



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

1959 · 50 · 2009

THIRD SECTION

CASE OF ROBERT LESJAK v. SLOVENIA

(Application no. 33946/03)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Lesjak v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 33946/03) 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 Robert Lesjak (“the applicant”), on 14 October 2003.

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

3. The applicant alleged that his right to a trial within a reasonable time had been violated and that he did not have an effective remedy in this respect.

4. On 12 June 2007 the President of the Third Section decided to inform the Government of the application and to request them to submit information under Rule 54 § 2 (a) of the Rules of Court. Further to receipt of the information requested, the President, on 17 October 2008, decided to invite the Government to submit written observations on admissibility and merits of the case (Rule 54 § 2(b) of the Rules). It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

A. The main proceedings

6. On 8 April 1995 the applicant was injured in a car accident. The perpetrator of the accident, I.R., had taken out insurance with the insurance company A.

7. On 18 October 1999 the applicant instituted civil proceedings against I.R. and the insurance company A. in the Celje District Court, seeking damages in the amount of 3,688,433 Slovenian tolar (SIT) (approximately 15,370 euros) (EUR) for the injuries sustained.

8. Between 29 November 2001 and 12 May 2006 the applicant lodged several written submissions and adduced evidence.

9. Between 15 December 2003 and 4 September 2006 the court held eight hearings, one of which was conducted at the site of the accident. It does not appear that any of the hearings were adjourned due to the applicant's fault.

10. During the proceedings, the court also appointed two experts and requested an additional opinion from one of them.

11. After the last hearing in the case, the court delivered an interim judgment (*vmesna sodba*) determining the responsibility for the damage, which was served on the applicant on 25 September 2006.

12. On 9 October 2006 the applicant appealed to the Celje Higher Court. I.R. and the insurance company A also appealed.

13. On 9 May 2007 the Celje Higher Court allowed the applicant's appeal in part and changed the first-instance court's interim judgment. It found I.R. and the insurance company A responsible for 70% of the damage suffered due to the accident.

14. The judgment was served on the applicant on 18 May 2007.

15. On 13 June 2007 the insurance company A lodged an appeal on points of law with the Supreme Court. These proceedings are still pending.

B. The proceedings under the 2006 Act

16. On 2 March 2007 the applicant lodged a supervisory appeal with the Celje District Court. In this supervisory appeal the applicant explained that the proceedings had started on 18 October 1999 and were still pending. As a

consequence, his right to a hearing within a reasonable time had been violated. He requested that the proceedings be expedited and the decision be delivered immediately.

17. On 23 March 2007, referring to sections 5(1) and 6(4) of the Act on the Protection of the Right to a Trial without Undue Delay (“the 2006 Act”), the President of the Celje District Court replied to the supervisory appeal by explaining that the case file had been transferred to the Celje Higher Court on 20 March 2007.

II. RELEVANT DOMESTIC LAW

18. The Act on the Protection of the Right to a Hearing without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Gazette no. 49/2006- “the 2006 Act”) was passed by the Slovenian Parliament on 26 April 2006 and became operational on 1 January 2007.

19. The 2006 Act provides for remedies to expedite pending proceedings (a supervisory appeal and a motion for a deadline). In addition to these acceleratory remedies, the 2006 Act also provides the possibility to obtain redress through a compensatory remedy, namely by bringing a claim for just satisfaction.

20. As regards the acceleratory remedies, a claimant may, during the first- and second-instance proceedings, that is the proceedings before the regular courts, use a supervisory appeal if he or she considers that the court is unduly protracting the decision-making. If the president of the court dismisses the supervisory appeal or, *inter alia*, fails to respond to the claimant within two months, he or she can lodge a motion for a deadline with the court hearing the case. The motion for a deadline is dealt with by the president of the higher court. He or she shall decide on the motion for a deadline within fifteen days of receiving it.

21. As regards the present case, the following provisions of the 2006 Act are relevant:

Section 6 - Decision on supervisory appeal

“(1) If the supervisory appeal is manifestly unfounded having regard to the timetable for resolving the case concerned by the supervisory appeal, the president of the court shall dismiss the appeal by a ruling.

(2) If the supervisory appeal does not contain all the requisite elements referred to in section 5(2) of this Act, the president of the court shall dismiss it by a ruling. No appeal shall lie against that ruling.

