CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 463/03
by Matej KORENJAK
against Slovenia

The European Court of Human Rights (Third Section), sitting on 15 May 2007 as a Chamber composed of:

Mr C. BÎRSAN, *President,*
Mr B.M. ZUPANČIČ,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges,*
and Mr S. NAISMITH, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 December 2002,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Matej Korenjak, is a Slovenian national who was born in 1983 and lives in Braslovče. He was represented before the Court by the Verstovšek lawyers practising in Celje.

A. The circumstances of the case

1. The civil proceedings brought by the applicant

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

3. On 16 December 1996 the applicant was injured in his primary school while climbing on a roof of a gymnasium under construction.

4. On 16 July 1997 the applicant, who was a minor at that time, instituted civil proceedings in the Celje District Court (*Okrožno sodišče v Celju)* against the Adriatic Insurance Company ("the AIC") claiming compensation amounting to 6,200,000 Slovenian tolars (SIT). He also sought an exemption from court fees.

5. On 19 March and 1 July 1998 the applicant made requests for a hearing.

6. On 31 July and 8 September 1998 the applicant filed pleadings.

7. On 11 September 1998 a hearing was held. The court decided to appoint three medical experts, namely, a surgeon, an orthopaedist and a urologist.

8. On 16 September 1998 the court issued three decisions appointing the above-mentioned medical experts.

9. On 29 September, 27 October 1989 and 2 February 1999 the applicant filed pleadings. On 26 February 1999 he requested a copy of the expert opinions and on 13 September 1999 he filed pleadings.

10. On 10 November 1999 he requested the court to set a hearing and on 13 June 2000 he filed pleadings.

11. On 13 September 2000 a hearing was held. The court heard witnesses and adjourned the hearing in order to call other witnesses.

12. On 25 October 2000 the applicant lodged additional evidence.

13. On 31 January 2001 a hearing was held and adjourned in order to summon two witnesses.

14. On 5 February 2001 the applicant filed pleadings.

15. On 2 April 2001 a hearing was held. The witnesses were heard and the court decided to appoint an expert in workplace safety.

16. On 4 and 6 April 2001 the applicant filed pleadings.

17. On 13 April 2001 the Celje District Court issued a decision appointing the expert.

18. On 10 January 2002 the applicant filed pleadings.

19. On 21 January 2002 a hearing was held. The court decided to summon the workplace safety expert.

20. On 11 February 2002 the Celje District Court issued a decision concerning an appointment.

21. On 22 February 2002 the applicant filed pleadings.

22. On 6 March 2002 a hearing was held. The court examined the workplace safety expert and decided to appoint another expert, namely a

clinical psychologist. On 25 March 2002 the applicant filed additional evidence. On 3 September 2002 the Celje District Court issued a decision concerning the appointment of the clinical psychologist.

23. On 16 October 2002 the Celje District Court handed down a judgment granting the applicant's claim in part.

24. On 26 January 2003 the applicant lodged an appeal. The proceedings are pending before the Celje Higher Court.

2. Entry into force of the Act on the Protection of the Right to a Trial without undue Delay

25. In a letter of 9 October 2006 the State Attorney General officially informed the Court that, further to its judgment in *Lukenda v. Slovenia* (no. 23032/02, §§ 93 and 95, ECHR 2005-X) binding the Slovenian State to adopt appropriate legal measures and administrative practices in order to secure the right to a trial within reasonable time, the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act") had been enacted on 26 April 2006. The 2006 Act came into force on 27 May 2006 and became operational on 1 January 2007.

B. Relevant domestic law

*1. The 1991 Constitution of the Republic of Slovenia (*Ustava Republike Slovenije, *Official Journal, No. 33/91)*

26. The following provisions of the 1991 Constitution are relevant here:

Article 23

"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.

Article 26

"Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office. ..."

Article 160

"The Constitutional Court shall hear:

... constitutional appeals in which specific acts are alleged to have infringed a human right or fundamental freedom; ...

Unless otherwise provided by law, the Constitutional Court shall hear a constitutional appeal only if legal remedies have been exhausted. The Constitutional Court shall decide whether a constitutional appeal is admissible for adjudication on the basis of statutory criteria and procedures."

