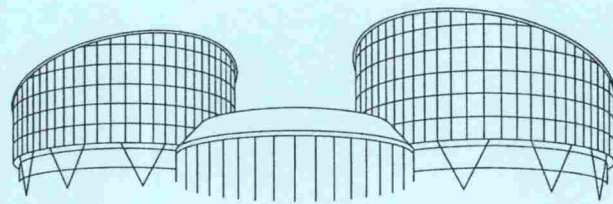


LF 177/12-67/1



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

FIFTH SECTION

CASE OF DANILO KOVAČIČ v. SLOVENIA

(Application no. 24376/08)

JUDGMENT

STRASBOURG

18 April 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Danilo Kovačič 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. 24376/08) 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 Danilo Kovačič (“the applicant”), on 22 May 2008.

2. The applicant was represented by Mr B. Penko, a lawyer practising in Ljubljana. The Slovenian Government (“the Government”) were represented by their Agent.

3. On 8 March 2012 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1940 and lives in Komen.

5. On 15 December 1993 an indictment was lodged against the applicant and three others before the Nova Gorica District Court. He was charged with the criminal offence of abuse of position as the director of the company HIT D.O.O. under section 133 of the Criminal Code.

6. The indictment was served on the applicant on 20 December 1993. All of the accused lodged objections to the indictment.

7. On 25 January 1994 the court rejected the objections.

8. On 19 April 1994 the first hearing was held. The representatives requested the recusal of the judge. The request was rejected.

9. Between 21 April 1994 and 12 July 1994 the court held some seven hearings. Three hearings were interrupted due to health problems of one of the co-accused (Ms A.T.K.). Five hearings scheduled for the second half of May were postponed to the beginning of June.

10. On 12 July 1994 held a hearing and decided that the case against Ms A.T.K. should be tried separately.

11. Between 14 July 1994 and 15 February 1995 the court held some twenty-six hearings, heard several witnesses, dealt with two requests for recusal of judges and adduced evidence.

12. On 15 February 1995 following amendments of the criminal legislation the court held a hearing in a different formation (a panel of five judges instead of three) and commenced the hearing by re-reading the indictment.

13. Between 16 February 1995 and 19 December 1995 the court held some twenty-eight hearings, heard several witnesses and adduced evidence. About ten hearings were postponed due to health problems of the applicant and one of the accused (Mr. D.K.).

14. During the hearing held on 9 January 1996 the applicant informed the court that he had serious heart problems and needed an operation. The court decided to try the applicant's case in a separate set of proceedings.

15. On 16 April 1997 the Nova Gorica District Court issued a decision joining the proceedings against the applicant and Ms A.T.K.

16. On 6 May 1999 the court decided to join to the proceedings the case involving the co-accused Mr. D.K., whose case had been remitted to the first-instance court after an initial conviction and a subsequent successful appeal.

17. Between 27 May 1999 and 1 September 1999 the court had to appoint *ex officio* representatives for the accused and had to deal with a motion for recusal of a judge and a motion for transfer of jurisdiction.

18. Between 6 September 1999 and 9 June 2000 the court held about thirty-six hearings. The court heard several witnesses and adduced evidence. The court also had to deal with requests for recusal of judges and in addition the *ex-officio* representatives resigned and the court had to appoint new ones.

19. On 12 June 2000 the first-instance court issued a judgment finding the applicant guilty as charged. He was sentenced to four years' imprisonment. The written copy of the judgment was issued on 2 November 2000. The applicant appealed.

20. On 12 June 2002 the Koper Higher Court rejected the appeal and upheld the first-instance judgment. The applicant lodged a request for protection of legality.

21. On 10 February 2005 the Supreme Court upheld the request for protection of legality in part and amended the operative part of the judgment by changing the legal classification and convicting him for the crime of the abuse of authority under section 244 of the Criminal Code. The Supreme Court found that the crimes under section 133 of the old Criminal Code and section 244 of the new Criminal Code constituted legal continuity and as the latter section was more favourable for the applicant the Supreme Court amended the first-instance judgment. His sentence was lowered to three years and eight months of imprisonment. He lodged a constitutional complaint.

22. On 3 February 2006 the applicant was granted pardon by a Decree issued by the President of the Republic of Slovenia. In the Decree it was stated only that the applicant's sentence of three years and eight months imprisonment was to be reduced to two years' imprisonment, provided that the applicant did not commit another crime within the following five years.

23. On 28 February 2008 the Constitutional Court rejected his complaint as unsubstantiated.

II. RELEVANT DOMESTIC LAW

24. 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

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 ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

A. Admissibility

26. The Government argued that as the applicant had been pardoned and his sentence reduced, which in their view was also because of the length of proceedings, he already received appropriate and just satisfaction for the alleged violation of the right to a trial within a reasonable time, and has thus lost the status of a "victim" in this respect.

27. It therefore has to be established whether the applicant may continue to claim to be a victim of a violation of Article 6 § 1 of the Convention on the grounds of the length of criminal proceedings against him in view of the fact that he was pardoned by way of a mitigated sentence.

28. The Court reiterates that an individual can no longer claim to be a victim of a violation of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of the Convention and afforded redress (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; and *Rautonen v. Finland*, no. 26813/09, 15 May 2012).

