



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

1959 · 50 · 2009

THIRD SECTION

CASE OF KORELC v. SLOVENIA

(Application no. 28456/03)

JUDGMENT

STRASBOURG

12 May 2009

FINAL

12/08/2009

This judgment may be subject to editorial revision.

In the case of Korelc 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,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 14 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 28456/03) 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 Janez Korelc (“the applicant”), on 19 August 2003.

2. The applicant, who had been granted legal aid, was represented by Mr. J. Hribernik, a lawyer practising in Ljubljana. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General, and their Co-Agent, Mrs B. Cizel Varšek, Deputy to the State-Attorney General.

3. The applicant complained under Article 14 in conjunction with Article 8 of the Convention that he had been discriminated against on the ground of gender in that he had been denied the right to succeed to a tenancy after A.Z.’s death, on account of the fact that they were both men. He challenged in particular the domestic court’s position that his relationship with A.Z. had amounted merely to an “economic community” and not to a “long-lasting life community”. This amounted also to a violation of his right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

The applicant further alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he was a party had been excessive. In substance, he also complained that there was no effective domestic remedy in respect of excessive length of proceedings (Article 13 of the Convention).

4. On 29 August 2006 the Court decided to give notice of the application to the Government. Under the provisions of 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 1946 and lives in Ljubljana.

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

A. Background

7. After divorcing his wife in 1986, the applicant moved in with his sister and after a while he began looking for other accommodation.

8. In spring 1990, A.Z., an eighty-six-year-old widower at the time and the father of the applicant's friend, invited the applicant to live with him. He thus moved into the one-room apartment A.Z. was renting from the Ljubljana-Šiška Municipality.

9. On 29 May 1992 the applicant registered his permanent residence at A.Z.'s address. A.Z. declared on the back of the registration form that the applicant lived with him in order to provide him with daily care.

10. On 9 June 1992 a new contract of lease was made in A.Z.'s name. The applicant's name was included in the contract as one of the persons allowed to use the apartment.

11. On 9 April 1993 A.Z. died.

12. Further to the applicant's inquiries, on 17 February 1995 the Ljubljana-Šiška Municipality informed him that the 1991 Housing Act (*Stanovanjski zakon*) was not applicable to the relationship established between the applicant and A.Z., since he was not a member of A.Z.'s close family. Therefore, he was not entitled to take over the tenancy and was requested to vacate the apartment within three months.

B. Main set of proceedings

13. On 24 February 1995 the applicant instituted proceedings in the Ljubljana Local Court (*Okrajno sodišče v Ljubljani*), seeking the right to succeed to the tenancy following A.Z.'s death. The claim was directed against the Ljubljana Municipality, which had taken over the ownership of

the apartment at issue from the Ljubljana-Šiška Municipality following a reform of the city administration.

14. On 4 April 1996 the Ljubljana Local Court requested the applicant to complete his action, which he did on 16 April 1996.

15. On 22 October 1999 the Ljubljana Municipality lodged a counterclaim, seeking the applicant's eviction. On 7 November 1999 the applicant lodged a response.

16. During this period, the applicant continued to live in the apartment, paid rent and in 1998 and 1999 refurbished the apartment.

17. At the hearing held on 9 November 1999, the Ljubljana Local Court allowed the counterclaim lodged by the Ljubljana Municipality.

18. Another hearing was held on 11 January 2000, at which the Ljubljana Local Court enlarged the claim to include all other successors of the previous municipalities that had formed the city of Ljubljana, without specifying them. In his submissions of 18 January 2000, the applicant enumerated eleven communities and municipalities which had replaced the former Ljubljana municipalities.

19. After a hearing held on 4 July 2000, the Ljubljana Local Court dismissed the applicant's claim. The court held that under Section 56 of the 1991 Housing Act ("Section 56") the applicant was not entitled to continue the contract of lease with the Ljubljana Municipality since he was neither the deceased's "spouse", nor a person forming a "long-lasting life community" with him, nor a close relative.

