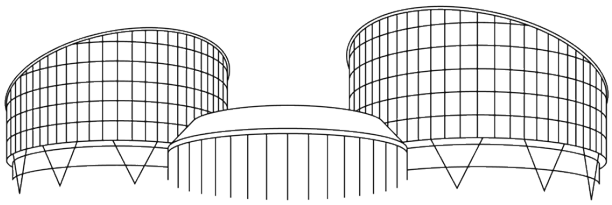

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GRUPA ZASTAVA VOZILA, A.D. v. SLOVENIA

(Application no. 67793/10)

JUDGMENT

STRASBOURG

25 April 2013

This judgment is final but it may be subject to editorial revision.

In the case of Grupa Zastava Vozila, A.D. v. Slovenia,

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

Angelika Nußberger, *President,*
Boštjan M. Zupančič,
Helena Jäderblom, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 2 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 67793/10) 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 Serbian company, Grupa Zastava Vozila, A.D. ("the applicant company"), on 11 November 2010.

2. The applicant company was represented by Ms M. Kranjčevič, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent.

3. On 24 May 2012 the application was communicated to the Government. In accordance with Protocol No. 14, the application was assigned to a committee of three Judges.

4. Having been informed on 24 May 2012 of their right to submit written comments of the case, the Serbian Government indicated to the Court that they did not intend to take part in the proceedings.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. In 1996 the applicant company GRUPA ZASTAVA VOZILA A.D. concluded a contract with the company PS ZA AVTO p.o. before a notary determining the contractual modalities concerning joint investments.

6. On 1 December 1997 proceedings for the annulment of the above contract and notarial protocol were instituted against the applicant company before the Ljubljana District Court by the company PS ZA AVTO.

7. On 14 July 1998 the court ordered the claim to be served on the applicant company in the Republic of Serbia with the assistance of the Ministry of Justice ("the Ministry") through diplomatic channels.

8. On 29 October 1998 the court made an inquiry with the Ministry concerning the service.

9. On 12 November 1998 the Ministry informed the court that they were still waiting for a reply from the Serbian authorities.

10. On 30 May 2000 the court received a request for third party intervention from the company ZASTAVA AVTO d.o.o.

11. On 6 June 2000 the court made another inquiry with the Ministry concerning the service.

12. On 29 June 2000 the applicant company's representative sent the authority form and a request for joinder with another case.

13. On 17 May 2001 the applicant company sent a request for a hearing to be set.

14. The first hearing scheduled for 11 October 2001 was postponed.

15. On 12 October 2001 the State Attorney's Office submitted a request for third party intervention.

16. On 10 June 2002 the court issued a decision allowing both third parties to participate in the proceedings.

17. On 12 September 2002 the applicant company lodged a counterclaim. Due to the counterclaim the court postponed the hearing set for 19 September 2002.

18. On 3 February 2003 the court held a settlement hearing. The parties failed to reach a settlement.

19. On 14 April 2003 the court held the first hearing.

20. On 23 April 2003 the applicant company requested an extension of deadline for the submission of documents. The deadline was extended by one month.

21. On 10 November 2003 the court appointed a financial expert.

22. On 23 February 2004 the court granted the expert's request for the extension of the deadline for the submission of the report.

23. On 3 May 2004 the expert submitted the report.

24. On 6 October 2004 the court held a hearing.

25. On 13 December 2004 the court rendered a judgment ruling in favour of the applicant company. The notarial protocol and the contract remained in force. The plaintiff appealed.

26. On 7 November 2006 the Ljubljana Higher Court delivered a judgment amending the first-instance judgment and ruling against the applicant company. The applicant company lodged an appeal on points of law.

27. On 12 May 2008 the Supreme Court delivered a judgment upholding the appeal court's decision. The applicant company lodged a constitutional appeal.

28. On 13 May 2010 the Constitutional Court rejected the appeal as unfounded.

THE LAW

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

29. The applicant company complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

30. In substance, the applicant company further complained that the remedies available for excessive legal 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

31. The Government offered the applicant company a settlement proposal made by reference to section 25 of the 2006 Act to the. The applicant company did not accept the offer.

32. The Court observes that the transitional provision of the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act"), namely section 25, provides for the procedure to be followed in respect of applications where the violation of the "reasonable time" requirement has already ceased to exist and which were lodged with the Court before 1 January 2007. Notwithstanding the fact that the settlement proposal was made by reference to section 25, as the proceedings to which the applicant company was a party continued before the Supreme Court and the Constitutional Court after the new legislation became operational, the above provision did not give a remedy to the applicant company's case.

33. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1

34. The period to be taken into consideration began on 1 December 1997, the day the proceedings were instituted before Ljubljana District Court, and ended on 13 May 2010, the date of the Constitutional Court's decision. It therefore lasted twelve years and five months at four levels of jurisdiction.

35. 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, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

36. The Court notes that it took the first-instance court more than five years to hold the first hearing and an additional two years to deliver a judgment (see paragraphs 5, 18 and 25 above). It is true that the case was of a certain complexity and there were some difficulties with the service of claim to the applicant company in Serbia, the Court however notes that there were almost two years of total inactivity in the proceedings (see paragraphs 8-12 above). Such a length of time at one instance seems unreasonable.

37. Having examined all the material submitted to it and having regard to the Court's case-law (see *Bedi v. Slovenia*, 24901/02, §§ 18-20, 13 April 2006; *Žnidar v. Slovenia*, 76434/01, §§ 21-23, 9 March 2006; *Kiurkchian v. Bolgaria*, no. 44626/98, §§ 68-72, 24 March 2005; and *Von Koester v. Germany*, no. 40009/04, §§ 124-125, 7 January 2010) 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

38. 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).

39. In the present case the Court is not persuaded that the applicant company could have had access to the compensation claim and finds the remedies of the 2006 Act ineffective (see paragraphs 32-33 above). As regards the remedies available prior to the implementation of the 2006 Act, the Court sees no reason to take a different approach from that taken in earlier cases in which those remedies were considered ineffective (see *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

40. 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 company could have obtained a ruling dealing with its right to have its case heard within a reasonable time, as set forth in Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant company complained under Article 6 of the Convention about the unfairness and arbitrariness of the proceedings. It complained that the judgments were not sufficiently reasoned; in particular that the domestic courts did not address an international agreement the applicant company was referring to in its submissions.

42. Having examined the above complaints, the Court finds, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the Article 6. It follows that the remaining complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

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

45. The Government contested the claim.

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

B. Costs and expenses

47. The applicant company also claimed EUR 1,824 for the costs and expenses incurred before the Court.

48. The Government contested the claim.

49. Regard being had to the documents in its possession and to its case-law, the Court considers that the sum claimed should be awarded in full.

C. Default interest

50. The Court considers it appropriate that the default interest rate 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 complaint concerning the excessive length of the proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months , 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;
      (iii) EUR 1,824 (one thousand eight hundred and twenty-four 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;

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

Done in English, and notified in writing on 25 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President