

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

FIFTH SECTION

CASE OF TRUNK v. SLOVENIA

(Application no. 41391/06)

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 Trunk 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. 41391/06) 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 Franc Trunk ("the applicant"), on 29 September 2006.

2. The applicant was represented by Ms M. Končan 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 of the lack of an effective domestic remedy in this respect.

4. On 24 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Portorož.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. First set of proceedings (III Pd 489/96)

7. The applicant was a public servant working for the Centre for Educational and Extracurricular Activities ("the Center"). He was laid off following disciplinary proceedings. On 11 October 1996 he instituted proceedings before the Ljubljana Labour and Social Court against the Ministry of Education and Sport ("The Ministry") and the Centre seeking the annulment of the decision on termination of his employment contract together with all the rights and benefits stemming from the termination of the contract.

8. On 23 February 1998 the first hearing was held.

9. On 22 September 1998 the court issued a decision after the applicant withdrew his claim against the Ministry.

10. Between 8 October 1998 and 8 November 1999 the first-instance court held three hearings. In addition, in May and April 1999 two hearings were postponed on the request of the defendant party. A hearing was held on 8 November 1999.

11. On 22 December 1999 the first-instance court rendered a judgment rejecting the applicant's request. He appealed.

12. On 5 April 2002 the Ljubljana Higher Labour and Social Court upheld the appeal in part and remitted the case for re-examination. The court remitted part of the case because a preliminary submission of the defendant had not been sent to the applicant and he could therefore not submit his comments on the matter.

13. On 18 June 2002 the first-instance court held a hearing and rendered a judgment. The court found the first-instance disciplinary decision (see paragraph 7 above) to be lawful and the second-instance decision to be unlawful. Accordingly the court concluded that the applicant's employment contract had been terminated lawfully, however the decision on termination became final only when the judgment became final. The court therefore found that the applicant was entitled to the employment rights and benefits for the relevant period. The applicant appealed.

14. On 25 September 2002 the Ljubljana Labour and Social Court issued a *corrigendum* of the judgment.

15. On 27 August 2004 the Ljubljana Higher Labour and Social Court delivered a judgment. As the applicant kept lodging new requests concerning his rights and benefits throughout the proceedings the appeal court considered one such request in the appeal as a request for a supplementary judgment. The court rejected the remainder of the appeal and in this part the judgment became final. The applicant lodged an appeal on points of law.

16. On 4 November 2004 the Ljubljana Labour and Social Court rejected the appeal on points of law on procedural grounds. The applicant appealed.

17. On 14 January 2005 the Ljubljana Higher Labour and Social Court upheld the appeal. The appeal on points of law was sent to the Supreme Court.

18. On 25 October 2005 the Supreme Court rejected the appeal on points of law. The applicant lodged a constitutional appeal.

19. On 7 June 2006 the first-instance court issued a judgment (see paragraph 15 above). The applicant appealed.

20. On 5 October 2006 the appeal was rejected. The appeal court found *inter alia* that the applicant had been requesting rights and benefits after the appeal judgment became final without any grounds.

21. On 12 February 2007 the Constitutional Court rejected the constitutional appeal.

B. Second set of proceedings (VP 371/96)

22. On 20 December 1996 the applicant's former employer instituted proceedings against him before the Ljubljana District Court seeking the restitution of work-related material following the dismissal.

23. On 14 May 1997 the Ljubljana District Court issued a decision ordering the applicant to return the disputed material. The applicant appealed.

24. On 3 July 1997 the court held a hearing and annulled the decision. The plaintiff appealed.

25. On 14 October 1997 the Ljubljana Higher Court rejected the appeal.

26. On 18 December 1997 a decision was issued, whereby due to lack of jurisdiction the case was transferred to the Piran District Court.

27. On 28 November 1998 the applicant lodged a counter claim seeking payment for the updates he made to a computer and car expenses.

28. On 8 January 2001 the proceedings were stayed. The proceedings resumed on 9 April 2001.

29. On 15 October 2001 the Piran District Court issued a decision on termination of proceedings following the withdrawal of the claim by the plaintiff. The applicant, however, decided to pursue his counter claim.

30. On 5 February 2002 the Piran District Court issued a decision on lack of jurisdiction. The case was transferred to the Ljubljana Labour Court.

31. Between 12 April 2002 and 14 March 2003 the Ljubljana Labour Court held four hearings.

32. After the last hearing the court rendered a judgment upholding the applicant's request in part. Both parties appealed.

33. On 18 November 2004 the Higher Labour and Social Court upheld the appeals and remitted the case for re-examination.

34. On 23 March 2007 the Ljubljana Labour Court held a hearing and rendered a judgment upholding the applicant's request in part. An appeal was lodged.

35. On 10 September 2008 the Higher Labour and Social Court rendered a judgment.

II. RELEVANT DOMESTIC LAW

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

THE LAW

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

37. 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 ..."

38. 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 [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

39. Firstly, as regards the second set of proceedings the Court notes that they were pending at second instance on 1 January 2007 and continued for more than three months. Following the Court's findings in the cases *Grzinčič v. Slovenia* (no. 26867/02, § 110, 3 May 2007) and *Nezirovič v. Slovenia* (no. 16400/06, (dec.), §§ 27-42, 18 November 2008) the complaints under Articles 6 and 13 must be declared inadmissible in accordance with Article 35 §§ 1 and Article 35 §§ 3 and 4 of the Convention, respectively.

40. Secondly, as to the first set of proceedings the Court notes that the present case concerns proceedings that fall into the category of cases where the domestic proceedings had been "finally resolved" before the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act") entered into force but have afterwards continued before the Supreme and

Constitutional Court. The case is thus similar to the case *Kovinar d.o.o. v. Slovenia* (no. 24162/06, 4 December 2012). In that case the Court found that the legal remedies at the applicant's disposal were ineffective (ibid., §§ 18-21).

41. The Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish the present case from the above mentioned case.

42. The Court further notes that the part of the application concerning the first set of proceedings 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

43. The period to be taken into consideration began on 11 October 1996, the date when proceedings were instituted, and ended on 12 February 2007, when the Constitutional Court's decision was issued. The proceedings thus lasted ten years and four months at four levels of jurisdiction.

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

45. Having examined all the material submitted to it, and having regard to its case-law (see *Bedi v. Slovenia*, no. 24901/02, §§ 18-20, 13 April 2006; and *Žnidar v. Slovenia*, no. 76434/01, §§ 21-23, 9 March 2006) on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable-time" requirement.

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

2. Article 13

46. 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).

47. 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 39-42 above). As regards the remedies available prior to the implementation of the 2006 Act, the Court

sees no reason to take a different approach to that taken in earlier cases in which those remedies were considered ineffective (see *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

48. 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

49. 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

50. The applicant claimed 26,800 euros (EUR) in respect of non-pecuniary damage.

51. The Government did not express an opinion on the matter

52. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 2,400 under that head.

B. Costs and expenses

53. The applicant also claimed EUR 3,060 for the costs and expenses incurred before the Court.

54. The Government did not express an opinion on the matter

55. 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 the representative doubled his fees due to the representation before an international court, which the Court finds unreasonable, since, for example, he was allowed to use the Slovenian language before the Court. The Court therefore considers it reasonable to award the applicant the sum of EUR 1,500 under this head.

C. Default interest

56. 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 the lack of an effective remedy as regards the first set of proceedings 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 2,400 (two thousand four hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five 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 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
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.

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.