

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

FIFTH SECTION

CASE OF MADŽAREVIĆ v. SLOVENIA

(Application no. 38975/05)

JUDGMENT

STRASBOURG

15 May 2012

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



In the case of Madžarević v. Slovenia**,**

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

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 38975/05) 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 Borut Madžarević ("the applicant"), on 10 October 2005.

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

3. On 12 February 2009 the application was communicated to the Government. In accordance with Protocol No. 14 to the Convention, the application was assigned to a committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Ljubljana.

A. Enforcement proceedings (In 2000/00047)

5. On 25 November 1998 the Ljubljana Labour and Social Court found that the applicant's employment had been unlawfully terminated by company K. and ordered the latter to reinstate the applicant in his previous position and pay his salary for the period of his wrongful dismissal. On 28 June 2000 this judgment became final.

6. On 22 September 2000 the applicant lodged a request for enforcement of the judgment.

7. On 3 October 2000 the Vrhnika Local Court allowed the enforcement claim. Company K., however, objected, claiming that it had already fulfilled the obligations arising from the above-mentioned judgment. On 8 November 2000 the Vrhnika Local Court stayed the enforcement and advised company K. to institute contentious proceedings.

8. After the termination of the contentious proceedings (see paragraphs 11-18 below), and further to a request by the applicant on 13 March 2007, the enforcement proceedings continued. On 13 June 2007 the court ordered enforcement of the part of the judgment awarding the sum of EUR 46,950 which represented the unpaid salary with default interest (see paragraph 16 below). The applicant lodged an appeal, which was rejected on 10 October 2007.

9. On 29 November 2007 the Vrhnika Local Court discontinued the enforcement on the basis of information received from company K. to the effect that the payment had been made. However, this decision was quashed on appeal and subsequently, further to the notification that the applicant had received the full amount of the outstanding claim, the Vrhnika Local Court discontinued the enforcement on 24 September 2008. The applicant's appeal against that decision was rejected by the Ljubljana Higher Court on 25 February 2009. The latter's decision was served on the applicant on an unspecified date in March 2009.

10. In the course of those proceedings, the applicant lodged supervisory appeals under the Protection of the Right to Trial without Undue Delay Act (hereinafter referred to as "the 2006 Act") on 18 July 2007 and 17 March 2008 respectively. On 4 April 2008 he lodged a motion for a deadline, which was rejected as unfounded by the vice-president of the Ljubljana Higher Court on 25 April 2008.

B. Contentious proceedings concerning the validity of the enforcement (P 1454/2005)

11. On 24 November 2000 company K. lodged a claim with the Ljubljana Labour and Social Court, contesting the validity of the above-mentioned enforcement order of 3 October 2000 (see paragraph 7 above).

12. A hearing was held on 28 August 2001. On that date the court delivered a judgment, which was served on the applicant on 7 January 2002. On 14 January 2002 the applicant appealed.

13. On 29 August 2003 the Higher Labour and Social Court allowed the appeal and remitted the case for re-examination.

14. On 1 December 2003 the Ljubljana Labour and Social Court decided that it did not have jurisdiction in the case and referred it to the Vrhnika Local Court for adjudication. Following an objection by the applicant, the Vrhnika Local Court also declared that it lacked jurisdiction to decide on the matter and referred the case to the Ljubljana District Court on 16 July 2004.

On 21 January 2005 the latter instituted a dispute on jurisdiction. Following a decision of the Ljubljana Higher Court of 2 February 2005 the case was again transferred to the Vrhnika Local Court on 7 March 2005.

15. On 10 March 2005 the Vrhnika Local Court ordered company K. to specify the monetary value of the claim and, on 7 April 2005, declared lack of jurisdiction to adjudicate the case and referred it to the Ljubljana District Court. On 23 June and 6 December 2005 the latter held hearings.

16. On 6 December 2005 the court delivered a judgment in which it upheld company K.'s claim in so far as it concerned the re-employment of the applicant and payment of contributions and taxes. On the other hand, it rejected the company's claim with respect to unreimbursed salary with default interest and found that the claim for enforcement of this part of the judgment was admissible.