(3) If no ruling as provided for in paragraphs 1 or 2 of this section is given, the president of the court shall, as part of his judicial management powers under the Judicature Act, immediately request the judge or president of a court panel (‘the judge’) to whom the case has been assigned for resolution to submit a report indicating the reasons for the duration of the proceedings not later than fifteen days

after receiving the request of the president of the court or after obtaining the file, if necessary for drawing up the report. The report shall include a declaration in respect of the criteria referred to in section 4 of this Act and an opinion on the time-limit within which the case may be resolved. The president of the court may also require the judge to submit the case file if he considers that, in the light of the allegations of the party indicated in the supervisory appeal, its examination is necessary.

(4) If the judge notifies the president of the court in writing that all relevant procedural measures will be performed or a decision issued within a time-limit not exceeding four months following the receipt of the supervisory appeal, the president of the court shall inform the party thereof and thus conclude the consideration of the supervisory appeal.

(5) If the president of the court establishes that in view of the criteria referred to in section 4 of this Act the court is not unduly protracting the decision-making in the case, he shall dismiss the supervisory appeal by a ruling.

(6) If the president of the court ... in view of the criteria referred to in section 4 of this Act, establishes that the court is unduly delaying the decision-making in the case, he shall, depending on the status and nature of the case and by a ruling, order a deadline for the performance of certain procedural measures, and may also order that the case be resolved as a priority owing to the circumstances of the case, particularly if the matter is urgent. If he orders that appropriate procedural measures be performed by the judge, he shall also set the time frame for their performance, which shall be no less than fifteen days and no longer than six months, and the appropriate deadline for the judge to report on the measures performed.

(7) If the president of the court establishes that the undue delay in decision-making in the case is attributable to an excessive workload or an extended absence of the judge, he may order that the case be reassigned. He may also propose that an additional judge be assigned to the court or order other measures in accordance with the Judicial Service Act.

...

Section 8 - Motion for a deadline

“(1) If, under section 6(1) or (5) of this Act, the president of the court dismisses the supervisory appeal or fails to respond to the party within two months or fails to send the notification referred to in section 6(4) of this Act within the said time-limit or if appropriate procedural acts have not been performed within the time-limit set in the notification or ruling of the president of the court, the party may lodge a motion for a deadline on the grounds stated in section 5(1) of this Act with the court hearing the case.

...

(3) The party may lodge an motion for a deadline within fifteen days of receiving the ruling or after expiry of the time-limits provided for in paragraph 1 of this section.”

22. As to the claim for just satisfaction, sections 15, 19 and 20 of the 2006 Act provide that for the party to be able to lodge a claim for just

satisfaction two cumulative conditions must be satisfied. Firstly, during the first- and/or second-instance proceedings the applicant must have successfully availed himself of a supervisory appeal or have lodged a motion for a deadline, regardless of its outcome. In this connection section 15 provides, in so far as relevant:

“(1) If the supervisory appeal lodged by the party has been upheld or a motion for a deadline has been lodged, the party may claim just satisfaction under the present Act.

...”

23. Secondly, the proceedings must have been “finally resolved” (*pravnomočno končan postopek*). The final resolution of the case refers in principle to the final decision against which no ordinary appeal lies. This would normally be the first, or if an appeal has been lodged, the second-instance court’s decision.

24. As regards proceedings before the Supreme Court, a claimant can use a supervisory appeal and a motion for a deadline with an aim to accelerate the proceedings. It would appear from the text of the 2006 Act that both are dealt with by the president of the Supreme Court. A claim for just satisfaction is not available in respect of the length of Supreme Court proceedings. The relevant part of the 2006 Act reads as follows:

Section 5 - Supervisory appeal

“(1) If a party considers that the court is unduly protracting the decision-making, he or she may lodge a supervisory appeal in writing before the court hearing the case; the decision thereon is taken by the president of the court (‘the president of the court’).

...

Section 9 - Competence for decision-making

...

(3) The president of the Supreme Court of the Republic of Slovenia shall have the competence to decide on the motion for a deadline concerning cases heard by the Supreme Court of the Republic of Slovenia.

(4) Other judges may be assigned by the annual schedule of allocation to act in place of or together with the presidents of courts referred to in previous paragraphs for decision-making on motions for a deadline.”

