

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

FIFTH SECTION

CASE OF VUKADINOVIČ v. SLOVENIA

(Application no. 44100/09)

JUDGMENT

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 Vukadinovič 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. 44100/09) 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 Gorka Vukadinovič ("the applicant"), on 11 August 2009.

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

3. On 18 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Ljubljana.

A. First set of proceedings

5. On 6 August 1998 the applicant instituted a labour dispute before the Ljubljana Labour and Social Court seeking the annulment of the decisions of 9 June 1998 and 23 July 1998 whereby her contract had been terminated due to her unauthorised absence from work.

6. On 16 February 2000 the first-instance court delivered a judgment rejecting her request. She appealed.

7. On 20 June 2003 the Higher Labour and Social Court upheld the appeal and remitted the case for re-examination. The appeal court found that the facts had not been properly established and that as a consequence the application of the law was also questionable.

8. On 29 January 2004 the first-instance court rejected the applicant's claim. She appealed.

9. On 26 May 2006 the appeal was rejected. The applicant lodged an appeal on points of law.

10. On 11 March 2008 the Supreme Court rejected the appeal. The applicant lodged a constitutional appeal.

11. On 11 November 2008 the Constitutional Court rejected the appeal.

B. Second set of proceedings

12. On 5 April 1995 the applicant instituted proceedings before the Ljubljana Labour and Social Court seeking payment of benefits.

13. On 9 June 2003 the first-instance court delivered a judgment upholding her request in part. An appeal was lodged.

14. On 2 September 2004 the Ljubljana Higher Labour and Social Court remitted the case for re-examination.

15. On 12 April 2006 the first-instance court rendered a judgment. An appeal was lodged.

16. On 14 February 2007 the appeal was rejected and on 15 December 2008 the appeal on points of law was rejected. The applicant lodged a constitutional appeal

17. On 17 November 2009 the Constitutional Court rejected the appeal as being lodged out of time.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. 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 ..."

20. 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

21. As regards the first set of proceedings the Government offered a settlement proposal made by reference to section 25 of the 2006 Act to the applicant in the form of a written statement pursuant to section 15 of the said act acknowledging the violation of the right to a trial in a reasonable time but did not offer any monetary compensation. The applicant did not accept the offer.

22. The Court observes that the transitional provision of the 2006 Act, namely section 25, provides for the procedure to be followed in respect of applications where the violation of the "reasonable time" requirement has already ceased to exist and which were lodged with the Court before 1 January 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 Supreme Court after the new legislation became operational, the above provision does not apply to the applicant's case.

23. 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 before the 2006 Act became operational and have subsequently continued before the Supreme Court. Having regard to the 2006 Act as in force at the material time (see by contrast, *Žurej v. Slovenia, (dec.),* no. 24342/04, § 17, 18 October 2007), the applicant had no possibility to claim compensation for the delays incurred in the proceedings (see *mutatis mutandis*, *Tomažič v. Slovenia*, no. 38350/02,

§§ 41-45, 13 December 2007 and *Lesjak v. Slovenia,* no. 33946/03, §§ 54-55, 21 July 2009).

24. 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 (see *Korelc v. Slovenia*, no. 28456/03, §§ 59-63, 12 May 2009). It must therefore be declared admissible.

25. As to the second set of proceedings the Court notes that on 23 April 2010 the applicant lodged an application form, which was included in the case-file no. 44100/09. The Court observes that the applicant's constitutional appeal lodged in the main proceedings was rejected as being lodged out of time. The final decision to be taken into account for the purposes of the applicant's complaint regarding the undue length of proceedings is therefore the Supreme Court's decision of 15 December 2008. As the application was lodged before the Court on 23 April 2010, the Court finds that the length-of-proceedings complaint concerning the second set of proceedings was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

26. The period to be taken into consideration began on 6 August 1998, the day the applicant instituted proceedings before Ljubljana Labour and Social Court, and ended on 11 November 2008, the date of the Constitutional Court's decision. It therefore lasted ten years and five months at four levels of jurisdiction.

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 regard to the circumstances of the case and its case-law on the subject (see *Bedi v. Slovenia*, 24901/02, §§ 18-20, 13 April 2006; and *Žnidar v. Slovenia*, 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

29. 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).

30. 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 22-23 above). As regards the remedies available prior to the implementation of the 2006 Act, the Court sees no reason to take a different approach from that taken in earlier cases in which those remedies were considered ineffective (see *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005).

31. 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 dealing with her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Lastly, as regards the first set of proceedings, the applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 12 that the proceedings were unfair and that she was discriminated against and humiliated by the domestic courts because of her ethnic origins.

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

34. As regards the second set of proceedings the applicant complained under Articles 14 and 18 of the Convention that she was discriminated against by domestic authorities.

35. The Court notes that the constitutional appeal was lodged out of time and these complaints should therefore be rejected under Article 35 § 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. 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."

37. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT

1. *Declares* by a majority the complaint concerning the excessive length of the first set of proceedings and lack of an effective remedy admissible;

2. *Declares* by a majority the complaint concerning the excessive length of the second set of proceedings and lack of an effective remedy inadmissible;

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

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

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.