17. On 15 March 2006 the applicant appealed and so did K. On 24 January 2007 the Ljubljana Higher Court rejected both appeals. The judgment was served on the applicant on 12 February 2007.

18. In the course of the proceedings, the applicant lodged two supervisory appeals, one on 9 March 2005 and one on 3 January 2007.

C. Proceedings concerning the applicant's claim for compensation for non-pecuniary damage on account of the alleged delay in the above-mentioned proceedings

19. On 19 May 2008 the applicant, relying on section 20 of the 2006 Act, lodged a claim with the Kranj Local Court seeking compensation in the amount of EUR 5,000 for non-pecuniary damage incurred as a result of the length of the contentious proceedings. In the course of the proceedings, the applicant reduced his claim to EUR 4,000.

20. In reply to the claim, the State Attorney agreed to pay EUR 1,440 with respect to non-pecuniary damage.

21. Further to the termination of the enforcement proceedings (see paragraph 9 above), the applicant, on 8 June 2009, sent a settlement proposal to the State Attorney requesting to be paid compensation for non-pecuniary damage relating also to the length of the enforcement.

22. On 7 June 2010, the applicant, having received no reply from the State Attorney, requested that his compensation claim be extended to cover the damage resulting from the alleged excessive length of the enforcement proceedings. On 5 July 2010 the State Attorney declined to settle the case as far as the enforcement proceedings were concerned.

23. On 9 July 2010 the applicant lodged a supervisory appeal.

24. On 14 July 2010 the court issued a judgment. The court found that the contentious proceedings had lasted six years and two months at two levels of jurisdiction, had not concerned an issue of any complexity, and that the delay could not be attributed to the applicant. It also found that the

applicant had lodged two well-founded supervisory appeals in the course of the proceedings. The court concluded that the applicant's right to a trial within a reasonable time had been violated and that the State was to pay EUR 1,440 to him. In addition, it ordered the State to pay the applicant default interest on the amount of EUR 1,440 backdated to 19 May 2008. The court rejected the remainder of the claim. Lastly, the court rejected the applicant's request of 7 June 2010 for the modification of the claim, finding that in accordance with the applicable procedural rules no modification could be made at that late stage of the proceedings.

25. On 6 September 2010 the applicant lodged an appeal. On 6 May 2011 the Ljubljana Higher Court rejected the appeal and the Kranj Local Court's judgment consequently became final.

D. Proceedings concerning the applicant's claim for damages on account of the alleged delay in the proceedings

26. On 22 July 2008 the applicant, relying on section 21 of the 2006 Act, lodged a claim with the Ljubljana District Court for compensation for pecuniary damage in the amount of EUR 24,851, which he had allegedly sustained on account of the length of the contentious proceedings.

27. On 22 October 2009 the applicant modified his claim so as to include the damage incurred on account of the length of the enforcement proceedings (no. In 2000/20047).

28. On 1 June 2010 the Ljubljana District Court referred the case to the Kranj Local Court, which had jurisdiction to decide on the matter.

29. On 6 July 2010 the applicant lodged a supervisory appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. The 2006 Act entered into force on 17 May 2006. On 1 January 2007 it became operational and has been implemented since that date. The Act provides that a claimant may use a supervisory appeal and an application for a deadline in order to expedite the proceedings. In addition to these acceleratory remedies, the 2006 Act also provides for the opportunity to obtain redress by means of a compensatory remedy, namely, by bringing a claim for compensation. With regard to the compensatory remedy, the 2006 Act provides that two cumulative conditions must be satisfied in order for a party to be able to lodge a claim for compensation. Firstly, during the proceedings the applicant must have successfully availed himself of a supervisory appeal or have lodged an application for a deadline, regardless of the outcome. Secondly, the proceedings must have been terminated. Before a compensation claim can be lodged with a court, the claimant is required to attempt to settle the case with the State Attorney's Office. For a

detailed presentation of the 2006 Act, see *Žunič v. Slovenia* (dec.), no. 24342/04, §§ 17-26, 18 October 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

31. The applicant complained that the length of the domestic proceedings concerning the enforcement of the judgment of 25 November 1998, in particular with respect to the delays in the contentious 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 ..."