20. Since the notion of a "person having lived with the tenant in a long-lasting life community" was not defined in Section 56, in the court's view it had to be understood as an alternative to the notion "spouse" and interpreted in accordance with Section 12 of the Marriage and Family Relations Act defining an "extramarital relationship" (*zunajzakonska skupnost*). The latter provision limiting the notion of a "long-lasting life community" to a person of the opposite sex, the relationship between the applicant and A.Z. could only be described as an "economic community", which did not oblige the owner to conclude a new contract of lease.

21. By the same judgment, the court upheld the Ljubljana Municipality's counterclaim and ordered the applicant to vacate the apartment and to pay the costs of the proceedings. On 13 September 2000 the judgment was served on the applicant.

22. On 25 September 2000 the applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) contesting the first-instance court's interpretation of a "long-lasting life community."

23. On 28 March 2001 the Ljubljana Higher Court dismissed the appeal on the ground that Section 56 limited the circle of persons eligible to take over the lease from the deceased to members of the tenant's close family, including an "extramarital partner". A person having formed only an "economic community" with the deceased did not belong to this circle,

however close that community might be. It considered that a “long-lasting life community” was the equivalent of an “extramarital relationship”. Finally, the court observed that the first-instance court had not dismissed the applicant’s claim due to his gender but because he did not belong to the circle of close family as defined by Section 56, and concluded that he could not have been discriminated against on this ground.

24. On 11 May 2001 the applicant requested the Ljubljana Public Prosecutor’s Office (*Državno tožilstvo v Ljubljani*) to lodge a request for protection of legality (*zahteva za varstvo zakonitosti*) with the Supreme Court (*Vrhovno sodišče*) against the second-instance court’s decision. The request was rejected on 6 June 2001.

25. On 11 June 2001 the applicant lodged a constitutional appeal with the Constitutional Court, which was declared admissible on 21 January 2002. In addition, the Constitutional Court stayed the execution of the second-instance judgment until its final decision.

26. On 20 February 2003 the Constitutional Court dismissed the applicant’s appeal. It held that the lower courts had rejected the applicant’s claim on two grounds and that in order to succeed before the Constitutional Court the applicant should have shown that both grounds had been incompatible with the provisions of the Constitution.

27. As to the first ground, it was not excluded that the lower courts’ position that a “long-lasting life community” in Section 56 was tantamount to an extramarital relationship as defined in Section 12 of the Marriage and Family Relations Act, that is a community of a man and a woman, was contrary to the Constitution. It could reasonably be conceived that the principles of equality before the law and prohibition of discrimination embodied in Article 14 of the Constitution suggested that there was no reasonable ground for distinction between opposite and same-sex partnerships as far as the legal consequences of the death of the tenant in the realm of housing law were concerned. In doing so, the Constitutional Court relied on the decision on admissibility in the *Karner v. Austria* case, where the applicant and the deceased tenant were partners living in a homosexual relationship (*Karner v. Austria* (dec.), no. 40016/98, 11 September 2001).

28. However, the lower courts had eventually found that the applicant and A.Z. had lived merely in an “economic community” and that the purpose of their life community was the assistance the applicant provided to A.Z. Moreover, the applicant had not contested these findings and had not adduced evidence in support of a “long-lasting life community” with A.Z. It was not discriminatory if this type of community, be it constituted of persons of the opposite or of the same sex, could not be qualified as a “long-lasting life community” for the purposes of Section 56.

29. On 18 March 2003 the Constitutional Court’s decision was served on the applicant.

C. Proceedings related to reimbursement of expenses for the refurbishment of the apartment

30. On 27 January 2004 the applicant attended a meeting at the Ljubljana Municipality. He proposed a settlement by which he would remain a tenant of the apartment for the next fifteen years and continue to pay the full rent, and in exchange he would not request the reimbursement of the expenses he had incurred in the refurbishment of the apartment, which was at that time more than seventy years old. His proposal was rejected and he was requested to vacate the apartment. On 24 February 2004 he reiterated his request in writing, which was rejected on 10 March 2004.

31. On 22 April 2004 the applicant instituted proceedings against the Ljubljana Municipality in the Ljubljana Local Court seeking reimbursement of the expenses he had incurred by refurbishing the apartment in 1998 and 1999 in the amount of 1,680,000 Slovenian tolar (SIT) (approximately 7,000 euros (EUR)) with interest.