25. For a more detailed presentation of the 2006 Act, see *Žunič v. Slovenia*, (dec.) no. 24342/04, 18 October 2007.

26. As regards possible outcome of Supreme Court proceedings, the Civil Procedure Act (*Zakon o pravdnem postopku*, Official Gazette no. 26/1999, in force since 14 July 1999) provides that, depending on the circumstances, the Supreme Court when upholding an appeal on points of

law may remit the case for re-examination or vary the lower court's judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the length of the civil proceedings had been excessive in breach of Article 6 § 1 of the Convention, which, as far as relevant, 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 ...”

A. Admissibility

1. The parties' arguments

28. The Government argued that the applicant had failed to exhaust available domestic remedies. They maintained that in the circumstances of his case section 25 of the 2006 Act, which concerns terminated proceedings, was not applicable, but the applicant should instead use the remedies normally available under the 2006 Act. They submitted that the president of the court's reply of 23 March 2007 meant that the supervisory appeal had been upheld. The supervisory appeal was also successful, as the procedural measures were carried out within the time-limit set in section 6, paragraph 4, of the 2006 Act. The applicant therefore fulfilled one of the two conditions for lodging a “just satisfaction claim”. As regards further remedies available, the Government submitted two contradictory set of arguments.

29. In their main set of observations, the Government pointed out that only an interim judgment had been issued in the case. It concerned only the grounds for damages, which was a basis of the applicant's claim. On the day the 2006 Act became operational this part of the case was pending before the second-instance court and the proceedings subsequently continued on appeal on points of law, where they are currently pending. Once the Supreme Court decides on the appeal on points of law, the case file will be sent to the first-instance court to decide on the remaining part of the claim concerning the amount of compensation. Subsequently, appeals to the second-instance court will again be available to the parties.

30. The Government submitted that the case was, on 1 January 2007, therefore far from being “finally resolved”. As a consequence, the applicant should first avail himself of the acceleratory remedies in the proceedings before the Supreme Court, namely supervisory appeal and motion for a deadline, both of which were to be decided by the president of the Supreme Court. Subsequently, in the forthcoming first- and possibly also second-instance proceedings he will again have the opportunity to use acceleratory remedies and ultimately, once the proceedings are “finally resolved”, he will be able to lodge a “just satisfaction claim” in respect of the allegedly unreasonable length of the proceedings.

31. In their further observations, the Government argued that the second condition for the lodging of the “just satisfaction claim” had already been fulfilled on 18 May 2007. They submitted that the case had become “finally resolved” on that date and that the applicant should have lodged a “just satisfaction claim” within nine months of the date. As regards the Supreme Court’s proceedings, they reiterated that acceleratory remedies were available to the applicant.

32. Finally, the Government explained that the main idea of the 2006 Act was to ensure compliance with the reasonable time requirement rather than providing compensation. They also submitted that in Slovenia the key problem in terms of excessive length was the proceedings at first instance, while the second-instance proceedings and the proceedings before the Supreme Court did not normally last an unreasonably long time.

33. The applicant disputed the Government’s arguments. He argued that there were no means available to accelerate proceedings before the Supreme Court. He further submitted that the delays in proceedings were a systemic problem and that the 2006 Act made it impossible for the parties to proceedings, which had lasted an unreasonably long time, to obtain just satisfaction.

2. The Court’s assessment

34. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to use first the remedies provided by the national legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. (see, among many other authorities, *Aksoy v. Turkey*, 18 December 1996, § 51, *Reports of Judgments and Decisions* 1996-VI).

35. The Court reiterates that 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 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any

violation that [has] already occurred” (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). Article 13 therefore offers an alternative: a remedy is “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 (*ibid.*, § 159). The same is necessarily true of the concept of “effective” remedy within the meaning of Article 35 § 1 (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

36. However, for countries where length of proceedings violations already exist, a remedy designed to expedite proceedings – although desirable for the future – may not be adequate to redress a situation in which the proceedings have clearly already been excessively long (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 185, ECHR 2006-...).