2. The Lukenda Project

27. Following the judgment in *Lukenda* (cited above) and decision no. U-I-65/05 of the Constitutional Court (22 September 2005), both binding the Slovenian State to establish conditions in which the right to a trial without undue delay must be afforded, the Slovenian Government adopted on 12 December 2005 a Joint State Project on the Elimination of Court Backlogs, the so-called Lukenda Project. Its goal is the elimination of backlogs in Slovenian courts and prosecutor's offices by the end of 2010, by providing for structural and managerial reform of the judiciary.

28. The preparation of the 2006 Act was part of the Lukenda Project.

3. The Act on the Protection of the Right to a Trial without undue Delay (Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006*)

29. The 2006 Act has been implemented since 1 January 2007. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed for a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

30. Section 3 provides for two remedies to expedite pending proceedings - a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) - and, ultimately, for a claim for just satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*).

31. Section 4 defines the criteria that domestic authorities should take into account when assessing the complaints:

Section 4 - Criteria for decision-making

> "When deciding on the legal remedies under this Act, the circumstances of the particular case shall be taken into account, namely: its complexity in terms of facts and law; actions of the parties to the proceedings, in particular as regards the use of procedural rights and fulfilment of obligations in the proceedings; compliance with rules on the set order for resolving cases, or with statutory deadlines for fixing preliminary hearings or for giving court decisions; the manner in which the case was heard before a supervisory appeal or a motion for a deadline was lodged; the nature and type of case and its importance for a party."

32. The supervisory appeal is governed by sections 5 and 6, which provide as follows:

Section 5 - Supervisory appeal

> "(1) If a party considers that the court is unduly protracting the decision-making, he or she may lodge a supervisory appeal in writing before the court hearing the case; the decision thereon is taken by the .... president of the court (hereinafter 'the president of the court').

(2) For the purposes of decision-making concerning the protection of the right to a trial without undue delay, the supervisory appeal shall contain the following elements:

– personal name or company name or any other name of the party, its address of permanent or temporary residence or registered office;

– personal name or company name or any other name of the representative or legal representative and its permanent or temporary residence or registered office;

– indication of the court hearing the case;

– reference number of the case or date on which the case was filed in the court;

– indication of circumstances or other particulars concerning the case, which demonstrate that the court is unduly protracting the decision-making;

– handwritten signature of the party, representative or lawyer."

Section 6 - Decision on supervisory appeal

"(1) If the supervisory appeal is manifestly unfounded having regard to the timetable for resolving the case concerned by the supervisory appeal, the president of the court shall dismiss the appeal by a ruling.

(2) If the supervisory appeal does not contain all the required elements referred to in section 5(2) of this Act, the president of the court shall dismiss it by a ruling. No appeal shall lie against that ruling.

(3) If no ruling as provided for in paragraphs 1 or 2 of this section is given, the president of the court shall, in the framework of his court management competence under the statute governing the court system, forthwith request the .... judge or chair of a court panel (hereinafter 'the judge') to whom the case has been assigned for resolution to submit a report indicating reasons for the duration of proceedings, not later than fifteen days after receiving the request of the president of the court or after obtaining the file, if necessary for drawing up the report. The report shall include the declaration in respect of criteria referred to in section 4 of this Act and the opinion on the time-limit within which the case may be resolved. The president of the court may also require the judge to submit the case file if he assesses that, in the light of allegations of the party indicated in the supervisory appeal, its examination is necessary.

(4) If the judge notifies the president of the court in writing that all relevant procedural acts will be performed or a decision issued within a time-limit not exceeding four months following the receipt of the supervisory appeal, the president of the court shall inform the party thereof and thus conclude the consideration of the supervisory appeal.

(5) If the president of the court establishes that in view of the criteria referred to in section 4 of this Act the court is not unduly protracting the decision-making in the case, he shall dismiss the supervisory appeal by a ruling.

(6) If the president of the court has not informed the party in accordance with paragraph 4 of this section and if, in view of the criteria referred to in section 4 of this Act, he establishes that the court is unduly delaying the decision-making in the case, he shall, depending on the status and nature of the case and by a ruling, order a deadline for the performance of certain procedural acts, and may also order that the case be resolved as a priority owing to the circumstances of the case, particularly when the matter is urgent. If he orders that appropriate procedural acts be performed

by the judge, he shall also set the time-frame for their performance, which may not be less than fifteen days and not longer than six months, as well as the appropriate deadline for the judge to report on the acts performed.

(7) If the president of the court establishes that the undue delay in decision-making in the case is attributable to an excessive workload or an extended absence of the judge, he may order that the case be reassigned. He may also propose that an additional judge be assigned to the court or order other measures in accordance with the statute governing the judicial service.

