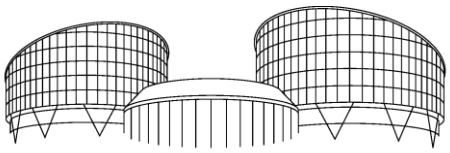

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF W. v. SLOVENIA

(Application no. 24125/06)

JUDGMENT

STRASBOURG

23 January 2014

FINAL

23/04/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of W. v. Slovenia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 17 December 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 24125/06) 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, Ms W. ("the applicant"), on 22 May 2006. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr A. Pipuš, a lawyer practising in Maribor. The Slovenian Government ("the Government") were represented by their Agent, Mrs A. Vran, State Attorney.

3. The applicant alleged that the criminal proceedings concerning her rape had been unduly long and not conducted with the required diligence.

4. On 29 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Maribor.

A. Criminal proceedings concerning the applicant's rape

6. On the night of 13 April 1990 the applicant, then eighteen years old, was raped by a group of seven males. Three other males allegedly

participated: one as an aider and abettor and two others by committing a sexual assault on her. Five of the accused had not yet reached the age of majority (eighteen years) at the time of the commission of the criminal acts and were accordingly tried as juveniles.

7. In September 1990 criminal charges of rape, aiding and abetting rape and sexual assault were brought against the accused. All of them submitted in their defence that the applicant had voluntarily engaged in sexual activity with them.

8. The court held a number of hearings and obtained expert reports. An expert in clinical psychology found that the applicant had a learning disability and that she had not been physically or mentally capable of offering serious resistance.

9. On 13 November 1990 the Maribor Basic Court rendered a judgment acquitting the defendants of all charges. The verdict was based on the findings that the applicant had not seriously resisted sexual intercourse, that she had changed her testimony regarding the events surrounding one of the rape charges during the proceedings and that the defendants could not be considered to have employed force or threats which would be objectively capable of breaking the victim's resistance.

10. The Public Prosecutor appealed against the judgment.

11. On 10 April 1991 the Maribor Higher Court quashed the first-instance judgment, finding that the facts had been insufficiently established. It ordered that the case be remitted to the first-instance court for fresh consideration before a different panel, without the participation of the judges who had delivered the impugned judgment.

12. In July 1991 the Maribor Basic Court conducted inquiries in order to establish the place of residence of two of the defendants. However, as the two defendants had allegedly emigrated to Austria, they could not be found. Several more inquiries were made in 1995, 1999, 2000 and 2001, but all attempts at establishing these two defendants' whereabouts proved unsuccessful.

13. Between 10 March 1995 and 31 August 2000 the applicant sent at least eight letters urging the Maribor District Court (previously called the Maribor Basic Court) to accelerate the proceedings and/or asking for a case review by the president of the court owing to delays in scheduling the first retrial hearing.

14. In the period from 20 May 1999 to 25 September 2001 the court scheduled five hearings, all of which were, however, adjourned for failure of some of the defendants to appear.

15. On 5 January 2001 the Director of the Department for Judicial Administration at the Ministry of Justice informed the applicant that the court had encountered difficulties identifying some of the defendants' residences. He also noted that between 28 May 1990 and 27 September 2000 there had been frequent changes of the presiding judge in her case due

to judges being promoted. He mentioned that in the aforementioned period seven different judges had been dealing with the case.

16. Following this information, on 9 March 2001 the applicant suggested that the charges against the two defendants, one charged with rape and the other with aiding and abetting rape, who were allegedly residing in Austria and could not be found, be severed into a separate case and an international arrest warrant be issued against them.

17. On 29 May 2001 the Maribor District Court issued a detention order against the two defendants, which served as a legal basis for the issuing of the international arrest warrant.

18. On 22 November 2001 the court held the first hearing, followed by four more. It also obtained reports from two experts, one in neuropsychiatry and the other in clinical psychology.

19. On 4 June 2002 the court found one defendant guilty of rape under the first paragraph of Article 180 of the Penal Code and five defendants guilty of aggravated rape under the second paragraph of Article 180 of the Criminal Code. Regardless of the fact that they were tried as juveniles, the rules of sentencing applicable to adults applied to them as they had all reached the age of twenty-one before the judgment was given. The defendants were sentenced to prison sentences ranging from eight months to one year on account of, *inter alia*, the significant passage of time from the commission of the crime until their conviction. However, the court concluded that prison sentences were appropriate in order to make the defendants realise the gravity of their offences, particularly as they had not shown any genuine regret over the criminal acts committed against the applicant who continued to suffer from the consequences thereof. Lastly, the court acquitted the two defendants who had been charged with sexual assault.