37. As regards Slovenia, the Court has taken the view that the mere fact that an applicant had lodged his or her application before the implementation of the 2006 Act did not absolve him or her from exhausting the remedies available under the 2006 Act (see *Korenjak v. Slovenia* (dec.) no. 463/03, §§ 63-71, 15 May 2007). The Court also found that the aggregate of remedies provided by the 2006 Act in cases of excessively long proceedings pending at first and second instance was effective (see *Korenjak*, cited above, § 62). The applicants were therefore required to make use of the acceleratory remedies if the proceedings were pending before the first- or second-instance court (*ibid.*), and were also required to use the compensatory remedy provided that, after exhausting the acceleratory remedies, they had reasonably prompt access to it (see *Žunič v.* cited above, §§ 43-55; see also *Nežirovič v. Slovenia* (dec.), no. 16400/06, 25 November 2008).

38. In the present case, the Court observes that, on 1 January 2007, the day the 2006 Act came into force, the applicant’s case was pending before the second-instance court in the part which had been decided by the first-instance court, namely the part concerning the responsibility for the damages. The second-instance court delivered its judgment on 9 May 2007. An appeal on points of law was lodged on 13 June 2007 and since then the proceedings have been pending before the Supreme Court. As regards the possible outcome of the latter proceedings, the Court notes that the Supreme Court could theoretically reject the applicant’s claim as a whole and that would lead to a final resolution of the case; it could also remit the case for re-examination (see paragraph 26 above). These scenarios, however, have not been mentioned by the Government, who have submitted instead that after the Supreme Court renders a decision the remaining part of the claim concerning the amount of damages to be awarded to the applicant would have to be examined by the regular court.

39. The Court notes that the Government argued that the applicant had effective remedies at his disposal in respect of, first, the pending Supreme

Court proceedings, and, second, the previous and forthcoming proceedings before the regular courts.

(a) Assessment of the remedies in respect of the length of proceedings before the Supreme Court

40. Since the 2006 Act entered into force, the Court has undertaken an examination of the effectiveness, within the meaning of Articles 13 and 35 § 1, of the new remedies available in respect of the length of the first- and second-instance proceedings (see paragraph 37 above). It found that the aggregate of these remedies, namely a supervisory appeal and a motion for a deadline together with a “claim for just satisfaction”, was effective in the sense that the remedies were in principle capable both of preventing the continuation of the alleged violation and of providing adequate redress for any violation that had already occurred (see case-law cited in paragraph 37 above). The Court notes that this conclusion was reached only in respect of the remedies available in relation to the proceedings before the first- and second-instance court and that the level of protection available in respect of the proceeding before the Supreme Court is significantly lower.

41. In this connection, the Court observes that in proceedings before the Supreme Court a claimant can use a supervisory appeal and a motion for a deadline. However, unlike in proceedings before the regular courts where a motion for a deadline constitutes, in substance, an appeal to a higher instance, in the proceedings before the Supreme Court both remedies are dealt with by the president of that court – that is the court responsible for the conduct of the proceeding to which the remedy relates. The Court further observes that no compensation can be claimed in respect of the length of Supreme Court proceedings.

42. The Court found in the *Lukenda* judgment that the request for supervision, which, although then regulated only by the Judicature Act, was a remedy of the same nature as the present supervisory appeal, was ineffective. It noted that this was a remedy in the framework of judicial administration and not within court proceedings; that it had no binding effect on the court concerned; and that since there was no right of appeal this remedy could not have had any significant effect on expediting the proceedings as a whole (see *Lukenda*, §§ 24, 61-64 and the case-law cited therein).

43. The Court finds that with some improvements brought in by the 2006 Act, in particular as regards the criteria for assessing the reasonableness of the length of proceedings and indication of certain deadlines, the two acceleratory remedies available in Supreme Court proceedings remain, in substance similar to the request for supervision, which was found not to be an effective remedy in the *Lukenda* judgment.

44. The Court moreover notes that, unlike the proceedings before the lower courts, Supreme Court proceedings do not normally involve various

procedural steps; that they concern only the examination of questions of law, and that no hearing is held in them. In absence of any evidence submitted by the Government, the Court finds it difficult to foresee what the practical effect of the mentioned remedies would be on the speed with which Supreme Court proceedings are conducted.