32. On 16 September 2008 the Ljubljana Local Court dismissed his claim. Since he did not appeal, the decision became final.

D. Enforcement proceedings

33. Further to the Constitutional Court's decision of 20 February 2003, on 23 March 2004 the Ljubljana Municipality instituted enforcement proceedings against the applicant in the Ljubljana Local Court.

34. On 23 April 2004 the court allowed the enforcement and ordered the applicant to vacate the apartment. This decision was served on the applicant on 10 May 2004.

35. The following day the applicant requested a deferral of the enforcement pending the outcome of the second set of proceedings.

36. On 16 September 2004 the Ljubljana Local Court rejected the applicant's request. The applicant lodged an appeal.

37. On 16 March 2005 the Ljubljana Higher Court dismissed the appeal.

38. On 20 June 2005 the applicant asked the Ljubljana Municipality for a deferral of the enforcement proceedings pending the outcome of the proceedings before the European Court for Human Rights.

39. On 17 March 2006 the bailiff ordered him to vacate the apartment on 11 April 2006.

40. On 30 March 2006 the Ljubljana Municipality asked the bailiff to postpone the eviction pending the outcome of the proceedings before the Court.

41. At the request of the Ljubljana Municipality, on 29 April 2008 the Ljubljana Local Court decided to stay the enforcement proceedings pending the outcome of the proceedings before the Court.

II. RELEVANT DOMESTIC LAW

1. *The Act on the Protection of the Right to a Trial without undue Delay (Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja, Official Gazette of the RS no. 49/2006)*

42. The Act on the Protection of the Right to a Trial without undue Delay was enacted 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.

43. 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 has lodged 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 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.”

2. *The Constitution of the Republic of Slovenia (Ustava Republike Slovenije, Official Gazette of the RS no. 33/1)*

Article 14

“In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

All are equal before the law.”

3. *The 1991 Housing Act (Stanovanjski zakon, Official Gazette of the RS no. 18/91 with amendments)*

Section 6

“Close family members under this Act are the spouse of an owner or a person with whom the owner lives in a long-lasting life community, their children or adopted children, parents and adoptive parents and persons whom they are obliged by law to support.

The provisions of the previous paragraph shall also be used *mutatis mutandis* for the determination of close family members of a tenant.”

Section 56

“If the tenant dies, the owner of the apartment is obliged to conclude a contract of lease with the tenant’s spouse or with a person who lived with the tenant in a long-lasting life community or with one of the close family members stated in the contract of lease...”

44. On 14 October 2003 the new Housing Act (*Stanovanjski zakon (SZ-I)*, Official Journal 69/2003) entered into force and replaced the 1991 Housing Act. In its Section 109, among other changes, the words “a person who lived with the tenant in a long-lasting life community” were replaced by “a person who lived with the tenant in an extramarital relationship”.

4. *The Marriage and Family Relations Act (Zakon o zakonski zvezi in družinskih razmerah, Official Gazette of the RS no. 15/76 with amendments)*

Section 12

“A long-lasting life community of a man and a woman, who have not entered into a marriage, shall have for them the same legal consequences enshrined in this Act as if they had entered into [a marriage] if no such reason existed which would render the marriage between them void; and it shall have effect in other areas if the law so provides.

If a decision concerning rights or obligations depends on the existence of a life community referred to in the previous paragraph, this existence shall be established in the proceedings concerning these rights or obligations. The decision on this question will only have legal effect in the matter in which it was resolved.”

5. *Registration of Same-Sex Civil Partnership Act (Zakon o registraciji istospolne partnerske skupnosti, Official Gazette of the RS no. 65/2005)*

45. In 2005 Slovenia adopted the Registration of Same-Sex Civil Partnership Act, which regulates in entirety partnerships of same-sex couples.

Section 37

“If the partners cannot agree after the cessation or annulment of the partnership on who will remain in housing to which one or both have leasing rights, a court shall decide the claim of the other partner, at his request, in non-litigious proceedings. The court shall take into account in this the housing needs of the partners, their justifiable interest and other circumstances of the case.

