

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

FIFTH SECTION

CASE OF NOVAK v. SLOVENIA

(Application no. 5420/07)

JUDGMENT

STRASBOURG

25 April 2013

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



In the case of Novak 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. 5420/07) 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 Karlo Drago Novak ("the applicant"), on 21 December 2006.

2. The Slovenian Government ("the Government") were represented by their Agent.

3. On 22 June 2012 the application was communicated to the Government. In accordance with Protocol No. 14, 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 Logatec.

5. On 21 May 1997 the applicant lodged a criminal complaint against J.P. for fraud, alleging that on 21 August 1996 he had lent J. P. 1.000 DEM that J. P. never returned.

6. On 27 January 1999 the Ljubljana District Attorney's Office lodged charges against J. P. with the Ljubljana District Court for several offences of fraud, including the one relating to the applicant.

7. On an undefined date in 1999 the applicant instituted civil proceedings against J. P.

8. At a hearing held on 30 October 2000 before the Ljubljana District Court the applicant submitted his pecuniary claim for damages in the criminal proceedings.

9. On 11 June 2001 the applicant withdrew his civil claim and stated that he would submit a pecuniary claim for damages in the criminal proceedings.

10. On 20 December 2004, after hearings had been held on 22 September 2004, 27 October 2004, 23 November 2004, 10 December 2004, the Ljubljana District Court found the defendant J. P. guilty of several offences of fraud. As regards the offence relating to the applicant, the District Court rejected the charges due to the expiry of the absolute period of limitation and accordingly dismissed his pecuniary claims.

11. On 22 February 2007 the Ljubljana Higher Court dismissed the applicant's appeal.

12. On 15 October 2007 the Constitutional Court rejected the applicant's constitutional appeal on the basis that the applicant had no standing with regard to the proceedings he was complaining of.

II. RELEVANT DOMESTIC LAW

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

14. In addition, section 25 of the Act on the Protection of the Right to a Trial without undue Delay, as amended on 9 June 2012, reads as follows:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

> "(1) In cases where a violation of the right to a trial without undue delay has already ceased **by 31 March 2007** (emphasis added) 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 ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 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 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 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

17. The Government argued non-exhaustion, claiming that since the proceedings were finally resolved within three months of 1 January 2007 and under the amended section 25 of the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act") this provision was now also applicable to the present case affording the applicant effective remedies.

18. The applicant contested these arguments.

19. 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 has already ceased to exist before 31 March 2007. Notwithstanding the fact that the settlement proposal was made by reference to section 25, as the proceedings to which the applicant was a party continued before the Constitutional Court after 31 March 2007, the above provision did not give a remedy to the applicant's case.

20. 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 within the first three months after the 2006 Act became operational and have subsequently continued before the Constitutional Court. Having regard to the 2006 Act as in force at the material time, the applicant had no possibility to claim compensation for the delays incurred in the proceedings (see *Tomažič v. Slovenia*, no. 38350/02, 13 December 2007, §§ 41-45). This part of the application is thus not inadmissible for non-exhaustion.

21. 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

22. Taking into account the circumstances of the present case, the Court observes that the period to be taken into consideration began on 30 October

2000, the day the applicant submitted his pecuniary claim for damages in the criminal proceedings before the Ljubljana District Court (see, *mutatis mutandis, Perez v. France* [GC], no. 47287/99, §§ 66-67, ECHR 2004-I), and ended on 15 October 2007, the day the Constitutional Court's decision was issued. It therefore lasted nearly seven years 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. The Court observes that, due to the number of criminal acts the defendant was charged with and the number of the injured parties, the criminal proceedings was of certain complexity. It further notes that the amount the applicant claimed in the proceedings was not considerable. However, in the absence of delays to be attributed to the applicant, the Court further observes that while the proceeding had already been pending at the first instance when the applicant submitted his pecuniary claim, it took the first instance court further four years and two months to deliver its judgment and the second instance court further two years.

25. Having examined all the material submitted to it and having regard to its case-law on the subject (see, *Lednik v. Slovenia*, no. 37062/02, §§ 20-22, 15 November 2007, *Prljanović v. Slovenia*, no. 22172/02, §§ 18-20, 3 August 2006, *Tratar v. Slovenia*, nos. 76141/01, 25387/02 and 5925/05, §§ 61-69, 4 October 2007), the Court, for the reasons set out above, considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. 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 in the case *Tomažič v. Slovenia*, no. 38350/02, 13 December 2007, §§ 41-45, 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. Lastly, the applicant complained under Articles 3, 5, and 7 of the Convention with regard to the impact the proceedings had on his well-being.

29. Having examined the above complaints, the Court finds, in the light of all the materials in its possession, and in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the Articles relied on by the applicants. It follows that the remaining complaints concerning the first set of proceedings are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. 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 1,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government contested the claim.

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

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 complaint concerning the excessive length of the proceedings and the effectiveness of remedies in this respect admissible and the remainder of the application inadmissible;

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 1,000 (one 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.

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
Deputy Registrar

Angelika Nußberger
President