20. The convicted defendants appealed; however, their appeals were dismissed by the Maribor Higher Court on 25 January 2006. Their subsequent extraordinary appeals (requests for the protection of legality) were also dismissed by the Supreme Court on 12 July 2007.

21. The defendant charged with aiding and abetting the rape of the applicant, whose whereabouts had been unknown and whose case had been separated from the main proceedings, was extradited to Slovenia on 9 March 2004. On 30 March 2004 the court held a hearing and found the defendant guilty. He was sentenced to eight months in prison. The defendant's subsequent appeal was dismissed on 4 August 2004.

22. The other missing defendant was arrested in Slovakia and detained on 21 February 2003. After having been extradited to Slovenia, the court held hearings on 4 and 5 September 2003 and on the latter date convicted him of aggravated rape under the second paragraph of Article 180 of the Penal Code. He, too, was sentenced to eight months in prison. He appealed

against the verdict; however, on 9 June 2006 his appeal was dismissed by the Maribor Higher Court.

B. The applicant's civil action for damages

23. On 22 September 1995 the applicant lodged a civil claim against all ten defendants and a number of the defendants' parents, seeking compensation for non-pecuniary damage she had sustained as a result of the rape.

24. On 17 June 2002 the civil panel of the Maribor District Court stayed the civil proceedings pending a final decision in the criminal proceedings. The civil trial was resumed in November 2007.

25. Subsequently, two hearings were held and on 21 January 2009 the first instance court gave a judgment awarding the applicant 16,691.70 euros (EUR), together with default interest. The applicant and some of the respondent parties appealed. On 10 March 2010 the Maribor Higher Court upheld the applicant's appeal and dismissed the respondents' appeal. In the civil retrial, the District Court found that the two respondents who had initially been excluded from liability for damages owing to their acquittal in the criminal proceedings were jointly liable for the damages awarded to the applicant.

26. One of the two respondents appealed against the judgment, but on 9 November 2011 the Maribor Higher Court dismissed his appeal.

C. The applicant's claim against the State for non-pecuniary damage owing to the delays in the criminal proceedings

27. Following unsuccessful settlement negotiations with the State Attorney's Office, on 30 November 2009 the applicant lodged a claim with the Celje Local Court seeking compensation in the amount of EUR 5,000, the maximum amount that could be awarded for non-pecuniary damage incurred as a result of the length of the criminal proceedings. She relied on the Protection of the Right to a Trial without Undue Delay Act (hereinafter "the 2006 Act"). She submitted that her interest in the criminal proceedings had not only been of a pecuniary nature but also aimed at safeguarding her rights under Article 3 of the Convention.

28. On 16 November 2010 the court rendered a judgment, finding that the applicant's right to trial within a reasonable time had been breached and that the State was to pay EUR 5,000 to the applicant, together with default interest. The court pointed out that the overall duration of the proceedings had amounted to fifteen years and nine months, noting in particular the lack of any activity between April 1991 and March 2001. Moreover, it observed that the applicant's case had involved two major criminal acts, a gang rape and a sexual assault, which, in addition to posing a considerable threat to

society, had caused severe mental distress to the applicant. The court emphasised that due to the nature of these criminal acts committed against her, the criminal proceedings ought to have been conducted in a particularly diligent, determined and prompt manner; however, that had not been the case. It was further noted that the lengthy proceedings had been extremely stressful for the applicant, who had been forced to relive the painful events too many times, in addition to which she had had no effective remedies at her disposal in order to accelerate the proceedings. Thus, having regard to the importance of the case for the applicant and the lengthy period of absence of any procedural acts on the part of the criminal court, the court deviated from the general practice of the domestic authorities to award, within the statutory range of between EUR 300 and 5,000, 45% of the sum that would be awarded for a violation of the right to trial within a reasonable time by the Court. Thus, the applicant was awarded the maximum amount possible under the 2006 Act, although she would have apparently not been entitled to such amount purely on the basis of the excessive length of proceedings.

29. The applicant and the State Attorney lodged appeals. On 4 August 2011 the Celje Higher Court modified the first-instance judgment in so far as it concerned the costs of proceedings. It rejected the remainder of the appeals.

30. On 13 October 2011 the applicant lodged a constitutional appeal and initiative petition for the review of the constitutionality of the 2006 Act in so far as it limited the maximum amount to be awarded for a violation of the "reasonable time" requirement to EUR 5,000. She alleged that the statutory limitation of compensation in this manner was unconstitutional, as the maximum amount did not constitute sufficient redress for particularly arduous cases such as her own.

31. On 10 February 2012 the Constitutional Court rejected the constitutional appeal as inadmissible. Consequently, the applicant's petition for the review of the constitutionality of the 2006 Act's limitation on compensation was also rejected, as the court held that the possible annulment of the challenged statutory provision could not have had any legal effects on the applicant's position.

