

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

FIFTH SECTION

CASE OF OROŽIM v. SLOVENIA

(Application no. 49323/06)

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 Orožim 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. 49323/06) 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, Ms Štefanija Orožim ("the applicant"), on 13 November 2006.

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

3. The applicant alleged, *inter alia*, under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive. She also complained under Article 13 of the Convention of the lack of an effective domestic remedy in this respect.

4. On 14 January 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Lesce.

6. In 1993 the company DOMPLAN Kranj instituted enforcement proceedings against the applicant before the Kranj Basic Court. The enforcement order was issued on 20 April 1993.

7. On 28 June 1994 the Convention came into force in respect of Slovenia.

8. On 28 July 1994 the case was reassigned to the Radovljica District Court.

9. On 23 December 1994 the enforcement order was served on the applicant. She lodged an objection.

10. On 13 September 1995 the enforcement order was annulled and the case was to be adjudicated in the framework of contentious proceedings.

11. On 3 October 1995 the creditor lodged another request for enforcement against the applicant. The enforcement order was issued on 23 October 1995.

12. On 26 January 1999 the Radovljica District Court issued a decision joining the two cases.

13. On 23 April 2001 the first-instance court held a hearing.

14. On 9 July 2001 the first-instance court rendered a judgment, upholding the creditor's requests. The applicant appealed.

15. On 24 April 2002 the Ljubljana Higher Court rejected the appeal.

16. On 7 October 2002 the creditor lodged a request for enforcement based on the judgment of 9 July 2001.

17. On 14 October 2002 the Radovljica District Court issued an enforcement order.

18. On 30 October 2002 the applicant lodged an objection to the order and at the same time a request for postponement of the enforcement expressing willingness to reach a settlement. The applicant's objection was sent to the creditor on 12 September 2003. The creditor responded on 5 March 2004.

19. On 25 May 2006 the first-instance court held a hearing and issued a decision regarding the objection against the enforcement order. The creditor appealed.

20. On 8 March 2007 the creditor requested the proceedings to be terminated following an out-of-court settlement reached between the parties. The decision on termination of proceedings was issued on 16 March 2007.

II. RELEVANT DOMESTIC LAW

21. For relevant domestic law see *Nezirović v. Slovenia* ((dec.) no. 16400/06, 25 November 2008).

THE LAW

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

22. The applicant complained that the proceedings to which she was a party had been excessively long. She 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 ..."

23. In substance, 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

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds (see *Maksimovič v. Slovenia,* no. 28662/05, §§ 21–24, 22 June 2010 and *Korelc v. Slovenia*, no. 28456/03, §§ 59-63, 12 May 2009). It must therefore be declared admissible.

B. Merits

1. Article 6

25. The Government argued that for the purposes of calculation of the duration of proceedings the enforcement proceedings and the contentious proceedings should be considered separately, since they are proceedings governed by different rules and conducted independently one from another.

26. The Court observes that the proceedings comprised of three stages. They began as enforcement proceedings instituted by the creditor, which later continued as contentious proceedings ending on 9 July 2001, when the first-instance judgment was issued. Based on this final judgment the creditor again instituted enforcement proceedings, which ended on 16 March 2007.

27. The Court reiterates its case-law on the subject, where it stated that the execution of a judgment given by any court is to be regarded as an

integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, p. 510, § 40). This principle has been found applicable in cases concerning the length of proceedings (see, for example, the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, Reports of Judgments and Decisions 1996-IV, pp. 1383-1384, §§ 20-24, and pp. 1410-1411, §§ 16-20, respectively) and is therefore also applicable in the present case.

28. Having regard to the above, the period to be taken into consideration began on 28 June 1994, the day the Convention came into force in respect of Slovenia, and ended on 16 March 2007, the day the decision on termination of proceedings was issued. It therefore lasted twelve years and nine months. The case was considered first as enforcement proceedings at one instance and in contentious proceedings on two instances (see paragraphs 14, 15 and 19 above).

29. 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

30. In this connection the Court observes that longest period of inactivity attributable to the State lasted between October 1995 and June 2001 (see paragraphs 11-13 above). The applicant's contribution to the delays on the other hand amounts to approximately two years, namely from October 2002 and May 2006 (see paragraphs 18-19 above), when she requested the postponement of the enforcement and failed to promptly settle her debt.

31. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Simončič v. Slovenia*, no. 7351/04, §§ 23-26, 18 January 2011, *Ovniček v. Slovenia*, no. 33561/02, §§ 17-19, 27 April 2006; *Soleša v. Slovenia*, no. 21464/02, §§ 17-19, 13 April 2006), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

2. Article 13

33. 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 *Maksimovič v. Slovenia* (cited above, §§ 29–30), 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 her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicant complained under Articles 6 and 14 of the Convention that the proceedings were unfair and the domestic courts were clearly on the creditor's side, completely ignoring her submissions and evidence. She further complained that she was discriminated against by everyone, including her attorney.

35. The Court notes that the applicant did not lodge a constitutional complaint. The above complaints must therefore be rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 17,609.45 euros (EUR) in respect of pecuniary and non-pecuniary damage.

38. The Government contested these claims.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,400 in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed EUR 842,02 for the costs and expenses incurred before the domestic courts and EUR 41,08 for those incurred before the Court.

41. The Government contested the claim for reimbursement of costs and expenses incurred before the domestic courts.

42. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic

proceedings and considers it reasonable to award the sum of EUR 50 for the proceedings before the Court.

C. Default interest

43. 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 complaint concerning the excessive length of the proceedings and lack of an effective remedy admissible;

2. *Declares* unanimously the remainder of the application inadmissible;

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

4. *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 6,400 (six thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 50 (fifty 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;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

[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.

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	Mark Villiger
Registrar	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.

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.