

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

FOURTH SECTION

DECISION

Application no. 39216/13
Anton KASTELIC
against Slovenia

The European Court of Human Rights (Fourth Section), sitting on 5 September 2017 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Georges Ravarani,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 June 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Anton Kastelic, is a Slovenian national, who was born in 1943 and lives in Velike Lašče. He was represented before the Court by Mr M. Kunič, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

A. The circumstances of the case

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

1. The minor offences proceedings and the seizure of the applicant's rifles

3. On 27 August 1997 the police lodged a request for the institution of proceedings against the applicant in respect of the minor offence of hunting songbirds. It further requested the court to issue a search warrant for the applicant's premises and seize the applicant's rifles due to the risk of reoffending.

4. On 29 August 1997 the police conducted the search of the applicant's house and seized bullets and two hunting rifles – one of the type Česka zbrojovka Bock (hereinafter "the Bock rifle") and the other one of the type Crvena zastava.

5. On 4 September 1997 the police lodged a second request for the institution of minor offence proceedings against the applicant also in respect of the minor offence of inappropriate storage of firearms and munition and the minor offence of use of a rifle in a public place, where it could represent a danger to the public.

6. On 12 November 1997 the Ljubljana Minor Offences Judge in the first set of minor offences proceedings dismissed the charges against the applicant in respect of the request of 27 August 1997 (see paragraph 3 above) and ordered the return of the rifles to the applicant once the decision became final. The decision became final on 5 December 1997. However, it would appear that the applicant had not picked up his rifles, which were subsequently confiscated on 12 February 1998 (see paragraph 7 below).

7. On 12 February 1998 the Ljubljana Minor Offences Judge in the second set of minor offences proceedings instituted on the basis of the request of 4 September 1997 (see paragraph 5 above) convicted the applicant and ordered the confiscation of the two rifles seized on 29 August 1997 (see paragraph 4 above). The applicant appealed.

8. On 29 November 2001 the Senate for Minor Offences decided to discontinue the minor offences proceedings against the applicant since the prosecution had in the meantime become time-barred. It decided that the Crvena zastava rifle could be returned to the applicant while it remitted the decision on the confiscation of the Bock rifle back to the the Ljubljana Minor Offences Judge.

9. On 26 February 2002 the Crvena zastava rifle was returned to the applicant.

10. On 20 April 2004 the Ljubljana Minor Offences Judge also decided to return the Bock rifle to the applicant, as there were no reasons of general safety and/or moral grounds justifying its confiscation. This decision was served on the applicant on 29 April 2004.

11. On 28 September 2004 the applicant went to the Ljubljana Administrative Unit to retrieve his Bock rifle. He established that the rifle was not in the same condition that it had been at the time of the seizure and refused to take it back.

2. The civil proceedings

12. On 17 March 2005 the applicant instituted civil proceedings against the State before the Ljubljana Local Court. He claimed 1,500,000 Slovenian tolars (SIT) (approximately 6,260 euros (EUR)) in respect of the non-pecuniary damage he alleged to have incurred on the account of the delays in the minor offences proceedings and because of defamation of his character and his inability to use his rifles. He moreover claimed SIT 120,000 (approximately EUR 500) with respect to the pecuniary damage caused by the unsuitable maintenance and storage of the Bock rifle, which he calculated on the basis of the price of a new rifle. It would appear that at some point he raised his claim for pecuniary damage to EUR 1,100, corresponding to the alleged price of a new rifle of a similar type.

13. The case had later been referred to the Kamnik Local Court which held hearings on 24 February, 21 April, 19 May 2009 and 8 January 2010. On 24 February 2009 the court heard the applicant who testified about the upkeep of the rifle, its value and its damage. He also explained that the rifle only needed a change of barrel; however he did not inquire how much that would cost.

14. On 8 January 2010 the court dismissed the applicant's claim in respect of both non-pecuniary and pecuniary damage. With regard to non-pecuniary damage relating to the alleged defamation and prolonged seizure of the rifles, the court held that the claim had been lodged out of the three-year time-limit. The local court further held that the applicant had in any event failed to establish all the elements of the liability of the State, in particular he had failed to show that he had suffered distress due to the minor offences proceedings and that the duration of the proceedings had been a consequence of unlawful conduct on the part of the minor offences judge. The applicant's claim in respect of pecuniary damage was dismissed because he had, *inter alia*, failed to show in what condition the rifle had been at the moment of the seizure and what, if any, damage on the rifle had resulted from the alleged unsuitable upkeep and storage during the confiscation period.

15. The applicant appealed, arguing that there was a causal link between the pecuniary damage and the unsuitable storage and disputed the view that the claim with respect to non-pecuniary damage had been time-barred. On 6 October 2010 the Ljubljana Higher Court dismissed the applicant's appeal. With regard to the applicant's claim in respect of pecuniary damage it considered that even if the applicant had managed to establish all the elements of the liability of the State, he would have been justified solely to the reparation costs of the rifle and not to the costs of a new rifle. The applicant had never submitted a claim for damages relating to the amount of reparation costs and for this reason alone his claim concerning pecuniary damage should be rejected.

16. The applicant lodged an application for leave to appeal on points of law. On 14 April 2011 the Supreme Court rejected the applicant's application with regard to the pecuniary damage, as the amount of the damages claimed was lower than the threshold stipulated by law, that is EUR 2,000 (see paragraph 19 below). With regard to non-pecuniary damage, the Supreme Court, dismissing this part of the leave to appeal, found that the applicant had failed to appeal the lower courts' view that he had not established all the elements of the liability of the State. Thus even a favorable decision of the Supreme Court with regard to time-barring could not change the outcome of the proceedings.