II. RELEVANT DOMESTIC LAW

A. Applicable criminal law

32. At the time of the incident, the applicable criminal law was the 1977 Criminal Code of the Socialist Republic of Slovenia. However, in the course of the retrial proceedings, a new Criminal Code was adopted in 1994 introducing more lenient sentences for the criminal offences of rape and aggravated rape. In accordance with the general principle of domestic

criminal law that a law more lenient on the perpetrator may be applied retroactively, Article 180 of the 1994 Criminal Code was used in the proceedings, which reads, in so far as relevant, as follows:

> "(1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.
>
> (2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by at least two perpetrators or against an offender serving a sentence in a closed or semi-open type of penal institution, the perpetrator(s) shall be sentenced to imprisonment for not less than three years.
>
> ..."

33. Section 286(2) of the Criminal Procedure Act 1994 provides that the presiding judge shall schedule a first trial hearing within two months of receipt of the indictment. If he fails to do so, he must inform the president of the court thereof, and the latter is required to take the necessary steps to schedule the hearing. A provision to this effect was also included in the previously applicable Criminal Procedure Act 1977.

B. Applicable civil law

34. According to Article 179 of the Code of Obligations, which constitutes the statutory basis for awarding compensation for non-pecuniary damage, such compensation may be awarded in the event of the infringement of a person's personal rights, provided that the circumstances of the case, and in particular the level and duration of the distress and fear caused thereby, justify an award.

C. The 2006 Act

35. Under Section 2 of the 2006 Act, the right to a trial within a reasonable time is guaranteed to, amongst others, injured parties in criminal proceedings. Section 16 of the Act provides for a compensatory remedy and fixes the maximum amount that may be awarded. It reads as follows:

> "(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 in respect of individual, finally decided cases shall be awarded in an amount of between 300 and 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, the actions of the State, the actions of the party [making the claim] and the importance of the case for that party."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that the delays in the criminal proceedings against the individuals who raped her or participated were at variance with the respondent State's obligation to provide an effective system of prosecution of the criminal offences committed against her, as required by Article 3 of the Convention. She also relied on Articles 6 § 1 and 13 of the Convention, alleging that her right to trial within a reasonable time had been violated in these proceedings.

37. The Court, being the master of the characterisation to be given in law to the facts of the case, finds that the above complaint falls to be examined under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Incompatibility ratione temporis

38. The Government highlighted that Slovenia had ratified the Convention on 28 June 1994 and that the most important procedural steps taken concerning the criminal trial in issue had occurred before the critical date. Notably, the pre-trial proceedings had been carried out, the criminal investigation concluded and, most importantly, the entire first set of criminal proceedings before two courts (trial and appeal) had also been concluded. In the Government's opinion, the criterion of a genuine connection between the event and the entry into force of the Convention was rather loose. However, they refrained from taking a position on whether these procedural steps excluded the present case from the Court's temporal jurisdiction.

39. The applicant pointed out that her complaints were related to a situation which still obtained after the Convention became operational in respect of Slovenia, therefore she was of the opinion that her case fell within the Court's temporal jurisdiction.

40. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the date of ratification of the Convention and its Protocols by the respondent State. After ratification, the State's acts must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction, even where they are merely extensions of an already existing situation (see, for example, *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I).

41. With regard to the procedural obligations incumbent on the States, the Court observes that they have been implied in varying contexts under the Convention (see, for example, *B. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121; *Cyprus v. Turkey* [GC], no. 25781/94, § 147, ECHR 2001-IV; and *M.C. v. Bulgaria*, no. 39272/98, §§ 148-153, ECHR 2003-XII) where this has been perceived as necessary to ensure that the rights guaranteed under the Convention are not theoretical or illusory, but practical and effective (*İlhan v. Turkey* [GC], no. 22277/93, § 91, ECHR 2000-VII). In particular, the Court has interpreted Articles 2 and 3 of the Convention, having regard to the fundamental character of these rights, as containing a procedural obligation to carry out an effective investigation into alleged breaches of the substantive limb of these provisions (*Ergi v. Turkey*, 28 July 1998, § 82, *Reports of Judgments and Decisions* 1998-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-06, *Reports* 1998-VIII; *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII, and *Šilih v. Slovenia* [GC], no. 71463/01, § 153, ECHR 2009).

