

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

FOURTH SECTION

CASE OF KOLAR v. SLOVENIA

(Application no. 33868/08)

JUDGMENT

STRASBOURG

26 September 2017

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 (Fourth Section), sitting as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 33868/08) 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 8 July 2008.

2. The Slovenian Government ("the Government") were represented by their Agent, Mr L. Bembič, State Attorney.

3. On 13 May 2015 the complaints concerning the length of judicial proceedings and the lack of effective remedy in this connection were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Beloljin, Republic of Serbia.

A. Main proceedings

5. In 1997 the Maribor unit of the Surveying and Mapping Authority (hereinafter the "Maribor unit") issued several decisions concerning the delimitation of real estate belonging to the applicant and to company D., and ordering changes in respect of the use of land. The applicant appealed against some of those decisions.

6. On 28 September 2000 the Ministry for the Environment and Spatial Planning (hereinafter the "Ministry") granted the applicant's appeal in part

and annulled a decision issued on 12 February 1997 while it dismissed the appeal concerning two decisions issued on 31 January 1997.

7. On 23 November 2000 the applicant challenged the aforementioned decision of the Ministry in the part dismissing his appeal by instituting proceedings before the Administrative Court.

8. On 6 November 2003 the Administrative Court granted the applicant's appeal, annulled the challenged part of the decision of 28 September 2000 (see paragraph 6 above) and referred the case back to the Ministry who, in turn, referred it to the Maribor unit. The applicant appealed.

9. On 24 May 2006 the Supreme Court dismissed the appeal and upheld the Administrative Court's judgment. This decision was served on the applicant on 4 July 2006. The applicant lodged a constitutional complaint.

10. On 19 December 2007 the Constitutional Court dismissed the constitutional complaint. The decision was served on the applicant on 10 January 2008.

B. Proceedings under the Protection of the Right to Trial without Undue Delay Act ("the 2006 Act")

11. On 10 July 2015, referring to section 25 of the 2006 Act, which regulates the domestic settlement proceedings in cases where an application to an international court had been lodged before the 2006 Act entered into force (see paragraph 14 below), the State Attorney's Office sent the applicant a settlement offer. In the offer they emphasised that the proceedings before the Constitutional Court could not have given rise to a violation of the "reasonable time" requirement. In respect of redress they offered to provide the applicant with a written statement in which they would acknowledge that his right to a trial within a reasonable time had been violated in the proceedings before the Administrative Court and the Supreme Court. The offer was served on the applicant on 24 July 2015.

12. The applicant did not accept the offer.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law is summarised in *Robert Lesjak v. Slovenia* (no. 33946/03, §§ 18-25, 21 July 2009) and *Tomažič v. Slovenia* (no. 38350/02, § 23, 13 December 2007).

14. In addition, section 25 of the 2006 Act, as amended on 9 June 2012, reads as follows (see also *Novak v. Slovenia* [Committee], no. 5420/07, § 14, 25 April 2013):

> "(1) In cases where a violation of the right to a trial without undue delay has already ceased by 31 March 2007 and the party has made a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's

Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within a period of four months at the latest ...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months of the date on which the party filed its proposal, the party may bring an action before the court with jurisdiction under this Act. The party may bring an action within six months of receipt of the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court."

THE LAW

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

15. 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, in so 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..."

16. 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 [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

17. The Government argued that the applicant had failed to exhaust domestic remedies. They asserted that he had been given a reasonable settlement offer in the domestic proceedings. Had he been unhappy with it, he could have availed himself of the remedies provided in section 25 of the 2006 Act (see paragraph 14 above). In this connection, the Government maintained that the violation had ended on 4 July 2006 when the decision of

the Supreme Court had been served on the applicant (see paragraph 9 above).

18. The applicant disagreed and maintained that the proceedings before the Constitutional Court had also given rise to a violation of the "reasonable time" requirement and that therefore section 25 did not apply to his case.

19. The Court observes that the transitional provision of the 2006 Act – namely section 25, as amended on 9 June 2012 (see paragraph 14 above) – provides that a civil compensation claim can be lodged by applicants who refuse a settlement offer from the State Attorney's Office. The civil claim provided in section 25 can be lodged only in cases where the violation of the "reasonable time" requirement ceased to pertain before 31 March 2007 (see paragraph 14 above). In the present case, however, the proceedings terminated after that date with the decision of the Constitutional Court on 19 December 2007 (see paragraph 10 above).

20. The Court has already held that the proceedings before the Slovenian Constitutional Court are to be taken into account for the purpose of determining the length of the proceedings (see, *mutatis mutandis*, *Tričković v. Slovenia*, no. 39914/98, §§ 36-41, 12 June 2001). It notes that the Government have not submitted any convincing arguments to the contrary and that, in turn, the applicant could have successfully claimed compensation under section 25 of the 2006 Act before the domestic courts.

21. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed (see, *mutatis mutandis*, *Sotošek v. Slovenia* [Committee], no. 22799/09, §§ 24-25, 3 April 2014, and *Tomažič v. Slovenia*, no. 38350/02, §§ 44-45, 13 December 2007). The Court further notes that the application is 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 § 1 of the Convention

22. The period to be taken into consideration began on 23 November 2000, when the applicant instituted proceedings before the Administrative Court (see paragraph 7 above), and ended on 10 January 2008, when the decision of the Constitutional Court was served on him (see paragraph 10 above). They thus lasted more than seven years and one month at three levels of jurisdiction.

23. 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).

24. Having regard to the circumstances of the case and its case-law on the subject (see, *mutatis mutandis*, *Novak v. Slovenia* [Committee], no. 5420/07, §§ 22-26, 25 April 2013) 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.

25. There has accordingly been a breach of Article 6 § 1 of the Convention.

2. Article 13 of the Convention

26. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 of the Convention 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 in *Robert Lesjak v. Slovenia* (no. 33946/03, §§ 40-53, 21 July 2009) and *Tomažič* (cited above, §§ 41-45), and having regard to its conclusion that the procedure provided in section 25 of the amended 2006 Act did not apply to the applicant's case (see paragraphs 19-20 above), the Court finds that he did not have at his disposal an effective remedy whereby he could have obtained a ruling upholding his right to have his case heard within a reasonable time.

27. There has accordingly been a breach of Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 616,523.51 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

30. The Government contested these claims.

31. The Court considers that the applicant has not demonstrated the existence of a causal link between the pecuniary damage alleged by him and the violations found in the present case; it therefore rejects this claim. Having regard to its practice and case-law on the matter, it awards the applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant did not request reimbursement of costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

33. 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 2,400 (two thousand four hundred euros) 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 amount 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 26 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President