If a partner who is a tenant of the housing dies or is declared deceased, the other partner who is stated in the contract of lease and actually lives in the property has the right to claim the conclusion of a contract of lease from the lessor.”

THE LAW

46. The applicant complained under Article 6 § 1 of the Convention that the main set of the proceedings to which he was a party had been excessively long. In substance, he also complained that there was no effective domestic remedy in respect of excessive length of proceedings (Article 13 of the Convention).

47. He further complained that the domestic court had refused to grant him the right to succeed to the tenancy after A.Z.’s death. He maintained that he had formed with the deceased tenant a true “long-lasting life community” entitling him under Section 56 of the 1991 Housing Act to succeed to a tenancy and not merely an “economic community” as found by the domestic courts. On the contrary, their “economic community” was only a consequence of their sharing a life together and their mutual emotional attachment. The domestic courts’ findings thus negated the applicant’s emotional and spiritual connections with A.Z., their partnership, which could be compared to a relationship between a father and a son that had lasted for decades. In addition, the domestic courts’ position that only a man and a woman could form a “long-lasting life community” for the purposes of Article 56 of the 1991 Housing Act amounted to discrimination on the ground of gender in breach of Articles 8 and 14 of the Convention.

48. Finally, he complained under Article 6 § 1 of the Convention that his right to a fair trial had been breached by the wrongful findings of the domestic courts that the relationship between him and A.Z. was not a “long-lasting life community”.

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS AND OF ARTICLE 13 OF THE CONVENTION

49. The applicant complained about the excessive length of the main set 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 ... fair ... hearing within a reasonable time by [a] ... tribunal...”

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

51. The Government pleaded non-exhaustion of domestic remedies, in particular after the adoption of the Act on the Protection of the Right to a Trial without undue Delay (the “2006 Act”).

52. Relying on the *Lukenda v. Slovenia* judgment (no. 23032/02, 6 October 2005) the applicant contested that argument, claiming that the remedies available were not effective.

53. 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).

54. 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.

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

56. 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

57. The Government alleged that the proceedings were averagely demanding and that the court's tasks in terms of their complexity did not essentially deviate from the courts' normal activity in the interpretation and the use of law. Furthermore, the competent authorities cannot be reproached for delaying the procedure. On the other hand, the fact that there were ten defendants involved in the proceedings did contribute to their lengthy duration. In the Government's view, the applicant also contributed to their length since he failed initially to specify his claim as well as the value of the disputed subject. He should also have exercised his procedural rights with greater care. Finally, the dispute was of great importance to the applicant since it concerned a question of his accommodation.

58. The applicant disputed certain of these allegations. He complained in particular about the length of the proceedings before the first-instance court, amounting to approximately five years and seven months. He also stated that after the first-instance court had requested him to complete his claim, he had done it swiftly, and that the duration of the proceedings imputable to him was negligible in comparison with the overall length of the proceedings.

59. The Court finds that the proceedings initiated by the applicant on 24 February 1995 comprise two stages.

60. The first stage consisted of the main proceedings which began on 24 February 1995, the day the applicant instituted proceedings with the Ljubljana Local Court. They continued before the Ljubljana Higher Court and ended on 18 March 2003, when the Constitutional Court's decision was served on the applicant. The Court notes in this respect that the applicant's request for leave to lodge a request for protection of legality with the Supreme Court was not endorsed by the Ljubljana Public Prosecutor's Office. The main set of proceedings was therefore conducted at three levels of jurisdiction and lasted just over eight years.

61. The Court further observes that under its constant case-law in civil length of proceedings cases, the enforcement proceedings are the second stage of the proceedings (see *Zappia v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 20; *Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 24). The Court notes in this respect that on 23 March 2004 the enforcement proceedings started at the request of the Ljubljana Municipality, which was granted by the first-instance court. The

applicant then requested their deferral pending the outcome of the proceedings related to the reimbursement of expenses for refurbishment of the apartment. His request was finally rejected by the second-instance court on 16 March 2005. This part of the enforcement proceedings lasted nearly one year and two levels of jurisdiction and three instances were involved.

