

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

FIFTH SECTION

CASE OF KOLAR v. SLOVENIA

(Application no. 1363/07)

JUDGMENT

STRASBOURG

5 June 2014

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



In the case of Kolar v. Slovenia,

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

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Helena Jäderblom, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 1363/07) 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 Janko Kolar ("the applicant"), on 29 December 2006.

2. The applicant was represented by Mr S. Jenčič, a lawyer practising in Maribor. The Slovenian Government ("the Government") were represented by their Agent.

3. On 24 November 2010 the application was communicated to the Government.

4. The Government submitted a unilateral declaration which did not offer sufficient basis for finding that respect for human rights as defined in Article 37 § 1 the Convention had been fulfilled (see *Prencipe v. Monaco*, no. 43376/06, §§ 62-63, 16 July 2009). The Court was therefore required to continue the examination of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Maribor.

6. On 16 January 1992 the applicant instituted proceedings before the Maribor Basic Court against the Ministry of Environmental Protection and Spatial Planning for an injunction that they put into effect a decision on the construction of a dam close to a hydroelectric power plant built by the applicant.

7. On 18 March 1993 the applicant modified his claim into payment of pecuniary damages.

8. By 28 June 1994 when the Convention came into force in respect of Slovenia, the court had scheduled three main hearings of which one had been adjourned.

9. On 28 July 1995 the Maribor Local Court issued an order declaring itself as not having the subject-matter jurisdiction and referring the case to the Maribor District Court.

10. Two main hearings were held on 3 July 1996 and 19 September 1996 respectively.

11. Further two hearings scheduled for 24 October 1996 and 20 November 1997 were adjourned due the applicant's health problems.

12. A further hearing was held on 26 February 1999.

13. On 30 March 1999 the court held the last main hearing and issued its decision dismissing the applicant's claim. The applicant appealed.

14. On 14 September 1999 the Maribor Higher Court quashed the first instance court's decision and remitted the case back to the first instance court.

15. Five hearings were held in the new proceedings between 11 January 2001 and 7 November 2002. On the latter date the Maribor District Court issued a decision dismissing the applicant's claim. The applicant appealed.

16. On 11 July 2006 the Maribor Higher Court upheld the applicant's appeal and altered the decision on the merits, upholding the applicant's claim in part. Both parties lodged an appeal on points of law.

17. On 8 May 2008 the Supreme Court upheld the defendant's appeal on points of law and altered the decision of the higher court by dismissing the applicant's claim. The applicant lodged a constitutional complaint.

18. On 28 November 2008 the Constitutional Court dismissed the applicant's constitutional complaint.

II. RELEVANT DOMESTIC LAW

19. For relevant domestic law, see *Tomažič v. Slovenia* (no. 38350/02, 13 December 2007); *Robert Lesjak v. Slovenia* (no. 33946/03, 21 July 2009) and *Podbelšek Bračič v. Slovenia* (no. 42224/04, 18 April 2013).

THE LAW

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

20. 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..."

21. The applicant 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 [this] 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

22. In their submissions the Government claimed that section 25 of the 2006 Act was applicable to the applicant's case.

23. The Court observes that the transitional provision of the 2006 Act, namely section 25, as amended on 9 June 2012, provides for the procedure to be followed in respect of applications where the violation of the "reasonable time" requirement had already ceased to exist before 31 March 2007. However, as the proceedings to which the applicant was a party continued before the Supreme and the Constitutional Court after 31 March 2007, the above provision did not give a remedy in the applicant's case (see, *mutatis mutandis*, *Robert Lesjak v. Slovenia*, cited above, §§ 47-53 and *Tomažič v. Slovenia*, cited above, §§ 41-45).

24. This part of the application is thus not inadmissible for non-exhaustion (see also *Sotošek v. Slovenia*, no. 22799/09, §§ 24-27, 3 April 2014; see by contrast *Carević v. Slovenia,* dec., no. 17314/03, §§ 44-50, 3 June 2008). The Court further notes that it is also not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6

25. The period to be taken into consideration began on 28 June 1994, when the Convention entered into force with respect to Slovenia and ended on 28 November 2008. The proceedings thus lasted fourteen years and five months at four levels of jurisdiction.

26. 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).

27. In assessing the reasonableness of the time that elapsed after the Convention came into force with respect to Slovenia, account must be taken of the state of proceedings at the time. The Court notes in this connection that at the relevant time the proceedings had been pending for two years and five months.

28. Having regard to the circumstances of the case and its case-law on the subject (see, *Zavodnik v. Slovenia*, no. 36261/08, §§ 21-30; 3 November 2013; *Fortunat v. Slovenia*, no. 42977/04, §§ 42-47, 18 April 2013 and *Rumpf v. Germany*, no. 46344/06, §§ 41-46, 2 September 2010) and in the absence of any arguments brought forward by the Government in respect of the above mentioned criteria, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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 view of its findings above (see, §§ 29-31) the Court finds 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

30. 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

31. The applicant claimed EUR 50,000 in respect of non-pecuniary damage.

32. The Government contested the claim.

33. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 8,000 under that head.

B. Costs and expenses

34 The applicant made no claim as regards the costs and expenses incurred before the Court. The Court therefore makes no award under this head.

C. Default interest

35. 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 EUR 8,000 (eight thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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's claim for just satisfaction.

Done in English, and notified in writing on 5 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Ann Power-Forde President