



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

THIRD SECTION

CASE OF MAKSIMOVICH v. SLOVENIA

(Application no. 28662/05)

JUDGMENT

STRASBOURG

22 June 2010

FINAL

22/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Maksimovič v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 1 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 28662/05) 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 Stojan Maksimovič (“the applicant”), on 28 July 2005.

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

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he had been a party had been excessive. In substance, he also complained of the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 20 February 2009 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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 1969 and lives in Kranj.

6. On 7 July 2001 the applicant was injured in a car accident. The motorist responsible for the accident had taken out insurance with the insurance company Zavarovalnica Maribor d.d.

7. On 17 October 2001 the applicant instituted civil proceedings against the insurance company in the Kranj District Court (*Okrožno sodišče v Kranju*) seeking damages in the amount of 1,187,433.00 Slovenian tolar (approximately 4,966 euros) for the injuries sustained.

8. Between 7 May 2002 and 20 September 2006 the applicant lodged four sets of preliminary written submissions.

9. Between 4 September 2002 and 8 October 2004 he made three requests that a date be set for a hearing.

10. Between 24 January and 21 September 2006 three hearings were held.

11. On 23 February 2007 the applicant informed the first-instance court that he wished to withdraw the claim.

12. On 30 March 2007 the Kranj District Court issued a decision that the proceedings be discontinued, following an out-of-court settlement between the parties.

II. RELEVANT DOMESTIC LAW

For the relevant domestic law see *Nežirović v. Slovenia* ((dec.) no. 16400/06, 25 November 2008).

THE LAW

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

13. The applicant complained that the length of the proceedings had been excessive. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

14. In substance, the applicant further complained that the remedies available for excessive length of 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

15. The Government pleaded non-exhaustion of domestic remedies. They referred to the Act on the Protection of the Right to a Trial without Undue Delay (“the 2006 Act”) and to the Court's decision in *Nezirović v. Slovenia* (cited above).

16. The applicant contested those arguments.

17. Firstly, the Court observes that the 2006 Act became operational on 1 January 2007. Since that date it has provided acceleratory remedies which can be used during the first- and second-instance proceedings. A claimant may lodge 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 appellant within two months, he or she, relying on the same grounds, can lodge a motion for a deadline with the court hearing the case. The motion for a deadline is to be dealt with by the president of the higher court. He or she is to decide on the motion for a deadline within fifteen days of receiving it.

18. In addition to these acceleratory remedies, the 2006 Act also provides for the possibility of obtaining redress through a compensatory remedy, that is by bringing a “claim for just satisfaction” after the acceleratory remedies have been exhausted, namely, a successful supervisory appeal or a motion for a deadline, regardless of its outcome. The “claim for just satisfaction” can be lodged when the proceedings have been resolved.

19. Secondly, the Court notes that it has found in previous cases against Slovenia that the applicants were required to make use of acceleratory remedies if the proceedings were pending before the first or second-instance court (see *Korenjak v. Slovenia*, (dec.) no. 463/03, §§ 63-61, 15 May 2007), and that they 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. Slovenia*, (dec.) no. 24342/04, §§ 43-55, 18 October 2007).

20. Thirdly, in the decision *Nezirović v. Slovenia* (cited above, §§ 37-40) the Court observed that even in cases where the delays had occurred before the 2006 Act became operational, the compensation claim could in principle be considered to be an effective remedy if the applicant had a real possibility of satisfying the requirements for its admissibility, including the use of acceleratory remedies as required by section 15. In that case, the Court found that the applicant had had a real possibility of satisfying the requirements for the use of acceleratory remedies, having regard to the fact that the 2006 Act had been published in the Official Gazette on 12 May 2006 and that the impugned domestic proceedings were finally resolved on 9 May 2007. The Court therefore considered that four months

(the period after the 2006 Act became operational) was a sufficiently long period to allow the party to the proceedings to exhaust the said remedies.

21. In the present case the Court must determine whether, in view of the principles set out in *Nezirović v. Slovenia* (see paragraph 20 above), the applicant had enough time and a reasonable chance to exhaust the acceleratory remedies for the purpose of securing his access to a just satisfaction claim.

22. In this connection the Court observes that when the 2006 Act became operational on 1 January 2007, the impugned proceedings were pending before the first-instance court. The last hearing in the case was held on 21 September 2006 and the applicant subsequently withdrew his claim on 23 February 2007, following an out-of-court settlement between the parties. A decision was given on 30 March 2007 terminating the proceedings. The applicant therefore had less than three months to avail himself of the acceleratory remedies. In order to use these remedies in a way that would have enabled him to subsequently lodge a just satisfaction claim, he would have had to lodge a supervisory appeal in the days immediately after the 2006 Act became operational. Moreover, if the supervisory appeal had been rejected, which would have been highly likely given that there had been no delays after 1 January 2007, or if the president of the first-instance court had failed to decide on it within two months, the applicant would have had to lodge a motion for a deadline with the president of the second-instance court (see paragraph 17 above). Only then would he have satisfied the admissibility requirements for a just satisfaction claim.

23. Taking into account that an out-of-court settlement was reached on 23 February 2007, which is less than three months after the 2006 Act became operational, and having regard to the statutory deadlines for the lodging of acceleratory remedies and the time needed for their adjudication (see paragraph 17 above), the Court considers that the applicant could not realistically have been expected to exhaust the acceleratory remedies for the purpose of satisfying the conditions for lodging a compensation claim in the present case (see, by contrast, *Nezirović v. Slovenia*, §§ 36–41). The Government's objection concerning non-exhaustion of domestic remedies should therefore be dismissed.

24. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention; nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

25. 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.

26. The Court observes that the period to be taken into consideration began on 17 October 2001, when the applicant instituted proceedings with the Kranj District Court, and ended on 30 March 2007, when the decision terminating the proceedings was issued. The relevant period therefore lasted five years and five months for one level of jurisdiction.

27. 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).

28. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement. There has accordingly been a breach of Article 6 § 1.

2. Article 13

29. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In the present case the Court is not persuaded that the applicant could have had access to the compensation claim and finds the remedies of the 2006 Act ineffective (see paragraphs 15-25 above). As regards the remedies available prior to the implementation of the 2006 Act, the Court sees no reason to take a different approach to that taken in earlier cases in which those remedies were considered ineffective (see *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 9,500 euros (EUR) in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

35. The applicant also claimed EUR 275 for the costs and expenses incurred in the proceedings before the Court.

36. The Government did not comment on the applicant's claim.

37. 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, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 275 for the proceedings before the Court.

C. Default interest

38. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 275 (two hundred and seventy-five 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 22 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President