62. Subsequently, the applicant again requested a stay of the enforcement proceedings pending the outcome of the proceedings before the Court, which was granted. Since the length of that part of the enforcement proceedings is not imputable to the domestic authorities, its duration is therefore not taken into account for the purpose of determining the relevant period.

63. The relevant period therefore comprises both the main proceedings and the first part of the enforcement proceedings. Their total duration is of approximately nine years at three levels of jurisdiction (see paragraphs 60-61 above).

64. 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).

65. The Court agrees with the respondent Government that the case was not particularly complex and that it was of great importance for the applicant. It finds, however, that the applicant did not contribute significantly to the protracted nature of the proceedings, which is to be imputed to the domestic authorities.

66. 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, 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

67. The Government submitted that, under the Slovenian system of legal remedies in length of proceedings cases, it was possible not only to expedite the proceedings but also to make good any damage suffered. Those remedies were effective. The applicant disputed that argument.

68. 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 *Kudla 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.

69. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of 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. ALLEGED VIOLATION OF ARTICLE 8 IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION AND OF ARTICLE 6 OF THE CONVENTION AS TO THE FAIR TRIAL

70. The applicant complained under Article 14 in conjunction with Article 8 of the Convention that he had been discriminated against on the ground of gender in that he had been denied the right to take over a tenancy after the death of A.Z. He challenged in particular the domestic court's position that his relationship with A.Z. had amounted merely to an "economic community" and not to a "long-lasting life community". This amounted also to a violation of his right to a fair hearing guaranteed by Article 6 of the Convention.

Article 14 of the Convention provides:

Article 14

"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."

Article 8 of the Convention provides in its relevant part:

Article 8

"1. Everyone has the right to respect for his private and family life [and] his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

71. The Government stated that the applicant had moved into the apartment at issue at A.Z.'s request. The latter allegedly loved the applicant like his own son. Because of A.Z.'s advanced age, the applicant had provided a great deal of care, both economic and emotional, to A.Z. and remained with him until his death. Therefore, according to the applicant,

they formed a “long-lasting life union”. Later, the applicant’s request to take over the tenancy rights after A.Z. was denied, since the domestic courts had found that the relationship between the applicant and A.Z. could not be qualified as a “long-lasting life community” under Section 56 of the 1991 Housing Act but merely as an “economic community”.

72. It was clear that the notion of a “long-lasting life community” in the 1991 Housing Act was set as an alternative to a marriage, as interpreted by the lower courts, since both notions in its Section 6 were followed by “their children”. Therefore, a “long-lasting life community” referred to such a type of a relationship as an “extramarital partnership” under the domestic law, a life community such as between spouses, the existence of which depends on the actual circumstances such as a common residence, a household, an economic interdependence, a community and mutual interconnection, and desire to live together as a man and a wife.

73. The Government argued that the lower courts had rejected the applicant’s claim not only because the applicant and A.Z. were of the same sex but principally because their community had insufficient substance. The applicant was neither A.Z.’s relative nor was he his partner under Slovenian law. The Constitutional Court ruled that the lower courts had not breached the principle of equality before the law protected by the Constitution.

74. It should be mentioned that in the Slovenian legal order an “extramarital partnership” was envisaged only for partners of the opposite sex. A community of same-sex partners was legally recognised and regulated first in 2005. Nor could it be said that the community existing between the applicant and A.Z. could fall under the Registration of Same-Sex Civil Partnership Act because of the fact that they were of the same sex. The circumstances of the case at hand could not be compared with those obtaining in the *Karner v. Austria* case (no. 40016/98, ECHR § 33, 2003-IX) where the applicant and the deceased tenant were partners living in a homosexual relationship.

75. In the Government’s view, neither the applicant nor another person of the opposite sex who would have been taking care of a deceased tenant economically and emotionally would have been entitled under Slovenian law to take over the rights after him or her. Therefore, in the case at hand there was no discrimination under Article 14 of the Convention.