42. Moreover, the Court has already held that the procedural obligation to carry out an effective and prompt investigation under Article 2 has evolved into a separate and autonomous duty capable of binding the State, even when the substantive act took place before the critical date (see *Šilih*, cited above, § 159, and, more recently, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 141-150, 21 October 2013). For such a procedural obligation to come into effect, a significant proportion of the investigating steps required by this provision will have been or ought to have been taken after the critical date (see *Janowiec and Others*, § 142). Subsequently, the Court has applied this principle to cases concerning deaths at the hands of private individuals (see *Lyubov Efimenko v. Ukraine*, no. 75726/01, § 63, 25 November 2010, and *Frandeş v. Romania* (dec.) no. 35802/05, 17 May 2011). Finally, in *Tuna v. Turkey* (no. 22339/03, § 58, 19 January 2010) and in *Stanimirović v. Serbia* (no. 26088/06, § 28, 18 October 2011), it went on to hold that the principles established in *Šilih* similarly applied to the procedural obligation to investigate under Article 3.

43. In the present case, the Court observes that the applicant's complaint of failure to comply with the procedural obligations arising from Article 3 primarily concerns the allegedly excessive duration of the criminal proceedings concerning her gang rape and sexual assault which took place in 1990, four years before the entry into force of the Convention in respect of Slovenia. The Court agrees with the Government that a considerable number of procedural steps were carried out before the critical date. However, it is worth noting that following the remittal of the case for fresh examination, three entire retrials involving a number of hearings were conducted after this date. Furthermore, the criminal proceedings against the ten individuals accused of raping and sexually assaulting the applicant took

place before three judicial instances and were only concluded on 12 July 2007, thirteen years after the entry into force of the Convention. A significant proportion of the proceedings covering a lengthy period of time therefore took place after the critical date and, finally, the applicant's complaints about the State's failure to conduct effective and prompt criminal proceedings also pertain to a large extent to this period.

44. In view of this, the Court finds that the alleged procedural violation of Article 3 falls within its temporal jurisdiction and that it is therefore competent to examine this part of the application in so far as the events occurred after 28 June 1994.

2. Non-exhaustion of domestic remedies

45. The Government objected that the applicant had failed to exhaust domestic remedies, as she had not introduced an action against the State for compensation of non-pecuniary damage caused by the State authorities based on Article 179 of the Code of Obligations. According to the Government, any unlawful conduct on the part of the authorities might constitute a violation of an individual's personal rights. In support of their submissions, they cited eight decisions of the Supreme Court adopted between 1998 and 2009 and two decisions of the Ljubljana Higher Court of 2010 and 2011 showing that the State had been found by the domestic courts to be liable for damages related to the work of its employees and the exercise of their powers. Moreover, the Government submitted eleven decisions of the Supreme Court, the Ljubljana Higher Court and the Maribor Higher Court in which a wide range of rights, such as the rights to personal dignity, to physical and mental integrity, to a healthy living environment, to personal liberty, to respect for the deceased and to the inviolability of the home had been considered as "personal rights" by the courts and their unlawful infringement had been found to cause mental distress warranting compensation.

46. The applicant challenged the Government's arguments, observing that she had exhausted all available domestic remedies and that she had only been able to achieve partial success with her claim for compensation under the 2006 Act.

47. The general principles on the exhaustion of domestic remedies are set out in *Sejdovic v. Italy* ([GC], no. 56581/00, §§ 43-46, ECHR 2006-II). The Court will apply these principles to the legal avenue relied upon by the Government. It emphasises at the outset that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically: in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, among other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general context in which

they operate, as well as the personal circumstances of the applicant (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66 and 68-69, *Reports* 1996-IV; *Orchowski v. Poland*, no. 17885/04, §§ 105-106, 22 October 2009; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 70, ECHR 2010; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 286, 26 June 2012).

48. In the present case, the Government argued that the applicant could have introduced an action for damages against the State under Articles 148 and 179 of the Code of Obligations. The Court notes that the prospects of success of such a remedy would depend on whether the applicant could prove that the conduct of the domestic authorities had amounted to unlawful "infringement of her personal rights" (see the relevant domestic provisions summarised in paragraph 34 above). However, none of the decisions cited by the Government showed that the procedural obligation to provide for effective prosecution of violent acts against individuals would be considered by the domestic courts within the context of "personal rights" and that the authorities' failure to comply with their procedural obligation would amount to the "infringement" of these rights. The domestic decisions cited by the Government related to substantive fundamental rights and not to the rights arising from the State's positive obligation to conduct an effective investigation and criminal proceedings. Moreover, it cannot be overlooked that the Government disputed the applicant's victim status on account of the compensation she had been awarded in the proceedings against the State under the 2006 Act (see paragraph 51 below). Having regard to the specific circumstances of the present case, where the applicant essentially complained of the lack of promptness in dealing with her case, this Government's objection reinforces the Court's doubts as to whether she could have obtained a separate examination of her complaints in the light of the State's positive obligations under Article 3 in a civil action brought in accordance with the general rules of civil law.

49. In light of the above, the Court is not convinced that, in the present case, a claim for damages against the State would have had reasonable prospects of success and would constitute an effective remedy for the purposes of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §§ 115-116, 20 October 2011).