17. The applicant lodged a constitutional complaint. He complained about the time bar concerning his claim for non-pecuniary damage and about the authorities' lack of responsibility for the proper storage of his rifles. On 7 December 2012 the Constitutional Court rejected the applicant's constitutional complaint with regard to pecuniary damage and did not accept it with regard to non-pecuniary damage. The decision was served on the applicant's representative on 13 December 2012.

B. Relevant domestic law

18. Article 23 of the Constitution of the Republic of Slovenia reads, as far as relevant, as follows:

> "Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. ..."

19. According to the Civil Procedure Act (Official Gazette no. 26/99, with further amendments) in force at the relevant time, the Supreme Court could not accept an appeal on points of law in cases where the disputed value of the claim did not exceed EUR 2,000.

COMPLAINTS

20. The applicant complained under Article 6 of the Convention about the length of the minor offences proceedings. He also complained that the seizure, confiscation and inappropriate upkeep of his rifles and the rejection of his claim for compensation had amounted to a violation of Article 1 of Protocol No. 1 to the Convention.

THE LAW

21. The applicant complained of a violation of Article 6 § 1 of the Convention, which, in so far as relevant, 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 ..."

22. He also complained of a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

23. The Government argued that the applicant had failed to comply with the six-month time-limit with regard to both complaints. Moreover, they argued that he had failed to properly exhaust domestic remedies with respect to his complaint under Article 1 of Protocol No 1 to the Convention. In particular, the applicant's claim concerning non-pecuniary damage was rejected because, in addition to being time-barred, it was considered unsubstantiated. The applicant however did not dispute this view, neither in his appeal nor in his application for leave to appeal on points of law. He has therefore not properly exhausted domestic remedies. The Government raised the same argument with regard to the claim for pecuniary damage. In particular, they pointed out that the applicant had alleged in the civil proceedings that his Bock rifle would have needed repairing but had not put forward any claim or estimation concerning the repair costs in line with the domestic procedure. He had instead indicated the value of the new rifle at EUR 1,100, which was irrelevant for the assessment of the damage corresponding to the reparation costs to which only the applicant had been entitled.

24. The applicant disputed the Government's arguments and maintained that he had rightly availed himself of civil proceedings and lodged a constitutional complaint.

25. The Court finds it appropriate to consider the two complaints separately. As regards the complaint concerning the "reasonable time" requirement under Article 6, the Court notes that the applicant had claimed compensation for the length of minor offences proceedings by instituting civil proceedings (see paragraphs 12 to 17 above). The latter had commenced on 17 March 2005, before the Court found in *Lukenda v. Slovenia* (no. 23032/02, §§ 54-60, ECHR 2005-X) that the civil claim for

damages could not have been considered an effective remedy for addressing a violation of the right to a trial within a reasonable time. Be that as it may, even assuming that the civil proceedings instituted by the applicant were capable of interrupting the running of the six-month time-limit (see, *mutatis mutandis, Fernie v. the United Kingdom* (dec.), no. 14881/04, 5 January 2006), this complaint must be rejected as out of time for the following reason.

26. After his application for leave to appeal on points of law relating to the outcome of the civil proceeding was dismissed on 14 April 2011 (see paragraph 16 above), the applicant did not invoke, not even in substance, his right to a trial without undue delay (see paragraph 17 above) in the subsequent proceedings before the Constitutional Court. Therefore, the proceedings before the Constitutional Court cannot be regarded as part of the process of exhaustion of domestic remedies. By lodging his application with the Court on 11 June 2013, which is more than two years from the end of the Supreme Court's proceedings, the applicant failed to comply with the six-month time-limit and this complaint should thus be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

27. As regards the complaint under Article 1 of Protocol No.1, the Court notes that on the one hand the applicant did not challenge before the higher courts one of the grounds on which his claim for the non-pecuniary damage allegedly resulting from the seizure of the rifles had been dismissed, notably that he had failed to establish all the elements of the State liability (see paragraphs 14 to 16 above). On the other hand, his claim concerning pecuniary damage was dismissed because he had not put forward any quantified claim, let alone evidence, for the damage sustained on his Bock rifle in accordance with the domestic procedure (see paragraphs 12 to 15 above). Thus, through his own omission, he did not provide the Slovenian courts with the opportunity, which is in principle intended to be afforded to a Contracting State by Article 35 of the Convention, of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it (see *Farrugia v. Malta* (dec.), no. 67557/10, § 23, 6 March 2012).

28. The Court moreover observes that the applicant lodged an application for leave to appeal on points of law. This avenue was, however, not available with respect to claims in which the disputed value was lower than EUR 2,000 (see paragraphs 16 and 19 above). This is why his application for leave to appeal on points of law in the part concerning the pecuniary damage was rejected by the Supreme Court. His constitutional complaint was subsequently rejected and not considered on the merits as regards the issue of pecuniary damage (see paragraph 17 above). Therefore, the applicant, also in the foregoing context, failed to comply with the formal requirements laid down in the domestic law, as required by rule on exhaustion of domestic remedies (see *Azinas v. Cyprus* [GC], no. 56679/00,

§ 38, ECHR 2004-III). This resulted in his complaint concerning the pecuniary damage not being examined on the merits by the Constitutional Court.

29. It follows that the applicant failed to properly exhaust domestic remedies as regards his complaint under Article 1 of Protocol No. 1 to the Convention, which must thus be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President