(8) A judge may be assigned by the annual schedule of allocation to act in place of or together with the president of the court in exercising the court management competence for decision-making in respect of the supervisory appeal."

33. Sections 8, 9 and 11 define the motion for a deadline and provide for measures that may be applied by the court dealing with the motion. They read, in so far as relevant, as follows:

Section 8 - Motion for a deadline

"(1) If, under section 6(1) or (5) of this Act, the president of the court dismisses the supervisory appeal or fails to respond to the party within two months or fails to send the notification referred to in section 6(4) of this Act within the said time-limit or if appropriate procedural acts have not been performed within the time-limit set in the notification or ruling of the president of the court, the party may lodge a motion for a deadline under section 5(1) of this Act with the court hearing the case.

...

(3) The party may lodge the motion for a deadline within fifteen days after receiving the ruling or after the time-limits provided for in paragraph 1 of this section."

Section 9 - Competence for decision-making

"(1) The president of the higher court in the judicial area covering the local court, district court or other court of first instance, shall be competent to decide on the motion for a deadline concerning cases heard by the local court, district court or other court of first instance.

..."

Section 11 - Decision on the motion for a deadline

"(1) If the motion for a deadline is manifestly unfounded, having regard to the timetable for the resolution of the case and the actions of the party, the president of the court shall dismiss it by a ruling.

..."

(4) If the president of the court establishes that, in view of the criteria referred to in section 4 of this Act, the court is unduly protracting the decision-making in the case, he shall order, by a ruling, that the appropriate procedural acts be performed by the judge and shall also set the time-frame for their performance, which may not be less than fifteen days and not longer than four months, as well as set the appropriate deadline for the judge to report on the acts performed. According to the circumstances

of the case, particularly when the matter is urgent, the president of the court may also order that the case be resolved as a priority and propose to the president of the court referred to in section 5(1) of this Act that the measures referred to in section 6(7) of this Act be implemented.

(5) The president of the court shall decide on the motion for a deadline within fifteen days after receiving it."

34. Section 14 governs the competence of the Ministry of Justice in cases where a supervisory appeal has been lodged with the Ministry rather than with the court of competent jurisdiction:

Section 14 - Competence of the Ministry of Justice

"(1) If the supervisory appeal is lodged with the Ministry responsible for justice (hereinafter referred to as 'the Ministry'), the Minister .... responsible for justice (hereinafter referred to as 'the Minister') shall refer it to the president of the court of competent jurisdiction to hear it in accordance with this Act and shall ask to be kept informed of the findings and decision.

..."

35. Further to section 15, just satisfaction may be provided by payment of monetary compensation, a written statement of the State Attorney's Office or the publication of a judgment:

Section 15 - Just satisfaction

"(1) If the supervisory appeal lodged by the party was granted or if a motion for a deadline has been lodged, the party may claim just satisfaction under the present Act.

(2) Just satisfaction shall be provided by:

i. payment of monetary compensation for damage caused by a violation of the right to a trial without undue delay;

ii. a written statement from the State Attorney's Office that the party's right to a trial without undue delay was violated;

iii. the publication of a judgment that the party's right to a trial without undue delay was violated."

36. Section 16 provides for a compensatory remedy and fixes the maximum amount that could be awarded:

Section 16 - Monetary compensation

"(1) Monetary compensation shall be payable for non-pecuniary damage caused by a violation of the right to a trial without undue delay. Strict liability for any damage caused shall lie with the Republic of Slovenia.

(2) Monetary compensation for individual finally decided cases shall be granted in the amount of 300 up to 5,000 euros.

(3) When deciding on the amount of compensation, the criteria referred to in section 4 of this Act shall be taken into account, in particular the complexity of the case, actions of the State, actions of the party and the importance of the case for the party."

37. Sections 19, 20 and 21 govern just satisfaction proceedings and proceedings in respect of pecuniary damage:

Section 19 - Proceedings before the State Attorney's Office

"(1) Proceedings to enforce a claim for just satisfaction, provided that the condition referred to in section 15(1) of this Act is met, shall be instituted by a party by means of a motion for settlement lodged with the State Attorney's Office with a view to reaching an agreement on the type or amount of just satisfaction. The party may lodge such motion within nine months after the final resolution of the case. The State Attorney's Office shall rule on the motion of the party within a period of three months if it establishes that the just satisfaction claim is substantiated. Until the expiry of the above-mentioned period, the party may not assert any claim for monetary compensation by way of just satisfaction by bringing an action before the competent court.