29. In this regard the Court recalls that the mitigation of a sentence on the ground of excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle v. Germany*, cited above, § 66; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; and *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003–XI; *Cocchiarella v. Italy* [GC], no. 64886/01, § 77, ECHR 2006–V).

30. Turning to the present case, the Court observes that from the wording of the decree it cannot be even implicitly discerned that the State in any way took into consideration the duration of proceedings as a reason for the applicant's pardon (see paragraph 22 above). Given that the State failed to acknowledge in a sufficiently clear way the failure to observe the reasonable time requirement, the Court rejects the Government's objection. Thus, the Court concludes that the applicant can still claim to be a "victim" within the meaning of Article 34 of the Convention.

31. Finally, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds (see *mutatis mutandis*, *Tomažič v. Slovenia*, no. 38350/02, 13 December 2007, §§ 41–45). It must therefore be declared admissible.

B. Merits

32. Firstly, the Government invited the Court to reject the length-of-proceedings complaint as manifestly ill-founded. The argued that the proceedings were extremely complex; both legally and factually and required *inter alia* the cooperation between several countries. The Government stated that the court had to summon witnesses from abroad, provide an Albanian interpreter and translations of documents. Furthermore, there were issues with the health of the accused and with their representatives which, according to the Government, disrupted the

continuity of the course of the proceedings. In this connection, the Government highlighted that the applicant had failed to notify the court when his treatment in the USA had been concluded and was therefore also at fault for the delays.

33. In their additional observations the Government went on to argue that due to the special role of the Constitutional Court this part of the proceedings should be considered separately and dismissed as manifestly ill-founded.

34. The applicant contested these arguments.

35. The period to be taken into consideration began on 15 December 1993, the date when the indictment was issued. As far as the end of the period is concerned, the Court reiterates that the "time" whose reasonableness is to be reviewed covers in principle the entirety of the litigation, including the appeal proceedings (*Deumeland v. Germany*, judgment of 29 May 1986, Series A no. 100, § 77). The proceedings before the Constitutional Court are to be taken into account in this connection since they are, in principle, able to influence the outcome of the proceedings before the lower courts (see *Tričkovič v. Slovenia*, no. 39914/98, §§ 27-29 and 36-41, 12 June 2001 and *Šubinski v. Slovenia*, no. 19611/04, § 69, 18 January 2007). Accordingly, the Court rejects the Government's argument and considers the close of the period to be 28 February 2008, the date of the Constitutional Court's decision. The proceedings thus lasted fourteen years and two months at four levels of jurisdiction.

36. 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).

37. The Court acknowledges that the case concerned undoubtedly complex criminal proceedings dealing with political, legal and economical issues stemming from the transition phase following the independence of the Republic of Slovenia.

38. Turning first to the applicant's behaviour, the Court observes that although it is true that he had health problems and issues with legal representatives and had lodged several requests for recusal of judges (see paragraphs 13, 17 and 18), it finds that overall this did not result to such significant delays as to seriously impair the work of the court. In addition, it was not only the applicant had such issues but all of the accused (see paragraphs 9, 13, 17 and 18 above) and the Court can therefore not use this argument solely to the applicant's detriment.

39. As to the conduct of the domestic authorities the Court notes that the longest periods of inactivity were between January 1996 and May 1999. Although in 1996 the applicant underwent a heart operation in the United

States and it is unclear how long he was absent, there is no reasonable explanation for a complete standstill in the proceedings for over three years (see paragraphs 15 and 16 above). Taking into account the overall duration of the proceedings and the importance of the trial at the time such inactivity is unacceptable.

40. Having regard to the foregoing and to its case-law on the subject (see *Tomažič v. Slovenia*, no. 38350/02, §§ 54-61, 13 December 2007, *Rumpf v. Germany*, no. 46344/06, §§ 41-46, 2 September 2010, *Cundrič v. Slovenia*, no. 57566/00, §§ 29-31, 30 March 2006), 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant complained under Article 6 of the Convention that the domestic courts were biased in that they did not allow the evidence he presented and convicted him on the basis of their own interpretation of the applicable legislation. He also complains that the judgments were not sufficiently reasoned.

42. By relying on Article 7 § 1 of the Convention the applicant complained that the domestic courts erroneously applied the law and arbitrarily qualified a business decision, which was according to him legal under the Code of Obligations, as a criminal offence under the Criminal Code. As a consequence he was wrongfully convicted for an act that did not constitute a crime at the time it was committed.

43. Finally, he complained under Article 8 of the Convention that his political career was ruined, that he and his family were politically and morally discredited and that he was a victim of political lynching caused by the media.

44. 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 this part of the application is 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

45. 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

46. The applicant claimed 16,740,162 euros (EUR) in respect of pecuniary and non-pecuniary damage.

47. The Government contested these claims.

48. 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, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed EUR 11,000 for the costs and expenses incurred before the Court.

50. The Government contested the claim.

51. The Court notes that although the applicant was reminded by the Court of the requirements concerning just satisfaction claims set out in Rule 60 of the Rules of the Court, he had not itemised or substantiated his claims. The Court therefore makes no award under this head.

C. Default interest

52. 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 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 of the Convention;
4. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, within three months the amount of EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;

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

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.