



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

FIFTH SECTION

**CASE OF MISSENJOV v. ESTONIA**

*(Application no. 43276/06)*

JUDGMENT

STRASBOURG

29 January 2009

**FINAL**

***29/04/2009***

*This judgment may be subject to editorial revision.*



**In the case of Missenjoy v. Estonia,**

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

Peer Lorenzen, *President*,  
Rait Maruste,  
Karel Jungwiert,  
Renate Jaeger,  
Isabelle Berro-Lefèvre,  
Mirjana Lazarova Trajkovska,  
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 43276/06) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Mr Sergei Missenjoy (“the applicant”), on 13 October 2006.

2. The applicant was represented by Mr M. Aavik and later by Mr M. Arvisto, lawyers practising in Tallinn. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs.

3. On 6 December 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in Narva.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 19 October 1999 AS Eesti Maapank, a public limited company, lodged a claim for nearly four million kroons (EEK – corresponding

approximately to 255,000 euros (EUR)) against the applicant with the Narva City Court (*linnakohus*). The claim concerned an alleged loan the applicant had failed to pay back.

7. On 14 December 2000 AS Eesti Maapank applied for interlocutory measures. On 15 December 2000 the City Court granted the plaintiff's request and attached the applicant's property (four properties and four vehicles). The parties did not appeal against the decision.

8. However, on 2 January 2001 the applicant requested the City Court to revoke the attachment in respect of one house because it had already been mortgaged to a bank. On 19 January 2001 the City Court revoked the attachment in so far as requested.

9. On 23 October 2001 the Viru Court of Appeal (*ringkonnakohus*), on an appeal by the plaintiff, quashed the partial revocation of the attachment as it had been done without a valid legal ground.

10. On 27 February 2003 the plaintiff requested the City Court to speed up the proceedings.

11. In a letter of 27 October 2003 the City Court explained to the parties that in order to speed up the proceedings it was possible, by mutual agreement between the parties, to transfer jurisdiction to a different court. The court received no reply from the parties.

12. In the applicant's submission, he had been ready, at some stage of the proceedings, to transfer jurisdiction so that the Tallinn City Court would have tried the case. However, the plaintiff had not agreed.

13. On 12 July 2004 the Narva City Court transmitted the statement of claims to the applicant for comment. On 6 August 2004 the applicant informed the court that he did not acknowledge the claim.

14. By a decision of 1 April 2005 the City Court replaced AS Eesti Maapank as plaintiff by OÜ Trenton Invest, a private limited company, since the latter had agreed to take over the claim against the applicant.

15. On 18 May 2005 a preliminary hearing before the City Court took place. The court adjourned the hearing in order that the plaintiff could submit originals of certain documents and that an expert opinion could be obtained in respect of the genuineness of the applicant's signature on the documents. The plaintiff submitted the documents to the court on 25 May 2005. Subsequently, at the applicant's request, the court required certain additional documents from the plaintiff, which the latter was unable to provide.

16. In April 2006 the applicant became aware that the court had not sent the documents to an expert.

17. On 16 May 2006 the applicant and OÜ Trenton Invest concluded a compromise agreement. The applicant undertook to pay a sum of EEK 450,000 (approximately EUR 29,000) to the plaintiff to settle the case.

18. On 29 May 2006 the Viru County Court (*maakohus*) – the successor of the Narva City Court – approved the settlement.

19. On 21 July 2006 the County Court annulled the interlocutory measure applied on 15 December 2000.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice is mainly summarised in the judgment of *Saarekallas OÜ v. Estonia* (no. 11548/04, §§ 31-36, 8 November 2007).

21. In addition to the above, in a decision of 6 February 2006 the Administrative Law Chamber of the Supreme Court (case no. 3-3-1-4-06) considered that an appeal against a ruling of a lower court to adjourn a court hearing for an excessively long time was an effective remedy. The Supreme Court emphasised that it was irrelevant whether the lower court formulated the adjournment of the hearing by a separate written ruling or not. It noted that the higher court could not set a new time for the hearing in the lower court; however, it could oblige the lower court to re-examine the matter. The higher court could assess whether there had been relevant objective circumstances that had caused the adjournment and whether the lower court had complied with the discretionary rules in scheduling a new hearing. The opinion on the adjournment given by the parties before the lower court also had to be taken into account by the higher court in assessing whether the length of the adjournment was justified.

## THE LAW

### I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

22. On 31 March 2008 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which he had been involved. In respect of pecuniary and non-pecuniary damage and costs and expenses, the Government proposed a payment to the applicant of EUR 3,500. They invited the Court to strike out the application in accordance with Article 37 of the Convention.

23. The applicant did not agree with the Government's proposal and requested the Court to continue the examination of the application. He maintained that the Government's declaration had concerned only his

complaint under Article 6 § 1 of the Convention but not that concerning the lack of effective remedies under Article 13. He also considered that the amount proposed was too low.