A. Admissibility

32. The Government argued that the applicant had failed to exhaust the domestic remedies provided under the 2006 Act. In particular, the proceedings for compensation for pecuniary and non–pecuniary damage which the applicant instituted under the 2006 Act were still pending.

33. The applicant contested that argument on the grounds that the remedies referred to by the Government were ineffective.

34. The Court reiterates that it may only deal with a matter after all domestic remedies have been exhausted. It further notes that after the parties had submitted their observations to the Court, the domestic proceedings for compensation for non-pecuniary damage were terminated on 6 May 2011. As a result of these proceedings, the applicant was awarded compensation in the amount of EUR 1,440 by a judgment in which the court found that his right to a trial within a reasonable time had been violated. In view of this development, the Court must determine whether the applicant can still claim to be a victim of the alleged violation within the meaning of Article 34 of the Convention.

35. Having regard to the case-law on the subject-matter, the Court notes that the applicant's victim status will depend on whether the redress afforded to him at the domestic level was adequate and sufficient having regard to Article 41 of the Convention (see, among others, *Jakupović v. Croatia*, no. 12419/04, § 16, 31 July 2007; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-...; and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-...).

36. The Court notes that the amount awarded to the applicant, EUR 1,440 concerned only the contentious proceedings, which ended on 12 February 2007. Having regard to the length and importance of these proceedings for the applicant (labour dispute), the aforementioned sum represented less than 30% of what the Court would be likely to award in the circumstances of the case in accordance with its practice. This factor in itself leads to a result that is manifestly unreasonable, having regard to the Court's case-law. The redress obtained by the applicant at the domestic level was thus insufficient (see *Cocchiarella*, cited above, §§ 106-107). The applicant can accordingly still claim to be a "victim" of a breach of his right to a hearing within a reasonable time.

37. The Court further notes that the applicant requested the enforcement of the judgment of 25 November 1998 on 22 September 2000. The enforcement proceedings were stayed shortly afterwards, when contentious proceedings were instituted two months later. After the termination of the contentious proceedings, the enforcement proceedings continued for a further two years. In this connection, the Court notes that the applicant lodged acceleratory remedies under the 2006 Act with respect to the length of the enforcement proceedings and therefore became entitled under the aforementioned act to claim compensation. However, his claim for modification of the claim for non-pecuniary damage so as to include those further periods of duration of the enforcement proceedings was rejected (see paragraphs 22 and 24 above). In light of its conclusion concerning the applicant's victim status, the Court shall therefore take the overall period, including the periods not considered by the domestic court, into account when determining the merits of the case and, if appropriate, the applicant's claim for just satisfaction under Article 41 of the Convention (see *Vidas v. Croatia*, no. 40383/04, § 23, 3 July 2008).

38. Lastly, the Court notes that the proceedings lodged by the applicant for compensation for pecuniary damage with respect to his length-of-proceedings complaint are still pending before the domestic court. However, in view of the above findings, the Court finds it appropriate to take up this issue in the context of Article 41 of the Convention alone.

39. The Court therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds and must thus be declared admissible.

B. Merits

40. The period to be taken into consideration began on 22 September 2000, when the applicant lodged his enforcement request, and ended no earlier than on 25 February 2009, when the Ljubljana Higher Court's judgment was issued. The proceedings therefore lasted eight years and five

months, and two levels of jurisdiction were involved. Within that period, the contentious proceedings lasted about six years and three months.

41. 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). The Court reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

42. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

43. Having examined all the material submitted to it, the Court concurs with the domestic court that in the instant case the length of the contentious proceedings was excessive and failed to meet the "reasonable time" requirement.

44. As regards the length of the enforcement proceedings, not counting the time they were stayed pending the outcome of the contentious proceedings, the Court notes that they lasted about two years and two months at two levels of jurisdiction. Although no unjustified delays occurred in that period, having regard to the overall length of the enforcement proceedings and the delays that occurred in the contentious proceedings, the Court considers that the applicant was not afforded a trial within a reasonable time (see *Vidas*, cited above, § 37).

45. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant further complained that he had no effective remedies at his disposal as regards his complaint about the length of the proceedings. This complaint falls to be examined under Article 13 of the Convention, which 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."

47. 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). The "effectiveness" of a "remedy" within the meaning of Article 13, however, does not depend on the certainty of a favourable outcome for the applicant (see *Kudła*, cited above, § 157).

48. The Court notes that it is true that at the time when the applicant first brought his complaint to it, there were no effective remedies available in Slovenian law in respect of the length of the proceedings in issue (see *Belinger v. Slovenia*, (dec.), no. 42320/98, 2 October 2001, and *Lukenda v. Slovenia*, no. 23032/02, §§ 66-71, ECHR 2005-X). However, on 1 January 2007, after the introduction of the 2006 Act, he had at his disposal remedies which were aimed at redressing breaches of the "reasonable time" requirement at domestic level. The Court found in its decision in *Korenjak v. Slovenia* ((dec.), no. 463/03, §§ 63-71 and 78, 15 May 2007) that the remedies introduced by the 2006 Act should be used by applicants even in cases that were already on the Court's list by the date of the introduction of that act. In that case the Court, not having yet any court practice at its disposal and therefore basing its conclusions on an assessement of the provisions of the 2006 Act, found that a claim for non-pecauniary damage under that Act represented an appropriate means of redressing a violation that had already occurred (*Korenjak,* cited above, §§ 60-62). Having regard to the way the provisions of the 2006 Act were applied in the proceedings instituted by the applicant (see paragraph 19-25 above), the court sees no reason to depart from the above finding. It notes that the local court accepted the applicant's claim, found a violation of his right to trial within a reasonable time and awarded him compensation. The mere fact that the compensation awarded to the applicant at the domestic level does not correspond to the amounts awarded by the Court in comparable cases does not render the remedy on the whole ineffective (see for example, *Jakupović*, cited above, § 28).

49. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS

50. The applicant further complained that the length of the proceedings complained of had infringed his right to access to court under Article 6 § 1 of the Convention and to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

51. The Government contested that argument.

52. The Court notes that these complaints are linked to the one examined above under Article 6 § 1 and must therefore likewise be declared admissible.

53. Having regard to its finding under Article 6 § 1 as regards the complaint about the length of the proceedings, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 with respect to the right to access to court or Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Zanghì v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed EUR 24,851 in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

56. The Government contested these claims.

57. As regards the applicant's claim in respect of pecuniary damage, the Court, noting that the domestic proceedings concerning the same issue are still pending, rejects it.

58. As regards non-pecuniary damage, the Court reiterates that where an applicant has resorted to an available domestic remedy and thereby obtained a finding of a violation and has been awarded compensation, but can nevertheless still claim to be a "victim", the amount to be awarded under Article 41 may be less than the amounts the Court has awarded in similar cases. In that case an applicant, with regard to the period considered by the domestic authority, must be awarded the difference between the amount obtained in the domestic proceedings and an amount that would not have been regarded as manifestly unreasonable if it had been awarded by the competent domestic authority. An applicant should also be awarded an amount in respect of stages of the proceedings that may not have been taken into account by the domestic authority (see *Jakupović*, cited above, §§ 33-35, and *Solárová and Others v. Slovakia*, no. 77690/01, § 62, 5 December 2006).

59. The Court notes that the applicant was awarded EUR 1,440 by the domestic authorities. Having regard to the circumstances of the present case and to the fact that not the entire duration of the proceedings was covered by the judgment of 14 July 2009, the Court, ruling on an equitable basis, awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicant also claimed EUR 340 for the costs and expenses incurred before the domestic courts. He also claimed reimbursement of costs with respect to the proceedings before the Court, but did not specify this claim.

61. The Government contested the above claims.

62. 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 documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

63. 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 Article 13 inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;

3. *Holds* that it is not necessary to examine the applicant's complaints concerning his right to access to court under Article 6 § 1 and the right guaranteed by Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three 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 amount 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 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Ann Power-Forde President