50. It follows that the Government's objection of non-exhaustion of domestic remedies should be dismissed.

3. Lack of victim status

51. The Government objected that the applicant could no longer claim to be a victim of a violation of Article 3, having been awarded and paid compensation on the grounds that the criminal proceedings against the

perpetrators of the criminal acts against her had not been concluded within a reasonable time.

52. The applicant, on the other hand, argued that the compensation in the amount of EUR 5,000, the maximum amount that may be awarded pursuant to the 2006 Act, had not constituted sufficient redress in her case and maintained her complaint.

53. Article 34 of the Convention, in so far as relevant, provides:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

54. Having regard to the fact that the national authorities acknowledged a violation of the applicant's right to trial within a reasonable time under Article 6 of the Convention and awarded her compensation under this head, the Court considers that the issue of whether the applicant can still be considered a victim of the violation complained of depends on whether the domestic decisions rendered in the course of the 2006 Act proceedings entailed an acknowledgment, at least in substance, of a violation of the State's positive obligations under Article 3 to undertake an effective prosecution of the criminal offences committed against the applicant, and whether the compensation she received constituted appropriate and sufficient redress. The Court finds that these questions are closely linked to the substance of the applicant's complaint and should accordingly be joined to the merits.

4. Failure to respect the six-month rule

55. The Government asserted that in her original application of 22 May 2006, the applicant had only complained of a violation of her right to trial within a reasonable time in the criminal proceedings. She had only raised the complaint under Article 3 of the Convention in her submissions made on 23 June 2009, in which she had claimed that the State had failed to provide her with effective vindication of her right not to be subjected to inhuman or degrading treatment by conducting unduly long criminal proceedings against the perpetrators of the criminal acts against her. Accordingly, in the opinion of the Government, the applicant's latter complaint was lodged after the expiry of the six-month period and was therefore inadmissible.

56. The applicant disputed this objection by arguing that she had already made her complaint under Article 3 in substance in her initial application of 22 May 2006.

57. The Court notes that the applicant's main complaint raised under Article 6 of the Convention in her initial application form of 22 May 2006 was essentially the same as the one raised under Article 3 in her additional submissions. In both instances, she complained of the allegedly excessive length of the criminal proceedings concerning the criminal acts of which she

was the victim and as a result of which she had endured prolonged mental distress and almost sixteen years of uncertainty as to whether her rapists would be convicted. Reiterating that it is not bound by the legal characterisation of the facts put forward by the parties and recalling that the requirement of promptness is implicit in various Convention provisions including the procedural limb of Article 3 of the Convention (see paragraph 64 below), in the light of the specific circumstances of the present case the Court considers it appropriate that the applicant's complaint should be examined under this latter provision.

58. It follows that the Government's objection that the applicant's complaint under Article 3 was lodged out of time should be dismissed.

5. Conclusion

59. The Court notes that the complaint under Article 3 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. It must therefore be declared admissible.

B. Merits

1. The applicant's victim status

60. The Court considers that in the present case it cannot answer the question whether the applicant subsequently lost her initial status as the victim of a breach of Article 3 of the Convention within the meaning of Article 34 of the Convention without having first examined whether the domestic authorities discharged their procedural obligation under Article 3 to effectively investigate and prosecute the criminal offences of sexual abuse. Thereafter, the adequacy or otherwise of the authorities' response thereto can be considered.

(a) Whether the impugned treatment was contrary to the procedural aspect of Article 3

(i) The parties' submissions

61. The applicant complained that the conduct of the criminal proceedings against the perpetrators of the criminal acts against her had caused her a much greater level of distress than should have been necessary. She first referred to the excessive delays in the proceedings, in particular the complete inactivity of the authorities between 1991 and 2000. In her additional submissions the applicant pointed out that all perpetrators of the gang rape and sexual assault had been acquitted of all charges in the initial proceedings, which, for her, had resulted in prolonged and heightened uncertainty as to whether her rapists would be convicted and had caused her

severe suffering. In the retrial, the proceedings against the two missing defendants had had to be severed into separate cases, which had entailed her involvement in three separate trials in which she had had to relive the events in question over and over. She had also felt deeply humiliated by the statements made by the defendants at the hearings, in which they had laid heavy emphasis on her physical disability. Finally, the applicant pointed out that the perpetrators had been handed down very lenient prison sentences which had not sufficiently taken her young age at the time of the commission of their crimes and her physical and learning disabilities into account.