24. The Court recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar*, cited above, §§ 75-77, see also *Treial v. Estonia* (no. 2) (dec.), no. 42496/05, 18 March 2008).

25. The Court notes that the Government acknowledged in their unilateral declaration that the length of the domestic proceedings did not fulfil the requirement of “reasonable time” referred to in Article 6 § 1 and proposed to award the applicant EUR 3,500. However, the Court notes that the Government’s declaration did not contain such an acknowledgment in respect of the applicant’s second complaint, that under Article 13. That being so, and considering that the complaints under Article 6 § 1 and Article 13 are inseparably linked, the former not being capable of being struck out alone, the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case.

26. Therefore, the Court rejects the Government’s request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in 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 Government contested that argument.

29. The period to be taken into consideration began on 19 October 1999 and ended on 29 May 2006. It thus lasted six years, seven months and 20 days for one level of jurisdiction.

### A. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

31. 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).

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, and also *Saarekallas*, cited above, *Shchiglitsov v. Estonia*, no. 35062/03, 18 January 2007, *Treial v. Estonia*, no. 48129/99, 2 December 2003).

33. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. 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.

## **III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

34. The applicant further complained that in Estonia there was no court to which application could be made to complain of the excessive length of proceedings. He 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**

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. *The parties' submissions*

36. The Government asserted that effective remedies were available to the applicant at domestic level in respect of the complaint under Article 6 § 1 of the Convention. They mainly advanced similar arguments as in the above-cited case of *Saarekallas*, emphasising the possibility for a party to civil proceedings to appeal against a court ruling whereby the hearing was adjourned for more than three months (Article 177 § 5 of the Code of Civil Procedure). With reference to the Supreme Court decision of 6 February 2006, they asserted that the applicant could have appealed even in the absence of a separate written ruling whereby the hearing was adjourned. They also argued that the applicant could have objected to the failure to schedule a hearing and appealed against inactivity of the court lasting for more than three months.

37. The Government pointed out that under the Courts Act (*Kohtute seadus*), disciplinary proceedings could be initiated and sanctions imposed in respect of judges who failed to perform their official duties or did so in an inappropriate manner. However, the applicant had never lodged any such complaints against the judges concerned.

38. The Government also noted that the court had proposed to the parties to the proceedings that jurisdiction be transferred so that another court with a smaller caseload could have dealt with the case, but the parties had not used this possibility.

39. Finally, in respect of compensatory remedies, the Government referred to the case-law of the Supreme Court summarised in the case of *Saarekallas*, cited above.

40. The applicant was of the opinion that the Government had failed to demonstrate how the preventive measures could have expedited the proceedings in the present case. He emphasised that it was only possible to appeal against the adjournment of a hearing if at least one hearing was held. However, in the present case the first preliminary hearing had taken place on 18 May 2005, five years and seven months after the civil proceedings had commenced. Moreover, the City Court had adjourned the hearing without scheduling the next hearing as this was dependent on the time needed to obtain a forensic expert opinion. The applicant had believed that a further delay had been caused by the expert, whereas in fact the court had failed even to seek an expert opinion for a long time.

41. In the applicant's submission, a party to domestic proceedings did not have a subjective right to require the initiation of disciplinary proceedings in respect of a judge. As concerns the transfer of jurisdiction, he pointed out that this was only possible by mutual agreement between the parties. However, in the present case the plaintiff had declined such

proposals. The applicant also disputed the existence of compensatory remedies.

## 2. The Court's assessment

42. The Court reiterates that Article 13 of the Convention 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).

43. 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 if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred. A remedy is therefore 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 (see *Sürmeli v. Germany* [GC], no. 75529/01, § 99, ECHR 2006-VII, and *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

44. The Court has emphasised that the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy. Some States have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see *Sürmeli*, cited above, § 100; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 183 and 186, ECHR 2006-V; and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74 and 77, ECHR 2006-V).

45. The Court has found, for example, that an effective preventive remedy existed in Austria where the parties to the proceedings could lodge an application for acceleration of the proceedings if the court was dilatory in taking any procedural step. A higher court could then impose an appropriate time-limit for the taking of the procedural step in question (see *Holzinger v. Austria (no. 1)*, no. 23459/94, ECHR 2001-I). The Court has also found that there was an effective remedy available in Poland where a party to the proceedings could complain about an unreasonable delay in the proceedings to a superior court which might instruct the court examining the merits of the case to take certain measures within a fixed time-limit (see *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V; and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). Preventive remedies in respect of the length of proceedings have also been found to exist, for example, in

Switzerland (see *Kunz v. Switzerland* (dec.), no. 623/02, 21 June 2005) and Portugal (see *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX). The Court has on many occasions acknowledged that this type of remedy is “effective” in so far as it hastens the decision by the court concerned (see *Scordino (no. 1)*, cited above, § 184, with further references).