(2) If, in accordance with paragraph 1 of this section, the agreement has been reached with the party, the State Attorney's Office shall enter into an out-of-court settlement with the party."

Section 20 - Proceedings in a court

"(1) If no agreement under section 19 of this Act is reached upon the motion for settlement, or the State Attorney's Office and the party fail to negotiate an agreement within three months of the date of the motion being lodged, the party may bring an action for damages.

(2) An action for damages against the Republic of Slovenia shall be brought not later than eighteen months after the final resolution of the party's case.

..."

Section 21 - Action in respect of pecuniary damage

"(1) Action in respect of pecuniary damage caused by a violation of the right to a trial without undue delay may be brought by the party within eighteen months of the final ruling of the court on the party's case in accordance with the provisions of the Obligations Code concerning pecuniary damage.

..."

38. Sections 22 and 23 further provide for payment of compensation:

Section 22 – Payment of monetary compensation

"(1) The State Attorney's Office shall pay monetary compensation on the basis of the settlement referred to in section 19(2) of this Act and for all appropriate costs incurred by the party in connection therewith.

(2) The State Attorney's Office shall pay monetary compensation and the party's costs of the proceedings on the basis of a final court decision which has established the violation of the right to a trial without undue delay in the proceedings, under section 20 or section 21 of the present Act."

Section 23 - Provision of funds

"Funds ... shall be earmarked in the Budget of the Republic of Slovenia within the framework of the financial plan of the State Attorney's Office."

39. Section 25 lays down the following transitional rules in relation to the applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

"(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months after the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within a period of four months at the latest. ...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months after the date on which the party filed its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months after receiving the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court."

COMPLAINTS

40. The applicant complained, under Article 6 § 1 of the Convention, that the length of the pending proceedings had been excessive.

41. The applicant further complained that domestic remedies in length-of-proceedings cases were ineffective. He relied in substance on Article 13 of the Convention.

THE LAW

A. Alleged violation of Article 6 of the Convention

42. The applicant argued that the length of the proceedings pending at second instance had been incompatible with the "reasonable time" requirement under 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..."

43. The Court observes that since 1 January 2007, when the Act on the Protection of the Right to a Trial without undue Delay (the "2006 Act") became operational, the applicant has been entitled to seek acceleration of the impugned proceedings pending before the domestic courts.

44. Under the 2006 Act, in proceedings pending at first or second instance, a claimant may seek acceleration under its sections 3, 5 and 8 by means of a supervisory appeal and a motion for a deadline. The latter constitutes, in substance, an appeal against a decision on a supervisory appeal under certain conditions. Moreover, the applicant may ultimately obtain further redress through a compensatory remedy, namely by bringing a claim for just satisfaction under section 15 of the Act.

45. Given that the applicant may avail himself of the remedies afforded by the 2006 Act, the question therefore arises whether he should be required to use them for purposes of Article 35 § 1 of the Convention.

1. General principles established under the Court's case-law

46. The Court reiterates that by virtue of Article 1 (which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention"), the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is reflected in Articles 13 and 35 § 1 of the Convention.

47. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Lukenda*, cited above, § 42). The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (ibid.).

48. In addition, according to the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see *Selmouni*, cited above, § 75). However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1212, § 71; *Van Oosterwijck v. Belgium*, judgment of 6 November 1980, Series A no. 40, pp. 18-19, § 37; *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Grzinčič v. Slovenia*, no. 26867/02, § 84, 3 May 2007).

2. Assessment of the 2006 Act in respect of proceedings pending at first or second instance

49. It should be noted at the outset that under section 2 of the 2006 Act the new remedies available in Slovenia since 1 January 2007 may be used by a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

50. As far as proceedings pending at first or second instance are concerned, the possibility of a supervisory appeal and a motion for a deadline under sections 5 and 8 of the 2006 Act has empowered, firstly, the president of the court examining the case and, secondly, the president of the appellate instance, to examine complaints related to the excessive length of proceedings and to take appropriate action. If such a complaint is justified, they can order time-limits for procedural measures or decide that a case should be treated with priority, reassign a case, etc. (see paragraphs 32 and 33 above).