62. The Government claimed that the domestic authorities had investigated the criminal offences against the applicant conscientiously and effectively. The perpetrators of the acts had been identified, their criminal liability had been established and they had received prison sentences, albeit reduced on account of the significant passage of time from the commission of their offences to their conviction. In this connection, the Government acknowledged that the length of the criminal proceedings had been excessive, and explained that the situation had resulted from a systemic problem of court backlogs, which had, however, been effectively addressed as part of the "Lukenda" project created specifically to deal with considerable delays in processing cases. One of the measures adopted within this project was the 2006 Act, under which the applicant had been awarded compensation for the excessive length of the proceedings.

(ii) The Court's assessment

63. The relevant principles concerning the State's obligation inherent in Article 3 of the Convention to investigate cases of ill-treatment, and in particular sexual abuse committed by private individuals, are set out in *M.C. v. Bulgaria* (cited above, §§ 148-153).

64. As regards the Convention requirements relating to the effectiveness of an investigation, the Court has held that any investigation should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible for an offence. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, such as by taking witness statements and gathering forensic evidence, and a requirement of promptness and reasonable expedition is implicit in this context (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009, with further references). The promptness of the authorities' reaction to the complaints is an important factor (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given in the Court's judgments to matters such as the time taken to open investigations, delays in identifying witnesses or taking statements (see *Mătăsaru and Saviţchi v. Moldova*, nos. 38281/08,

§§ 88 and 93, 2 November 2010), the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001), and unjustified protraction of the criminal proceedings resulting in the expiry of the statute of limitations (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 101-103, 26 July 2007, and *P.M. v. Bulgaria*, no. 49669/07, § 66, 24 January 2012).

65. Moreover, in so far as the investigation leads to charges being brought before the national courts, the procedural obligations under Article 3 of the Convention extend to the trial stage of the proceedings. In such cases the proceedings as a whole, including the trial stage, must satisfy the requirements of the prohibition of ill-treatment (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts), and *Çelik v. Turkey (no. 2)*, no. 39326/02, § 34, 27 May 2010). In this respect, the Court has already held that, regardless of the final outcome of the proceedings, the protection mechanisms available under domestic law should operate in practice in a manner allowing for the examination of the merits of a particular case within a reasonable time (see *Ebcin v. Turkey*, no. 19506/05, § 40, 1 February 2011, with further references).

66. Turning to the present case, the Court notes that by the time the Convention entered into force with respect to Slovenia on 28 June 1994, the pre-trial stage of the criminal proceedings against the men accused of raping the applicant had been concluded (see paragraph 7 above), a trial had been conducted and the first-instance judgment pronounced, which was however overturned on appeal (see paragraphs 9 and 11 above). Following the remittal of the case and an initial inquiry seeking to establish the defendants' places of residence in 1991, all activity in the case ceased until, and beyond, the entry into force of the Convention for Slovenia, owing to the fact that two defendants could not be found. Between 1995 and 2001 another four similar inquiries were made with no success (see paragraph 12 above). For the same reason, the five hearings scheduled between 1999 and 2001 also had to be adjourned (see paragraph 14 above). At the applicant's suggestion, on 29 May 2001 the competent court severed the cases against the two missing defendants, who allegedly resided abroad, into separate proceedings and subsequently issued an international arrest warrant against them. The first hearing in the main proceedings against eight defendants was held on 22 November 2001, and on 4 June 2002 the court found them guilty of the charges (see paragraph 19 above) and imposed prison sentences on them. The first-instance judgment was upheld both by the higher court on 25 January 2006 and by the Supreme Court on 12 July 2007 (see paragraph 20 above). In addition the two missing defendants, who were subsequently found abroad and extradited to Slovenia, were eventually convicted as charged and their appeals were dismissed in 2004 and 2006 (see paragraphs 21 and 22 above).

67. Recalling the Government's acknowledgment that the delays accumulated in the criminal proceedings had indeed been excessive, the Court finds no reason to disagree with that assessment. Namely, it notes with concern that the only procedural activity undertaken by the competent court between the remittal of the case in 1991 and the first retrial hearing, which took place on 22 November 2001, was to make a few inquiries about the defendants' places of residence and to schedule five hearings, all of which were adjourned for failure of some of the defendants to appear in court. Considering that it was clear from as early as July 1991 that two defendants were not to be found in Slovenia, in the Court's opinion these steps were clearly insufficient to secure their presence at the hearings and thus to proceed with the case in a diligent manner. In this connection, the Court finds it striking that detention orders and international arrest warrants against them were only issued in 2001. It is equally striking that the separation of the cases against these defendants from the main proceedings was also first envisaged in 2001, at the suggestion of the applicant, who, since 1995, had repeatedly been urging the district court to accelerate the proceedings. In the Court's opinion, this course of proceedings implies a lack of interest on the part of the competent courts in bringing the responsible persons to justice, which was at variance with the Convention requirements of effective investigation and trial as set out in paragraph 63 above.

