

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

FIFTH SECTION

CASE OF RIJAVEC v. SLOVENIA

(Application no. 36349/05)

JUDGMENT

STRASBOURG

15 May 2012

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



In the case of Rijavec 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. 21313/06) 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 Boris Rijavec ("the applicant"), on 10 July 2005.

2. The applicant was represented by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government ("the Government") were represented by their Agent, Ms A. Pešec.

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. In substance, he also complained that there was no effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 9 July 2008 the President of the Section decided to inform the Government of the application and to request them to submit information under Rule 54 § 2 (a) of the Rules of Court. Further to receipt of the information requested, on 28 May 2010, the President decided to invite the Government to submit, if they so wish, written observations on the admissibility and merits of the case (Rule 54 § 2 (b) of the Rules). In accordance with Protocol No. 14, the application was assigned to a committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 22 October 1997 the applicant instituted civil proceedings before the Celje District Court seeking the compensation of damages sustained in a car accident.

6. On 3 September 1998 the first hearing was held.

7. On 16 September 1998 the first-instance court appointed a medical expert.

8. On 26 February 1999 the expert opinion was submitted to the first-instance court.

9. On 3 June 1999 a hearing was held.

10. On 29 June 1999 the first-instance court appointed a new medical expert.

11. On 1 September 1999 the expert submitted his opinion to the court.

12. On 4 November 1999 a hearing was held and the court decided to appoint the third expert.

13. On 7 February 2000 the expert submitted his opinion.

14. On 23 March 2000 the court postponed the hearing scheduled for 28 March 2000 on the request of the applicant due to his medical condition.

15. On 4 May 2000 the first-instance court held the last hearing and delivered a judgment upholding the applicant's request in part. Both parties appealed.

16. On 17 October 2001 the Celje Higher Court remitted part of the case for re-examination and rejected the remainder of the claim.

17. On 19 December 2001 the applicant lodged an appeal on points of law against the rejected part of his appeal before the second-instance court.

18. On 10 April 2003 the Supreme Court rejected the appeal on points of law and the proceedings at first-instance resumed.

19. On 9 December 2003 a hearing was held where a decision to amend the expert opinion was taken.

20. On 1 June 2004, during the last hearing, the first-instance court delivered a judgment. The applicant appealed.

21. On 14 April 2005 the Ljubljana Higher Court rendered a judgment.

II. RELEVANT DOMESTIC LAW

22. For relevant domestic law see judgment *Ribič v. Slovenia* (no. 20965/03, 19 October 2010, §19).

THE LAW

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

23. 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 ..."

24. 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

25. 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 *Ribič v. Slovenia*, no. 20965/03, 19 October 2010, §§ 37-42). It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

26. The period to be taken into consideration began on 22 October 1997, the date the Convention entered into force with respect to Slovenia, and ended on 14 April 2005. The proceedings thus lasted for seven years and six months at three levels of jurisdiction (five instances were involved due to remittals of the case).

27. 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).

28. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, *Bendič v. Slovenia*, 77519/01, §§ 21-23,

1 June 2006; *Jenko v. Slovenia*, no. 4267/02, §§ 19-21, 6 April 2006; *Mulej-Zupanec & Others v. Slovenia*, no. 77545/01, §§ 17-19, 9 March 2006 and *Gaber v. Slovenia*, no. 5059/02, §§ 17-19, 6 April 2006) the Court considers that length of the proceedings in the present case was excessive and failed to meet the "reasonable time" requirement.

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

2. Article 13

30. 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 for a case to be heard within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

31. In view of its findings in the case of *Ribič v. Slovenia* (cited above, §§ 37-42) and having regard to the fact that the Government have not submitted any convincing arguments which would require it to distinguish the present application from the aforementioned case 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 applicants claimed 15,000 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 him EUR 3,200 under that head.

B. Costs and expenses

36. The applicant also requested reimbursement for costs and expenses incurred in the proceedings before the Court. This claim was supported by

itemised list of expenses amounting to EUR 455 similar to the lists normally submitted to the courts in domestic proceedings.

37. The Government did not comment on the applicant's claim.

38. 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 information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 455, under that head, plus any tax that may be chargeable to him.

C. Default interest

39. The Court considers it appropriate that the default interest 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 Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay within three months, the following amounts:
      (i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 455 (four hundred and fifty-five 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* 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