

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

FIFTH SECTION

CASE OF MEGLIČ v. SLOVENIA

(Application no. 29119/06)

JUDGMENT

This version was rectified on 5 July 2013
under Rule 81 of the Rules of Court.

STRASBOURG

18 April 2013

FINAL

18/07/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Meglič v. Slovenia,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 29119/06) 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 Stanko Meglič ("the applicant"), on 4 July 2006.

2. The applicant was represented by Mr B. Verstovšek, a lawyer practising in Celje. 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. He also complained under Article 13 of the Convention that there was no effective domestic remedy in respect of the excessive length of the proceedings.

4. On 30 March 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. On 3 January 2001 the applicant instituted proceedings against his employer before the Novo Mesto District Court seeking compensation for damage sustained at the workplace.

7. On 6 February 2002 the first-instance court held the first hearing. The court appointed two experts. The experts submitted their reports on 16 April 2002 and 17 January 2003.

8. On 10 March 2003 the court held the second hearing and rendered a judgment upholding the applicant's request in part. Both parties appealed.

9. On 18 January 2004 the Ljubljana Higher Court remitted the case for re-examination in the part concerning the amount of compensation.

10. Between 19 April 2004 and 26 November 2004 the first-instance court held three hearings.

11. On 21 January 2005 the court rendered a judgment upholding the applicant's request in part. The applicant appealed.

12. On 22 February 2006 the appeal court rendered judgment amending the first-instance judgment. The applicant lodged an appeal on points of law.

13. On 26 February 2007 the applicant lodged a supervisory appeal with the first-instance court in accordance with the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act").

14. On 13 April 2008 the president of the Supreme Court rejected the supervisory appeal on procedural grounds.

15. On 17 December 2008 the Supreme Court rejected the appeal on points of law. The decision was served on the applicant on 16 January 2009.

II. RELEVANT DOMESTIC LAW

16. For relevant domestic law see *Tomažič v. Slovenia* (no. 38350/02, 13 December 2007).

THE LAW

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

17. The applicant complained that the proceedings to which he was a party had been excessively long. He relied on 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 ..."

18. 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

19. Firstly, the Government argued that the duration of proceedings until 1 January 2007, the date when the new legislation became operational, was not excessive and secondly, they pleaded non-exhaustion of domestic remedies for the part of the proceedings before the Supreme Court, which were conducted after 1 January 2007.

20. The applicant contested these arguments.

21. The Court observes that the transitional provision of 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. As the proceedings to which the applicant was a party continued before the Supreme Court after the new legislation became operational the above provision does not apply to the applicant's case.

22. As regards the application of other provisions of the 2006 Act, in particular its section 19, the Court notes that the proceedings in the present case had been finally resolved before the 2006 Act became operational and have subsequently continued before the Supreme Court. Having regard to the 2006 Act as in force at the material time (see by contrast, *Žurej v. Slovenia, (dec.),* no. 10386/03, § 17, 16 March 2010), the applicant had no possibility to claim compensation for the delays incurred in the proceedings (see *mutatis mutandis*, *Tomažič v. Slovenia*, no. 38350/02, §§ 41-45, 13 December 2007 and *Lesjak v. Slovenia,* no. 33946/03, §§ 54-55, 21 July 2009).

23. The Government's objection concerning the exhaustion of domestic remedies should therefore be dismissed.

24. 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

25. The period to be taken into consideration began on 3 January 2001, the day the applicant instituted proceedings before the Novo Mesto District Court, and ended on 16 January 2009, the day the Supreme Court's

judgment was served on the applicant. It therefore lasted eight years at three 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. Having examined all the material submitted to it, and having regard to its case-law on the subject (see *Šramel v. Slovenia,* no. 39154/02, §§ 21-23, 13 December 2007*; Lakota v. Slovenia,* no. 33488/02, §§ 26-29, 7 December 2006; and *Marič v. Slovenia,* no. 35489/02, §§ 21-23, 21 December 2006), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

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).

30. In the present case the Court is not persuaded that the applicant could have had access to the compensation claim and finds the remedies of the 2006 Act ineffective (see paragraphs 21-22 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).

31. 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 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

32. 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

33. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government contested the claim.

35. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 3,200 under that head.

B. Costs and expenses

36. The applicant also claimed EUR 2,832 for the costs and expenses incurred before the Court.

37. 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, the Court notes that the applicant's representative charged EUR 2,380 for drafting the application submitted to the Court. The Court notes the representative doubled his fees due to the representation before an international court, which the Court finds rather unreasonable, since, for example, he was allowed to use Slovenian before the Court. The Court considers it appropriate to award the applicant EUR 1,000 under that head, plus any tax that may be chargeable to the applicant.

C. Default interest

38. 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

1. *Declares* by a majority the application admissible;

2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 and Article 13 of the Convention;

3. *Holds* by six votes to one
   (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[1], the following amounts:
      (i) EUR 3,200 (three thousand and two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,000 (one thousand 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pejchal is annexed to this judgment.

M.V.
C.W.

[1] Rectified on 5 July 2013: "from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention" has been inserted.

DISSENTING OPINION OF JUDGE PEJCHAL

I disagree with the majority's finding of a violation of the applicant's right to a fair trial within "a reasonable time" for the reasons given already in my separate opinion in the case *Podbelšek Bračič v. Slovenia*, no. 42224/04.