68. Moreover, it is worth noting that the defendants who were eventually convicted of the criminal acts against the applicant received prison sentences of between eight months and a year, which amounted to less than the minimum sentences prescribed by law, as the district court took into account, *inter alia*, the significant lapse of time which had passed from the commission of the crimes until conviction.

69. In light of the above, the Court agrees with the applicant that the prolonged state of uncertainty and other negative implications of the lengthy proceedings, in particular having to relive the painful events a number of times in three separate retrials, caused her unnecessary suffering and frustration which could have been avoided had the criminal-law mechanisms aimed at deterrence of and punishment for criminal acts of sexual abuse been applied in an effective and prompt manner. In this regard, the Court would add that the failure of the State to ensure effective prosecution of rape cannot be justified by the backlog of cases in the relevant courts (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 183, ECHR 2006-V, and the references cited therein). Neither can it be justified by the frequent changes of the sitting judges who were dealing with the applicant's case. Namely, as the Court has already emphasised on many occasions, it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of the Convention (see, for example, *Šilih*, cited above, § 210).

70. Finally, the Court points out that the requirement imposed on the States to ensure effective protection against ill-treatment by private individuals, in particular, to children and other vulnerable persons, also applies in the context of their procedural obligation to provide the effective investigation and prosecution of such ill-treatment (see *M.C. v. Bulgaria*, cited above, §§ 150-153). Against that backdrop, the Court considers that the deficiencies established with regard to the conduct of the criminal proceedings in issue are all the more serious in light of the applicant's particular vulnerability as person with physical and learning disabilities.

71. Therefore, the Court finds that the domestic authorities did not comply with their positive obligations under Article 3 of the Convention.

(b) Whether the applicant lost her victim status

(i) Arguments of the parties

72. The Government, agreeing that the delays in the criminal proceedings concerning the applicant's rape had been excessive, argued that the situation had been appropriately redressed by the competent domestic authorities, which had awarded the applicant EUR 5,000 as compensation for non-pecuniary damage sustained as a result of the violation of the right to trial within a reasonable time. Taking the view that in the specific circumstances of the present case the remedy in question had constituted appropriate and sufficient redress with regard to both the alleged violations of the "reasonable time" requirement under Article 6 of the Convention and of the applicant's procedural rights under Article 3 of the Convention, the Government argued that she had lost her victim status. They pointed out that in the proceedings for compensation under the 2006 Act, the domestic courts had taken account of the particular circumstances of the criminal proceedings, emphasising that the applicant's case had not been handled in a careful, resolute and rapid manner, as required by the serious nature of the criminal acts involved, and that during the lengthy proceedings the applicant had had to relive the abuse she had suffered, which had caused her severe mental distress. Consequently, the applicant had been awarded a considerably higher amount than would normally have been granted under the 2006 Act. In the Government's opinion, the domestic courts had therefore appropriately examined the substantial deficiencies in the criminal proceedings on which the applicant had based her allegations concerning a violation of the State's positive obligations under Article 3.

73. The applicant acknowledged that the award of compensation had constituted partial redress for the mental distress she had suffered as a result of the lengthy criminal proceedings. However, she considered that EUR 5,000 had not sufficiently compensated her for the multitude of failures surrounding the excessive length of the proceedings and the different human rights violations caused thereby. In this regard, she

contended that her own case had been quite extreme and EUR 5,000 could not be regarded as sufficient redress.

(ii) The Court's assessment

74. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

75. In the present case, the domestic authorities acknowledged that the applicant's right to trial within a reasonable time had been violated and awarded her compensation for this violation. The Court must therefore examine whether this acknowledgment ought also to apply in the context of the applicant's complaint under Article 3 of the Convention, and if so, whether the compensation constituted appropriate and sufficient redress for the breach of the applicant's rights under the Convention.

α) The acknowledgment of a violation

76. The Court observes that the applicant's complaint under Article 3 of the failure of the State to ensure an effective trial of the charges of her rape was directed mainly against the delays in the proceedings. Therefore, while mindful of the fact that the remedies provided by the 2006 Act – including the award of compensation – specifically concern the right to have one's case examined within a reasonable time, within the meaning of Article 6 § 1 of the Convention (see paragraph 35 above), and do not in principle address situations in which delays are examined in terms of interference by the State with an applicant's rights under other Convention provisions (see, in this regard, *Šilih*, cited above, §§ 169-170; and *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 105, 1 December 2009), the Court does not exclude the possibility that the compensation awarded to the applicant under this Act may have provided her with effective redress for the breach of her rights under Article 3, on condition that the breach of this provision was acknowledged by the relevant domestic courts in substance.