45. In conclusion, having regard to the nature of the acceleratory remedies provided in the 2006 Act in relation to proceedings before the Supreme Court, and to the fact that they are not available in combination with any compensatory remedy, the Court is not convinced that they can provide effective redress in respect of the length of Supreme Court proceedings and cannot require the applicant to use them.

46. Notwithstanding the above conclusion, the Court notes that the present application does not concern merely the Supreme Court proceedings, but a situation which has developed over a long period involving three levels of jurisdiction. Regardless of the effect the above acceleratory remedies would have on the proceedings before the Supreme Court, had the applicant used them, the Court does not consider that they could have had any significant effect on the length of the proceedings as a whole (see *Holzinger v. Austria (no. 1)*, no. 23459/94, § 22, ECHR 2001-I, and *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

(b) Assessment of the remaining remedies available to the applicant

47. The Court observes that before the new legislation had taken effect, the applicant's case had already been pending for more than seven years, most of that time before the first-instance court. Since there were no effective remedies available to the applicant during that period (see *Lukenda*, cited above), the only way to remedy the situation was to subsequently provide a compensatory remedy for the damage suffered as a result of the delays (see *Scordino*, cited above, § 185). In this connection, the Court notes that since 1 January 2007 individuals have had the opportunity to avail themselves of a compensatory remedy under the two conditions set out in the 2006 Act (see paragraphs 22 and 23 above). The Government asserted that the applicant in the present case had successfully availed himself of the supervisory appeal, which the applicant did not dispute. In view of the parties' submissions concerning the second condition for lodging a "just satisfaction claim", the Court will proceed on the assumption that the applicant successfully availed himself of the supervisory appeal and by doing so the first condition was satisfied (*ibid.*). As regards the second condition, that is the "final resolution of the case", the Court reiterates its previous finding in the *Žunič* case, that:

"50. because of this condition, those who believe that they have suffered a violation of their right to a trial within a reasonable time may be obliged to wait even further before being able to seek relief. Therefore, ..., the Court finds it indispensable that the proceedings, which have already been long, are finally resolved particularly

promptly following the exhaustion of the accelerative remedies. Indeed, it cannot be ruled out that the question of a reasonably prompt access to a just satisfaction claim will affect whether this remedy, alone or in combination with the accelerative remedies, is effective in respect of the delays which had already occurred (see *Mifsud*, cited above, and, *mutatis mutandis*, *Scordino*, cited above, § 195)."

48. As regards the question of when, according to this second condition, the compensatory remedy should be available to the applicant in the present case, the Court must first address the Government's argument that the applicant's case has already been "finally resolved" on 18 May 2007. This argument conflicts with the initial observations of the Government and was intended to support the assertion that the applicant had the opportunity to lodge, within nine months of 18 May 2007, a "just satisfaction claim" in respect of the delays which had occurred beforehand (see paragraphs 29-31 above). The Court notes that, if that were true, it would mean that the "just satisfaction claim" was available also in cases which had been "finally resolved" only in the part concerning the basis of the claim, despite the fact that the remaining part was still pending.

49. In this connection, the Court reiterates that it is incumbent on the Government pleading non-exhaustion to demonstrate that a remedy they wish to rely on was an effective one, available in theory and in practice at the relevant time. The availability of any such remedy must be sufficiently certain in law as well as in practice (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198).

50. It is true that the Court has been prepared to allow for a certain level of flexibility in applying the requirements that Governments need to fulfil when relying on the non-exhaustion rule in respect of the domestic remedies adopted with a view to providing redress for undue delays in domestic proceedings (see *Scordino*, cited above, § 189-90; *Žunič*, cited above, § 37; *Korenjak*, cited above, § 73; *Charzyński v. Poland* no. 15212/03 (dec.), §§ 40-41, ECHR 2005-V; and *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII). However, the Court considers that an interpretation by the Government of the domestic legislation which does not have a sufficiently clear provision as to the availability of the remedy in a certain situation cannot be sufficient for it to conclude that that remedy was actually available to the applicant. That is particularly so if no domestic jurisprudence providing such a statutory interpretation is available to the Court.

51. Having regard to the fact that there is no explicit provision in the 2006 Act addressing this issue; that the Government has not supplied any domestic jurisprudence in support of their argument; and that their submissions in this respect are conflicting (see paragraphs 29-31), the Court considers that the Government has failed to demonstrate that a "just satisfaction claim" was available to the applicant immediately after the basis of the claim had been "finally resolved".