76. In any event, that provision did not have an independent existence since it had an influence only on “enjoying rights and freedoms”. In the Government’s view, since the applicant himself could not claim to be a close family member of A.Z., the facts of the case did not even fall within the ambit of Article 8 of the Convention. Therefore, under the test the Court applied in cases where a violation of Article 14 was alleged, already the answer to the first question – whether the facts of the case fell within one of the meritorious provisions of the Convention – was negative.

77. The applicant contested the Government's arguments. He maintained that even though he was sharing his life with A.Z. and took care of the latter economically and emotionally, he could not succeed to a tenancy after his death on account of the fact they were of the same gender.

78. The applicant argued that Section 56 of the Housing Act was vague, in contrast with its Section 6 which clearly defined the immediate family members as a "spouse or a person who lived with the tenant in a long-lasting life community, their children, adopted children", etc. If a "long-lasting community" could be construed as an alternative to a marriage in Section 6 because of the words "their children", then such an interpretation could not be valid for Section 56 which did not contain any reference to "children" and which in his view attributed this right also to other persons with whom the tenant had lived in a "long-lasting life-community".

79. The lack of clarity of the purpose of Section 56 was confirmed by the fact that the new Housing Act was adopted in 2003. The new provision no longer contains the notion of a "long-lasting life community" but rather a concept of an "extramarital relationship" which was already known to the legislature in 1991. Had the legislator had the intention of interpreting the notion of a "long-lasting community" as an "extramarital relationship", it would have done so in 1991. The linguistic explanation of this concept in Section 56 therefore provided for a possibility of an existence of a "long-lasting life community" between partners of the same sex even though such a community was not legally recognised in 1991.

80. In 1995, when the applicant made his claim, there was practically no judicial practice interpreting Section 56. Only in the subsequent years was legal opinion formed to the effect that the legislator had had an "extramarital partnership" in mind when referring to the concept of a "long-lasting life community". Since this lack of clarity had led the applicant to a wrong interpretation of Section 56, his constitutional rights had been breached. This effect on the applicant was also discriminatory under Article 14 of the Convention. Finally, the vague definition of persons entitled to succeed to a tenancy interfered with the applicant's right to respect for private and family life under Article 8 of the Convention.

B. The Court's assessment

81. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Stec and Others v. the United*

Kingdom (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X; *Burden v. the United Kingdom* [GC], no. 13378/05, § 58, ECHR 2008; and *Karner v. Austria*, no. 40016/98, § 32, ECHR 2003-IX).

82. The Court has to consider therefore whether the subject matter of the present case falls “within the ambit” of Article 8. The Court does not find it necessary to determine the notions of “private life” or “family life” because, in any event, the applicant’s complaint relates to the manner in which the alleged difference in treatment adversely affected the enjoyment of his right to respect for his “home” guaranteed under Article 8 of the Convention (see, *mutatis mutandis*, *Larkos v. Cyprus* [GC], no. 29515/95, § 28, ECHR 1999-I, and *Karner*, cited above, § 33). It is not disputed between the parties that the applicant had been living since 1990 in the flat that had been let to A.Z. and continued to do so after his death. The relevance of Article 8 cannot be denied in view of the judgment of the Ljubljana Local Court ordering the applicant’s eviction, which judgment was subsequently upheld by all levels of jurisdiction, notwithstanding the fact that it has not yet been executed (see, *mutatis mutandis*, *Stanková v. Slovakia*, no. 7205/02, § 57, 9 October 2007). Therefore, Article 14 of the Convention applies.

83. As to the scope of the guarantee under Article 14, the Court reiterates that according to its established case-law discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, § 33; *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007; and *Burden*, cited above, § 60). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Furthermore, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 94, ECHR 1999-VI; *Fretté v. France*, no. 36515/97, §§ 34 and 40, ECHR 2002-I; *S.L. v. Austria*, no. 45330/99, § 36, ECHR 2003-I; and *Karner*, cited above, § 37).

84. In the present case, the applicant claimed that his situation was relevantly similar or analogous to the one of a surviving partner of an opposite-sex tenant in a “long-lasting life community” who would have qualified under Slovenian law as it stood at the material time to succeed to a tenancy after his or her partner’s death. The Government, however, argued that there was no true analogy since the applicant’s cohabitation with A.Z. could only be qualified as an “economic union”.