46. Turning to the present case, the Court notes that the main preventive remedy referred to by the Government was the possibility under Article 177 § 5 of the Code of Civil Procedure to appeal against a court ruling whereby the hearing was adjourned for a period of more than three months. It observes that in the proceedings dealt with in the Supreme Court decision of 6 February 2006, referred to by the Government, the first-instance court had postponed the hearing for five months, whereas the complainant’s appeal against the postponement was decided by the appellate court in two months and nine days, although not in favour of the appellant in that particular case. Thus, at first sight it would seem that in some cases such an appeal might have a certain positive effect in preventing an excessive delay.

47. However, the Court notes that according to the Supreme Court decision cited above, the appellate court could only quash the ruling of a lower court whereby the hearing had been adjourned and instruct the lower court to reconsider the matter, which, no doubt, would have taken some more time. The Supreme Court clearly stated that the higher court could not set a new date for the hearing. Nor does it appear from the Supreme Court decision that the higher court could oblige the lower court to resolve the case before it – or indeed take any specific procedural steps – within a certain time-limit. Similarly, there is no indication that a higher court could give a lower court any other binding instructions to expedite the proceedings.

48. What is more, it appears that under the Code of Civil Procedure, as interpreted by the Supreme Court, a procedural appeal could only be lodged in cases of explicit adjournment of a hearing for more than three months, regardless of whether or not this was decided by a separate written ruling. The Court considers, however, that the adjournment of hearings is not necessarily – and was not in the present case – the main cause of delays in the proceedings. The first preliminary hearing in the present case was held on 18 May 2005, five years and seven months after the beginning of the proceedings. Before that no hearings had been held or adjourned. Moreover, the City Court did not set a new date for the adjourned hearing and therefore it is doubtful whether the adjournment could have been appealed against under Article 177 of the Code of Civil Procedure. In any event, according to the information available to the Court, this was the only adjournment of the hearing during the impugned proceedings. The Court does not consider that this one adjournment caused the excessive overall length of the proceedings and does not see how an appeal against the adjournment, even if it was

possible, could have had any significant effect on the length of the proceedings as a whole.

49. In respect of the Government's argument that the applicant could have objected to the failure of the court to schedule a hearing and appealed against the court's inactivity, the Court notes that it has not been provided with any examples of domestic law or practice demonstrating that these remedies were indeed available and effective.

50. As concerns the possibility to lodge a complaint with a view to initiating disciplinary proceedings against the judges, the Court is unable to see that such a course would have expedited the proceedings (see *Kormacheva v. Russia*, no. 53084/99, § 62, 29 January 2004). In respect of the possibility of transferring jurisdiction, the Court notes that this option would have required the other party's consent, which apparently was not given in the present case. Thus, the Court finds that these avenues did not constitute effective remedies within the meaning of Article 13.

51. In so far as compensatory remedies are concerned, the Court notes that the arguments put forward by the Government have been dismissed in an earlier case (see *Saarekallas*, cited above, § 66), and it sees no reason to reach a different conclusion in the present case.

52. Accordingly, the Court finds that in the present case there has been a violation of Article 13 of the Convention 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 of the Convention.

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

53. 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**

54. The applicant claimed EUR 47,934 in respect of pecuniary damage. In his submission, the value of his vehicles had decreased during the lengthy court proceedings and he had been unable to sell or lease the vehicles or real estate that had been attached by the court as an interlocutory measure. He also considered that the sum he had to pay the plaintiff to settle the case in accordance with the compromise agreement constituted part of the pecuniary damage he had sustained. Furthermore, the applicant claimed EUR 25,565 in respect of non-pecuniary damage.

55. The Government contested these claims, arguing that there was no causal connection between the alleged violations of the Convention and the pecuniary damage allegedly sustained by the applicant. In respect of non-pecuniary damage, the Government considered the applicant's claim excessive and invited the Court to award him a reasonable sum, should it find a violation.

56. The Court notes that the applicant did not appeal against the City Court decision ordering the attachment of his property. Although he requested that the interlocutory measure in respect of one of the properties be revoked on the ground that this property had already been mortgaged, he did not request the court to replace the measures applied with more lenient ones allowing him, for example, to let out his property. Furthermore, the payment made by the applicant to the plaintiff to settle the case was based on the compromise agreement concluded between the parties to the civil case and cannot, in the Court's view, be regarded as pecuniary damage resulting from the length of the court proceedings. Thus, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,600 under that head.

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

57. The applicant claimed EUR 1,754 for the costs and expenses incurred before the Court. He submitted a copy of a law firm's invoice.

58. The Government considered this sum excessive and invited the Court to award the applicant a reasonable sum for costs and expenses in the event of finding a violation.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. 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 sum of EUR 1,200 for the proceedings before the Court.

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

60. 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the application admissible;
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 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage and costs and expenses, to be converted into Estonian kroons at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Peer Lorenzen  
President