re-opening of the case was pending before the courts. The decision to grant her request was upheld on 17 October 1995 by the Higher Labour and Social Court and at that point the case was effectively re-opened (see paragraph 11 above). Having regard to its case-law on the subject (see, *mutatis mutandis*, *Sablon v. Belgium*, no. 36445/97, §§ 86-89 and 92, 10 April 2001, and *Löffler v. Austria*, no. 30546/96, § 19, 3 October 2000) the Court considers that the relevant period started to run with the decision of 17 October 1995. The proceedings ended on 25 January 2006, the day the Supreme Court's decision was served on the applicant (see paragraph 22 above). They therefore lasted about ten years and three months. The case was considered at three levels of jurisdiction. However, as a result of the remittals, ten instances were involved in the examination of the case in the period within the Court's temporal jurisdiction.

42. 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).

43. The Court considers that the case was of a certain, but limited, complexity. Further, it notes that, apart from availing herself of the appeals procedure, the applicant did nothing to unduly contribute to the length of the proceedings.

44. As regards the Government's argument that the delays in the proceedings should not be attributed to the State as they resulted from the parties' use of remedies, the Court notes that the level of jurisdiction at

which the case was considered as a result of the use of remedies is normally taken into account in assessing the reasonableness of the length of the proceedings. Having said that, the Court notes that in the present case the examination of the applicant's remedies was not the main reason for the length of the proceedings in the period within the Court's temporal jurisdiction. The delays in the proceedings were mainly caused by the remittal of the case.

45. The Court notes that after the reopening of the case in October 1995, the first-instance judgment of 27 May 1997 was quashed and the case remitted for re-examination. The next judgment was delivered by the first-instance court on 23 March 1999. However, that judgment was overruled by the second-instance court on 19 November 1999. Further to the applicant's appeal on points of law the Supreme Court quashed the lower courts' judgments and the case was again sent to the first-instance court for re-examination. On 31 January 2002 the first-instance court delivered a new judgment, which on 26 September 2002 was again quashed, this time by the second-instance court, and the case remitted to the first-instance court for re-examination. On 14 September 2004, seven years and three months after the first judgment in the re-opened proceedings, the first-instance court delivered a judgment which remained effective after being challenged before the higher courts (see paragraphs 11- 22 above) .

46. The Court acknowledges that the domestic courts were in the best position to judge whether the case ought to be referred back to the lower courts under the relevant provision of domestic law (*Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, § 43). Nonetheless, as it has already stressed in previous cases (see, for example, *Deželak v. Slovenia*, no. 1438/02, § 25, 6 April 2006), since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, as indeed appears to have happened in the applicant's case, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. That deficiency is attributable to the authorities, not the applicant (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

47. Having regard to the foregoing and taking also into account what was at stake for the applicant, the Court considers that in the instant case the length of the proceedings, which lasted more than ten years in the period within the Court's temporal jurisdiction, was excessive and failed to meet the "reasonable-time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

## 2. Article 13

48. 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.

49. 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 her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant complained that the proceedings were unfair, as the witnesses had lied. She also complained that the courts which had heard her case had not been impartial.

51. The Court notes that the applicant's complaints concerning the alleged unfairness and lack of impartiality in the proceedings are of a general character and are not supported by concrete evidence. Having regard to the foregoing and the documents in the case-file, it considers that the proceedings before the domestic courts in the instant case disclose no appearance of a failure to observe the requirements of fairness or impartiality under Article 6 of the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

52. The applicant further complained under Article 4 of the Convention of the allegedly harmful conditions in which she had been compelled to work, in particular between 1983 and 1990, when she had retired.

53. The Court is prevented from considering this part of the application as the events complained of (see paragraph 6 above) took place before 28 June 1994, the date the Convention entered into force in respect of Slovenia. It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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**

55. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government contested that claim.

57. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 6,400 under that head.

#### **B. Costs and expenses**

58. The applicant also claimed EUR 2,000 for costs and expenses incurred before the Court.

59. The Government submitted that the applicant had failed to indicate the scale rates on which her lawyer’s fees were based and had not specified the amounts claimed for her expenses and her legal representation. In any case, the claim was too high.

60. Under the Court’s case-law, an applicant is entitled to the reimbursement of his costs and expenses only in so far as they have been shown to have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court considers, on the basis of the information in the case-file, that it is reasonable to award the applicant the full sum claimed under this head, namely EUR 2,000.

#### **C. Default interest**

61. 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 civil proceedings and the effectiveness of the related legal remedies admissible;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
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 6,400 (six thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 2,000 (two 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Josep Casadevall  
President