85. Before the domestic courts, the applicant sought to avail himself of the right under section 56 of the 1991 Housing Act, which he asserted entitled him as a person who had lived with the deceased tenant A.Z. in a

“long-lasting life community” to succeed to the tenancy. The court of first instance dismissed the applicant’s action since he was neither A.Z.’s spouse nor a person having lived with him in a “long-lasting life community”, such a community being tantamount to an extramarital relationship of persons of the opposite sex, nor his close relative for the purposes of Section 56. The first instance court found that the relationship of the applicant and A.Z. could merely be qualified as an “economic community”. By the same judgment, the Ljubljana Municipality’s counterclaim was upheld and the applicant ordered to vacate the apartment.

86. This judgment was subsequently upheld by the Ljubljana Higher Court and the Constitutional Court, the latter stating that the applicant’s claim was dismissed since an “economic community”, whether constituted of persons of the same or of the opposite sex, could not be qualified as a “long-lasting life community”. In addition, referring to the decision on admissibility in the case *Karner v. Austria*, cited above, the Constitutional Court held that the lower courts’ position that a “long-lasting life community” for the purposes of Section 56 of the 1991 Housing Act could only be constituted of persons of the opposite sex might be contrary to the Constitution.

87. As to the relevant domestic legislation, the Court notes that Section 109 of the new Housing Act adopted in 2003 now gives the right to succeed to a tenancy to a spouse, a person who lived with the deceased tenant in an “extramarital relationship”, its existence depending on the actual circumstances of the partnership, or a close relative, which is essentially identical to the former Section 56 of the 1991 Housing Act as interpreted by the domestic courts. Moreover, since 2005 the Registration of the Same-Sex Civil Partnership Act gives the right to succeed to a tenancy to a same-sex partner of a deceased tenant.

88. The Court observes at the outset that it is not the applicant’s contention that his relationship with A.Z. was of a homosexual nature or that he was discriminated against on the ground of his sexual orientation. His situation is thus clearly distinguishable from that of the applicant in the case of *Karner*. Moreover, although he maintains that he was unable to succeed to the tenancy because he and A.Z. were of the same sex, the Court considers that this assertion is based on a partial misconception of the reasons relied on by the domestic courts. In essence, those courts declined to recognise the applicant’s right to succeed to the tenancy on the ground that his cohabitation with A.Z. amounted only to an “economic community” and did not fall within any of the categories listed in Section 56 of the Housing Act, namely the tenant’s spouse, a person who had lived with the tenant in a “long-lasting life community” or one of the tenant’s close family members. While it is true that the lower courts relied on an interpretation of the notion of “long-lasting life community” which limited its scope to extramarital relationships between persons of the opposite sex – a position which the

Constitutional Court found might be contrary to the Constitution – the applicant’s claim was ultimately dismissed because his relationship with A.Z. was of a different nature from a “long-lasting life community”, being rather an “economic community”, and not because he and A.Z. were of the same sex. In that respect, the Constitutional Court expressly stated that an “economic community” could not be equated with a “long-lasting life community” irrespective of whether it was constituted of persons of the same sex or the opposite sex. In these circumstances, it does not appear that the applicant’s sex was at all a decisive element in the rejection of his claim or that a person of the opposite sex would have been treated any differently. Consequently, the Court finds that the applicant has not been discriminated against on the grounds of either his sexual orientation or his sex.

89. The question remains whether the applicant’s situation could nevertheless be regarded as relevantly similar or analogous to that of the categories listed in Section 56 of the Housing Act, as interpreted by the domestic courts, that is, whether the distinction made between those categories and an “economic community” constitutes a difference in treatment amounting to discrimination prohibited by Article 14 of the Convention.

90. Firstly, in so far as the applicant seeks to compare his situation with that of a spouse, the Court recalls that it held in its recent *Burden v. the United Kingdom*, in the slightly different context of applicants who were cohabiting sisters, that the legal consequences of a marriage or of a homosexual civil partnership, which couples expressly and deliberately decide to incur, set these types of relationship apart from other forms of cohabitation (*Burden*, cited above, § 65). Therefore, distinguishing between different forms of cohabitation does not necessarily give rise to discrimination prohibited by Article 14. For similar reasons, the Court does not consider that the applicant’s situation was comparable to that of a married couple and finds that there has been no discrimination in that respect.