52. The Court will therefore continue on the assumption that the applicant will be able to seek just satisfaction only after his whole case is “finally resolved”. In view of the principle set out in the *Žunič* case, the Court therefore needs to examine whether the present application is premature, which would be the case if the applicant could be said to have reasonably prompt access to the “just satisfaction claim”.

53. The Court notes that in the *Žunič* case, where the proceedings were pending before the first-instance court, the Court concluded that, in view of the progress made in the proceedings, the applicant should have soon been able to use the compensatory remedy. However, unlike in that case, the applicant in the present case has already been waiting for two years for the proceedings before the Supreme Court to be concluded. These proceedings are currently still pending. The applicant may also have to wait further for the proceedings before the regular court, that is the first-instance and, if an appeal is lodged, the second-instance court, to be conducted in respect of the remaining part of the claim in order to be able to lodge a “just satisfaction claim”. In these circumstances the Court finds no reasonable grounds to assume that a “just satisfaction claim” has been available to the applicant reasonably promptly. The mere fact that the applicant would be able to reuse acceleratory remedies in forthcoming proceedings, provided that they continue before the regular courts, cannot override the above considerations.

(c) Conclusion

54. The Court finds that the new legislation, namely the 2006 Act, does not afford the applicant a legal remedy which could be considered effective in respect of the delays that have allegedly occurred in the impugned proceedings so far.

55. More generally, it finds first that the 2006 act does not provide for an effective remedy in respect of alleged delays in Supreme Court proceedings. Second, it notes that associating access to a “just satisfaction claim” with the “final resolution” of the case not only excludes Supreme Court proceedings but may in cases such as the present one delay the availability of that remedy to the extent that is not compatible with the Convention’s requirements. Moreover, this rule makes the application of the new remedies complicated as well as uncertain. As a result, an assessment of the issue of whether a particular applicant has prompt access to a “just satisfaction claim” unavoidably involves a degree of speculation and depends on the stage at which domestic proceedings are pending at the time the case is considered by the Court.

56. In conclusion, as this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds, it must be declared admissible.

B. Merits

57. The applicant argued that the length of the proceedings was unreasonable in his case. The Government did not submit any arguments in respect of the merits of the complaint under Article 6, despite being invited to do so.

58. The Court observes that the period to be taken into consideration began on 18 October 1999, the day the applicant instituted proceedings with the Celje District Court, and has not yet ended. The relevant period has therefore lasted over nine years and seven months at three levels of jurisdiction.

59. 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).

60. The Court would emphasise, as it did in number of its previous rulings concerning the implementation of the 2006 Act, that the subsidiary principle is one of the most important principles for the functioning of the Convention system. Having examined all the material submitted to it, and having regard to its case-law on the subject, it 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. In substance, the applicant further complained that the remedies available for excessively lengthy court proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

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

A. Admissibility

62. 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

63. The Government submitted that under the 2006 Act the applicant had at his disposal various effective legal remedies in respect of the alleged breach of the “reasonable time” requirement.

64. The applicant disputed that argument.

65. The Court reiterates that the standards of Article 13 require a party to the Convention to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant Convention complaint and to award appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 145). The Court again observes that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (see paragraph 34 above).

66. In the present case the Government have failed to show that the 2006 Act offered the applicant an effective remedy (see paragraphs 34 to 55 above). As regards the remedies available prior to the implementation of the 2006 Act, the Government have also failed to submit anything that would lead the Court to a different conclusion from the one reached in earlier cases in which these remedies were considered ineffective (see *Lukenda*, cited above, §§ 84 to 88).

67. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed EUR 8,000 in respect of non-pecuniary damage.

70. The Government did not comment on the claim.

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

B. Costs and expenses

72. The applicant also claimed SIT 147,132, which is approximately EUR 600, for the costs and expenses incurred before the Court.

73. The Government did not comment on the claim.

74. 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 are reasonable as to quantum. In the present case, the applicant submitted his claim for costs and expenses in the application form and this claim therefore related only to the preparation of the application. The Government, although having an opportunity to reply, has not disputed the claim and the Court considers it reasonable to award the sum of EUR 600 for the proceedings before the Court.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President