

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

FIFTH SECTION

CASE OF HABIČ v. SLOVENIA

(Application no. 23416/06)

JUDGMENT

STRASBOURG

25 April 2013

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



In the case of Habič 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. 23416/06) 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 Marjan Habič ("the applicant"), on 24 May 2006.

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

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

4. On 6 March 2009 the President of the 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, on 7 September 2012, the President decided to invite the Government to submit, if they so wish, written observations on the admissibility and merits of the case (Rule 54 § 2 (b) of the Rules). In accordance with Protocol No. 14, the application was assigned to a committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and lives in Begunje pri Cerknici.

6. On 10 April 1997 the applicant instituted a labour dispute against two companies before the Ljubljana Labour and Social Court seeking severance pay. He also lodged a request for an interim order to safeguard his claim since the companies were having financial difficulties.

7. On 24 April 1997 the first-instance court rejected the request for an interim order. He appealed.

8. On 22 May 1997 the appeal court remitted the decision on the interim order for reconsideration.

9. On 18 June 1997 the first-instance court postponed a hearing on the request of the applicant.

10. On 2 July 1997 the first-instance court held a hearing concerning the interim order.

11. On 11 July 1997 the first-instance court rejected the request for an interim order.

12. On 8 December 1998 the applicant lodged a preliminary submission and a second request for an interim order.

13. On 16 December 1998 the first-instance court rejected his request for an interim order.

14. On 6 July 1999 the applicant lodged a request to accelerate the proceedings.

15. On 24 November 1999 he lodged a third request for an interim order.

16. On 6 December 1999 the first-instance court rejected his request. He appealed.

17. On 23 December 1999 his appeal was rejected.

18. On 18 April 2000 the applicant withdrew his claim against the second defendant and lodged a fourth request for an interim order. His request was rejected on 4 May 2000. He appealed. His appeal was rejected on 23 May 2000.

19. On 19 July 2000 the first-instance court issued a decision on termination of proceedings concerning the second defendant.

20. On 15 November 2000 the first hearing was held.

21. On 24 January 2001 a hearing was postponed on request of both parties due to the absence of witnesses.

22. On 7 March 2001 the first-instance court held a hearing and rendered a judgment upholding the applicant's request in part. The applicant appealed.

23. On 21 November 2002 the Higher Labour and Social Court remitted the case for re-examination. The appeal court found that the first-instance court failed to establish the facts correctly and issued the judgment prematurely.

24. Between 2 July 2003 and 3 September 2003 the first-instance court held two hearings.

25. On 15 October 2003 the first-instance court issued a judgment upholding the applicant's request in part. The applicant appealed.

26. On 3 March 2005 the appeal was rejected. He lodged an appeal on points of law.

27. On 15 December 2005 the Supreme Court upheld the appeal and remitted the case to first-instance. The Supreme Court found that the lower court erred in the application of the law.

28. On 10 March 2006 the first-instance court issued a judgment upholding the applicant's request. The defendant appealed.

29. On 11 July 2006 the appeal court upheld the appeal in part and amended the operative part of the judgment.

II. RELEVANT DOMESTIC LAW

30. For relevant domestic law see judgment *Ribič v. Slovenia* (no. 20965/03, 19 October 2010, §19).

THE LAW

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

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

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

32. In substance, the applicant further complained that the remedies available for excessively long 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

33. The Government argued that the proceedings were not unduly long and that the application should be rejected as manifestly ill-founded. They submitted that the major delays were attributable to the applicant, who kept lodging requests for interim orders and appealed against almost every decision. They contended that this fact cannot be held to the detriment of the

State. According to them the domestic courts were adequately swift in the deliberation of the case.

34. The applicant contested these claims.

35. The Court notes that the present case concerns proceedings that were terminated before the 2006 Act came into force and the effectiveness of remedies, in particular of the "just satisfaction claim" provided by section 25 of the 2006 Act, implemented on 1 January 2007. The case is thus similar to the case *Ribič v. Slovenia* (cited above). In that case the Court found that the legal remedies at the applicant's disposal were ineffective (ibid., §§ 37-42).

36. The Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish the present case from the above mentioned case.

37. 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

38. The period to be taken into consideration began on 10 April 1997 and ended on 11 July 2006, when the second-instance court decision was issued. The proceedings therefore lasted nine years and three months at three levels of jurisdiction.

39. 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).

40. The Court notes that the case concerned a labour dispute which calls for additional diligence and swiftness in the deliberation.

41. Examining the applicant's behaviour and the Governments' arguments in this regard, the Court observes that he did lodge several requests for an interim order and requested for a hearing to be postponed. In this connection the Court notes that it held on many occasions, that the applicant's use of remedies should be considered as constituting an objective fact not capable of being attributed to the respondent State, and this is to be taken into account when determining whether or not the proceedings lasted longer than the reasonable time referred to in Article 6 (see for example *Tomažič v. Slovenia*, no. 38350/02, § 58, 13 December 2007). However, looking at the circumstances of the present case the Court finds that the deliberations on the requests for interim orders were dealt with

swiftly, usually within days, and do not appear to be the main reason for the initial delay before the first-instance court.

42. As regards the postponement of two hearings allegedly at the request of the applicant, the Court notes that as regards the first hearing (see paragraph 9), it is true that the applicant made such a request, but that does not however explain the fact that the hearing was held only three years later (see paragraph 20 above). Furthermore, the second hearing was postponed on request of both parties (see paragraph 21 above), which cannot be attributable solely to the applicant.

43. Turning to the conduct of the domestic courts, the Court observes that there was a period of one year and five months of absolutely no activity and an additional eleven months of barely any activity from the first-instance court (see paragraphs 11-15 above). Overall it took the first-instance court four years to reach a decision, which cannot be considered as reasonable.

44. The Court further observes that the case was remitted for re-examination two times. The reason on both occasions was the inability of the first-instance court to duly establish the facts despite clear orders from the appeal court and errors in the application of the law as established by the Supreme Court (see paragraph 23 and 27). The Court acknowledges that the domestic courts were in the best position to judge whether the case ought to be referred back to the lower courts under the relevant provision of domestic law *(Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, § 43). Nonetheless, as it has already stressed in previous cases (see, for example, *Deželak v. Slovenia*, no. 1438/02, § 25, 6 April 2006), since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, as indeed appears to have happened in the applicant's case, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. That deficiency is attributable to the authorities, not the applicant (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

45. Having regard to the foregoing and to its case-law on the subject (see *Ramšak v. Slovenia*, no. 33584/02, §§ 23-25, 13 December 2007; *Prekrasnyy v. Ukraine,* no. 33697/04, §§ 23-27, 18 February 2010; *Pavlova v. Bulgaria*, no. 39855/03, §§ 19-25, 14 January 2010; and *Geršak v. Slovenia*, no. 35475/02, §§ 27-31, 27 May 2008), 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

46. 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 for a case to be heard within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

47. The Court recalls its findings in the case of *Ribič v. Slovenia* (see paragraph 35 above) and notes that the Government have not submitted any convincing arguments which would require it to distinguish the present application from the aforementioned case. The Court therefore 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

48. 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

49. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government contested the claim.

51. The Court considers that it should award the full sum claimed.

B. Costs and expenses

52. The applicant also claimed EUR 1,362 for the costs and expenses incurred before the Court.

53. The Government contested the claim.

54. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,362 covering costs for the proceedings before the Court.

C. Default interest

55. 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 application admissible;

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, within three months, the following amounts:
      (i) EUR 4,000 (four thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,362 (one thousand three hundred and sixty-two 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.

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	Angelika Nußberger
Deputy Registrar	President