

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

FIFTH SECTION

CASE OF ŠVARA v. SLOVENIA

(Application no. 52886/08)

JUDGMENT

STRASBOURG

10 October 2013

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



In the case of Švara 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 17 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 52886/08) 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 Karel Švara ("the applicant"), on 29 October 2008.

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

3. On 6 September 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Prestranek.

5. On 13 November 1996, following a decision on his retirement, the applicant instituted proceedings against his former employer, the Republic of Slovenia, Ministry of Defence, before the Ljubljana Labour and Social Court. The case was initially conducted as a social dispute before the Social Court.

6. On 5 March 1998 the defendant responded to the claim.

7. On 7 December 1999 the court held the first main hearing.

8. On 11 February 2000 the second main hearing was held.

9. On 16 February 2000 the applicant gave a declaration before the court specifying his claim.

10. Following the applicant's declaration of 16 February 2000, as of 6 July 2000 the case was conducted as a labour dispute and was examined by the Labour Court.

11. On 24 January 2001 the third main hearing was held. At the hearing the applicant amended his claim.

12. On 7 May 2001 the applicant was invited by the court to assist him in amending his claim.

13. On 6 June 2001 the applicant requested the court for an extension of the time-limit for amending his claim.

14. On 8 June 2001 and 11 June 2001 the applicant amended his claim. On 15 June 2001 he submitted further documents to the court.

15. On 11 October 2001 the defendant responded to the claim.

16. Further two main hearings were held on 13 May 2002 and 18 September 2002. On the latter date the applicant orally amended his claim.

17. In January 2003 the applicant amended his claim in writing.

18. On 12 February 2003 a further main hearing was held. On the same date the Labour and Social Court granted a small part of the applicant's claim and dismissed the remainder of the claim. Both parties appealed.

19. On 16 December 2004 the Higher Labour and Social Court granted the appeals and remitted the case back to the first instance.

20. On 17 January 2005 the Ljubljana Labour and Social Court rejected the applicant's claim. In a separate order the court ordered the applicant to pay the costs of the proceedings. The applicant appealed against both decisions.

21. On 31 March 2006 the Higher Labour and Social Court dismissed the applicant's appeal regarding the rejection of the claim, modified the decision on the costs of proceedings and dismissed the remainder of the applicant's appeal relating to aforementioned decision.

22. On 29 May 2007 the Supreme Court dismissed the applicant's appeal on points of law. The applicant lodged a constitutional appeal.

23. On 4 July 2008 the Constitutional Court dismissed the applicant's constitutional appeal.

II. RELEVANT DOMESTIC LAW

24. For relevant domestic law, see the judgment *Lesjak v. Slovenia* (no. 33946/03, 21 July 2009) and *Tomažič v. Slovenia* (no. 38350/02, 13 December 2007).

THE LAW

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

25. 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..."

26. In substance, the applicant further complained that the remedies available for excessive legal proceedings in Slovenia were ineffective. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [this] 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

27. The Government raised no objections as regards the admissibility of these complaints.

28. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6

29. The period to be taken into consideration began on 13 November 1996, the date when the applicant instituted proceedings before the Labour and Social Court and ended on 4 July 2008, when the Constitutional Court dismissed the applicant's constitutional appeal. The proceedings thus lasted eleven years and ten months at four levels of jurisdiction.

30. 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 further reiterates that special diligence is necessary in labour disputes (*Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17; *Bauer v. Slovenia*, no. 75402/01, § 19, 9 March 2006).

31. The Court notes that the Government did not put forward any arguments as regards the complexity of the case.

32. Examining the applicant's behaviour, the Court observes that the applicant might have contributed to the length of proceedings by modifying his claim several times, as submitted by the Government. In particular the Government noted that the case was firstly conducted as a social dispute due to the applicant's imprecisions in formulating his claim and was only later after the applicant had in

the beginning of 2000 specified his claim accordingly, conducted as a labour dispute. The Government further referred to the period between January and June 2001 when the applicant was granted leave to amend his claim.

33. The applicant contested the arguments put forward by the Government.

34. In the circumstances of this case and having examined all the material submitted to it, the Court however does not find that the applicant's conduct had a significantly adverse effect on the length of proceedings. As regards the period between the institution of the proceedings in November 1996 and the applicant's declaration specifying his claim in February 2000, the Government did not argue that prior to the applicant's declaration the case could not have been decided on the basis of the applicant's initial submissions.

35. Furthermore, in the light of the overall length of proceedings before the first instance court which initially took more than six years to issue a decision the period between January 2001 and June 2001 when the applicant was awarded additional time to amend his claim, cannot be considered to have had a significantly adverse impact on the overall length of proceedings.

36. Having regard to the circumstances of the case and its case-law on the subject (see, *Fetis d.o.o. v. Slovenia*, 75366/01, §§ 15-18, 30 March 2006; *Cundrič v. Slovenia*, 57566/00, §§ 23-31, 30 March 2006; and *Jeznik v. Slovenia*, 32238/08, §§ 22-25, 20 June 2013), the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Article 13

38. 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 cases *Tomažič v. Slovenia* (no. 38350/02, 13 December 2007, §§ 41-45) and *Lesjak v. Slovenia* (no. 33946/03, 21 July 2009), 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 applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. Lastly, the applicant invoked Article 6 § 1 of the Convention with regard to the alleged unfairness of the proceedings and Article 14 of the Convention.

40. 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 applicant. It follows that the remaining complaints are

manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed alternatively 105,382 or 347,593 euros (EUR) in respect of pecuniary and EUR 1,000 in respect of non-pecuniary damage for each year of the duration of the proceedings.

43. The Government contested these claims.

44. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 4,800 under that head.

B. Costs and expenses

45. The applicant also claimed EUR 5,146 for the costs and expenses incurred before the domestic courts the Court.

46. The Government contested these claims.

47. The Court considers it reasonable to award the applicant, who was not represented by a lawyer, EUR 300 in respect of costs and expenses incurred before the Court.

C. Default interest

48. 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, the following amounts:
      (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 300 (three hundred 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President