51. The Court notes in particular that the president of the court examining the case has to decide within two months if a supervisory appeal under section 6 is well-founded. If the judge presiding over the case notifies the president that procedural acts or a decision will be forthcoming within four months, the president informs the party accordingly. If the complaint is justified, procedural acts are to be carried out within a period of up to six months.

52. As to a motion for a deadline, section 11 provides that a decision on whether the complaint is well-founded must be rendered within fifteen days and, if justified, procedural acts are performed within four months. In the Court's view, these deadlines as they stand in the text comply with the requirement of speediness necessary for a remedy to be effective (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 208, ECHR 2006-...).

53. Furthermore, sections 15 and 16 of the 2006 Act provide that anyone sustaining non-pecuniary damage as a result of a failure to comply with the "reasonable-time" requirement is entitled to just satisfaction if a supervisory appeal lodged by the party has been granted or if a motion for a deadline has been lodged (see paragraphs 35 and 36 above).

54. Just satisfaction will be provided by means of monetary compensation, a written statement from the State Attorney's Office or the publication of a judgment finding a violation of the right to a trial without undue delay (see paragraph 56 below). Monetary compensation for each finally decided case is granted in the amount of 300 to 5,000 euros, payable by the State Attorney's Office. The corresponding funds are earmarked in the Slovenian budget (see paragraph 38 above).

55. If the conditions in section 15 are met, that is if a supervisory appeal lodged by a party has been granted or if a motion for a deadline has been lodged (see paragraph 53 above), the party may start preliminary proceedings with the State Attorney's Office in order to reach an agreement on the type or amount of just satisfaction (see paragraph 37 above). A request for just satisfaction has to be lodged within nine months after a final judgment in a case, i.e. when it is no longer possible to challenge the decision by means of an ordinary appeal, and the State Attorney's Office must reply within three months.

56. If no agreement is reached, a party may bring an action for damages with the local court of competent jurisdiction within eighteen months after final resolution of a case. If the claim is granted in the framework of judicial proceedings, the State Attorney's Office will pay monetary compensation on the basis of a final court decision (see paragraph 38 above).

57. Lastly, under section 21 of the 2006 Act, a party may bring an action for pecuniary damage caused by a violation of the right to a trial without undue delay within eighteen months after the final decision. When deciding on pecuniary damage, the court has to take account of the provisions of the Obligations Act and the criteria referred to in section 4 of the 2006 Act (see paragraph 61 below).

58. The Court recalls that it has given certain indications in the *Scordino* judgment (cited above, §§ 182-189) as to the characteristics which effective domestic remedies in length-of-proceedings cases should have. In this connection, it notes that the purpose of the new Slovenian remedies is twofold.

59. Firstly, a supervisory appeal and a motion for a deadline are designed to obtain acceleration of pending proceedings and/or a statement that the time-limits have been exceeded. The Court recalls that it has stated on many occasions that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution (see *Scordino,* cited above, § 183). Since a supervisory appeal and a motion for a deadline, as they stand, consist in different tools for expediting pending proceedings,

the Court considers that the test of "effectiveness", as established by the recent case-law, is satisfied.

60. Secondly, the 2006 Act provides for a compensatory remedy - a request for just satisfaction – through which a party may, where appropriate, be awarded just satisfaction for any non-pecuniary and pecuniary damage sustained. A compensatory remedy is, without doubt, an appropriate means of redressing a violation that has already occurred. According to the Court's recent case-law, a combination of two types of remedies, one designed to expedite the proceedings and the other to afford compensation, seems to be the best solution for the redress of breaches of the "reasonable time" requirement (see, *Scordino,* cited above*,* § 186*).*

61. As is evident from section 4 of the 2006 Act, in assessing the reasonableness of the length of proceedings the national authorities are in essence required to look at the criteria established by the Court's case-law, namely the complexity of the case, the applicant's conduct and that of the competent authorities which are further specified, and the importance of what is at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

62. In view of the foregoing, basing its conclusions on an assessement of the legislative provisions as they stand, the Court is satisfied that the aggregate of remedies provided by the 2006 Act in cases of excessively long proceedings pending at first and second instance is effective in the sense that the remedies are in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred (see, *Grzinčič,* cited above*,* § 98).

3. Exhaustion requirement in respect of applications lodged prior to implementation of the 2006 Act

63. At this point the Court must also address the issue of the existence of domestic remedies at the time the present application was lodged, for purposes of the exhaustion requirement, since the applicant had lodged his application before the entry into force and implementation of the 2006 Act.