91. Secondly, the Court observes that Slovenian law also recognises the right of unmarried persons who are in an extramarital relationship to take over a tenancy. However, it does not consider that the applicant’s situation can be compared to such a relationship either. In this connection, the Court notes that an extramarital relationship is a legally recognised alternative to marriage in Slovenian law, by virtue of Article 12 of the Marriage and Family Relations Act, which provides that “[a] long-lasting community of a man and a woman who have not entered into [a marriage] shall have for them the same legal consequences ... as if they had entered into a marriage”. Consequently, the relationship of long-term partners under Slovenian law may be readily equated to that of a married couple, being of the same nature, notwithstanding the absence of formal recognition through some form of registration. In that respect, the Court further notes that in Section

56 of the Housing Act the category of “a person who has lived with the tenant in a long-lasting life community” immediately followed the expression “the tenant’s spouse” and, in accordance with the *ejusdem generis* principle, could reasonably be interpreted as being an extension of that specific status rather than as a wholly independent category of general application. Moreover, the fact that the lower courts limited their interpretation of the expression “long-lasting life community” to heterosexual couples does not change that conclusion, since in the present case the distinction between heterosexual and homosexual couples is not at issue.

92. Thirdly, while Slovenian law also recognises the right of close family members to take over a tenancy, the Court does not consider that the applicant’s relationship with A.Z., even if it may have borne certain similarities to that between father and son and even if it involved emotional ties beyond “economic community”, was such as to give rise to discrimination on account of the refusal to allow him to succeed to the tenancy. The Court considers that similar considerations to those relied upon in *Burden* are applicable to the distinction made between family members on the one hand and unrelated persons on the other. Notwithstanding the potentially close nature of the relationship between two unrelated people, the Court considers that the two situations are not comparable for the purposes of Article 14 of the Convention, since ties of filiation similarly entail specific rights and obligations in law, albeit not entered into voluntarily, which is not the case with the relationship between two unrelated people, irrespective of the intimacy of that relationship.

93. In any event, the Court recalls that the domestic courts concluded that the applicant’s cohabitation with A.Z. amounted only to an “economic community” which was not equivalent to a “long-lasting life community”. It further recalls that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. According to Article 19 of the Convention, the Court’s duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. It is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court observes that the domestic courts examined the relevant facts of the case in depth and explained in detail why they considered that the applicant and A.Z. had lived in a merely “economic community”. The Court considers that the reasons on which the domestic courts based their decisions in question are sufficient to exclude the assumption that the way in which they established and evaluated the applicant’s situation was unfair or arbitrary. In reaching this conclusion, the Court also takes into account that the Constitutional

Court assessed the relevant facts in the light of the same criteria as the Court applies in similar cases.

94. In conclusion, the Court finds that the proceedings were “fair” within the meaning of Article 6 § 1 of the Convention and that the difference in treatment to which the applicant was subjected was not discriminatory within the meaning of Article 14 of the Convention in conjunction with Article 8 of the Convention.

95. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed EUR 6,000 in respect of non-pecuniary damage.

98. The Government contested the claim.

99. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3.000 under that head.

B. Costs and expenses

100. The applicant also claimed EUR 862.87 for lawyer’s fees and EUR 728.18 for costs and expenses incurred in the domestic proceedings. He did not specify the amount of costs and expenses incurred in the proceedings before the Court.

101. The Government argued that the only costs that could be recognised were those arising from the actual proceedings before the Court. In addition, he was granted free legal aid by the Court.

102. 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.

103. The Court notes that the applicant was granted free legal aid in the amount of 850 EUR. Regard being had to the information in its possession

and the above criteria, it appears that this sum adequately covers the costs incurred by the applicant in the proceedings before the Court.

C. Default interest

104. 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 excessive length of the main set of proceedings and the lack of remedies in that respect admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as to the length of the proceedings;
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 3,000 (three thousand euros) in respect of non-pecuniary damage, 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 12 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President