64. The Court acknowledges that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged. However, this rule is subject to exceptions which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001).

65. It is true that at the time when the applicant first brought his complaint to the Court, he did not have any effective remedies available in Slovenian law in respect of the length of the pending proceedings in issue (see *Belinger v. Slovenia*, (dec.), no. 42320/98, 2 October 2001, and *Lukenda*, cited above).

66. However, the Court considers that there are several elements which favour an exception from this general rule in the instant case.

67. The Court recalls its findings in the *Lukenda* judgment that the average length of judicial proceedings in Slovenia reveals a systemic problem that has resulted from inadequate legislation and inefficiency in the administration of justice. By virtue of that judgment, the Slovenian State was bound to provide mechanisms for the effective redress of violations of Convention rights, both through appropriate legal measures and administrative practices (see *Lukenda*, cited above, §§ 93 and 95). That judgment was followed in 2006 by approximately 200 judgments against Slovenia concerning allegations of excessive length of proceedings before domestic courts.

68. The purpose of the remedies introduced by the 2006 Act as a response to the *Lukenda* judgment is precisely to enable the Slovenian authorities to redress breaches of the "reasonable time" requirement at domestic level. That is valid not only for applications lodged after the date on which the 2006 Act became operational, but also for those concerning domestic proceedings pending at first and second instance which were already on the Court's list of cases by that date.

69. In this connection, the Court notes that there are currently nearly 1,700 applications pending against Slovenia in which the applicants allege a violation of the "reasonable time" requirement as far as both pending and terminated domestic proceedings are concerned.

70. Moreover, the Court has already decided on several occasions, when Contracting Parties have adopted legislative measures in order to comply with the "reasonable time" requirement under Article 6 § 1 of the Convention, that applicants should exhaust such remedies notwithstanding the fact that their applications had been lodged with the Court prior to the enactment of the legislation in question.

71. Thus, the Court has held that applicants in cases against Italy which concern the length of proceedings should have recourse to the remedy introduced by the "Pinto Act" (see, for example, *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII, or *Brusco*, cited above). A similar decision was taken in respect of cases brought against Croatia, Slovakia and Poland following legislative changes (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). The Court considers that the position as regards the present application is similar in substance to the above-mentioned cases.

4. Application to the proceedings in the present case

72. Since the impugned civil proceedings are pending at second instance, the applicant may avail himself of the aggregate of remedies afforded by the 2006 Act, which the Court has found to be effective (see paragraph 62 above).

73. It is true that no long-term practice of domestic authorities applying the 2006 Act can be established at this time. However, it is clear that the Act was specifically designed to address the issue of the excessive length of proceedings before domestic courts and there is no reason to doubt its effectiveness at this stage. However, the Court's position may be subject to review in the future and the burden of proof as to the effectiveness of the remedies in practice remains incumbent on the Slovenian Government.

74. The Court draws attention to the general obligation of Contracting States to solve the structural problems underlying violations (see, *Broniowski v. Poland* [GC], no. 31443/96, § 191, ECHR 2004-V). Particular attention should therefore be paid by the national authorities in ensuring that the 2006 Act is applied in conformity with the Convention both as far as future case-law is concerned (see, *Scordino*, cited above, §§ 190-192) and as far as the general administration of justice is concerned. As to the latter, appropriate measures should be taken in order to avoid clogging up domestic avenues (see, *Belinger*, cited above). In this connection, the Court notes that the Slovenian Government adopted in December 2005 the so-called Lukenda Project to address this structural problem from different angles (see paragraph 27 above).

75. In view of the foregoing considerations and given that the possibility of using the new remedies in proceedings pending at first and second instance extends to the applicant in the present case, as well as to all other applicants who have submitted similar complaints under Article 34 of the Convention in respect of Slovenia, the Court finds that the applicant is required by Article 35 § 1 of the Convention to use the remedies available to him under the 2006 Act with effect from 1 January 2007.

76. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged violation of Article 13 of the Convention

77. The applicant also complained that the remedies available in Slovenia in length-of-proceedings cases were ineffective. In substance, he relied on Article 13 of the Convention, which provides:

> "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."

78. The Court has already found that the 2006 Act does afford the applicant effective remedies in respect of the complaint about the length of the proceedings pending at first and second instance (see paragraphs 62 and 75 above). That finding is also valid in the context of his complaint under Article 13 of the Convention.

79. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley NAISMITH
Deputy Registrar

Corneliu BÎRSAN
President