77. In this regard, the Court agrees with the Government that the local court deciding on the compensation to be awarded to the applicant took particular account of the nature of the criminal acts committed against her, emphasising their gravity, the importance of conducting particularly diligent and prompt criminal proceedings concerning these acts, and the mental distress and suffering endured by the applicant due to the lengthy proceedings. Therefore, although the criminal proceedings were examined from the perspective of the "reasonable time requirement", the Court finds that the local court's reasoning, confirmed by the higher court, included both recognition of the State's obligation to effectively prosecute cases of

sexual abuse and a finding that the competent authorities had failed to comply with this obligation. Moreover, it is not to be overlooked that the serious nature of the applicant's case influenced the amount of the compensation awarded to her, the local court having departed from the established domestic criteria for the calculation of awards made in compensation for the breach of the right to trial within a reasonable time.

78. In light of the foregoing, the Court finds that although the domestic courts did not specifically refer to Article 3 of the Convention in their decisions, their reasoning entailed an acknowledgement in substance of a breach of this Article.

β) The characteristics of the redress

79. The Court reiterates that the question whether the applicant received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue (see *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009).

80. In the present case the violation of the Convention found by the Court consists of the State's failure to conduct a prompt and effective trial of the charges of rape and sexual abuse of the applicant. Having regard to the fact that the deficiencies in the conduct of the proceedings cannot be rectified anymore by restoring the situation as it existed before the breach of the Convention, or by preventing the continuation of the violation, there can be no doubt that an award of compensation constituted an appropriate form of redress for the delays and related mental distress suffered by the applicant.

81. It remains to be ascertained whether the redress already afforded to the applicant at the domestic level was sufficient. It has already been established by the Court that in cases involving a breach of Article 3 at national level, an applicant's victim status may, *inter alia*, depend on the level of compensation awarded at domestic level, having regard to the facts complained about before the Court (see *Gäfgen v. Germany* [GC], no. 22978/05, § 118, ECHR 2010). Having regard to the wider margin of appreciation left to the domestic courts in this regard (see *Shilbergs*, cited above, § 77, and the references cited therein), the Court has emphasised, in particular, that the sums awarded may not be unreasonable in comparison with the awards made by the Court in similar cases. Whether the amount awarded may be regarded as reasonable falls to be assessed in the light of all the circumstances of the case. However, where the amount of compensation is substantially lower than what the Court generally awards in comparable cases, the applicant retains his or her status as a "victim" of the alleged breach of the Convention (see, *mutatis mutandis*, *Scordino*, cited above, §§ 182-92 and 202-15).

82. The parties' positions in the present case differed on this point, the Government alleging that the EUR 5,000 awarded to the applicant

constituted appropriate redress, and the applicant maintaining that this amount, albeit the statutory maximum, had not provided sufficient compensation given the extreme nature of her case. Indeed, the Court considers that the duration and severity of the violation are among the factors to be taken into account in assessing whether the domestic award could be regarded as adequate and sufficient redress (see, *mutatis mutandis*, *Shilbergs*, cited above, § 74, and *Shishkin v. Russia*, no. 18280/04, § 108, 7 July 2011).

83. The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in monetary terms (see *Shilbergs*, cited above, § 76, and *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004). The Court does not doubt that the domestic courts in the present case attempted to assess the level of mental distress and suffering sustained by the applicant as a result of the lack of effectiveness in conducting the criminal proceedings concerning her rape. However, this assessment was by definition limited by the statutory maximum of EUR 5,000, an amount which could not be exceeded regardless of the circumstances of the applicant's case (see paragraphs 30 and 31 above). This amount, however, is substantially lower than the amounts awarded by the Court in other cases involving deficiencies in an investigation and/or a prosecution of cases of sexual abuse committed by private individuals (see *M.C. v. Bulgaria*, cited above; *P.M. v. Bulgaria*, cited above; *C.A.S. and C.S. v. Romania*, no. 26692/05, 20 March 2012; and *D.J. v. Croatia*, no. 42418/10, 24 July 2012).

84. In the Court's opinion the effects of the prolonged uncertainty as to the outcome of the criminal proceedings and related mental distress endured by the applicant over the period of seventeen years, coupled with the short prison sentences imposed on the defendants, are comparable to the breaches found by the Court in the cases cited in the previous paragraph, which should be reflected in the amount of compensation awarded to the applicant. This finding cannot be changed by the fact that the outcome of the present case, in which eight out of ten defendants were eventually convicted and sentenced to imprisonment, was, as pointed out by the Government, favourable to the applicant.

85. Therefore, the Court considers that the compensation awarded to the applicant by the domestic courts did not constitute sufficient redress and thus she may still claim to be a "victim" of a breach of Article 3 of the Convention.

2. Compliance with Article 3

86. Having regard to the above findings, the Court finds that the criminal proceedings regarding the applicant's rape did not comply with the procedural requirements imposed by Article 3.

87. There has been a violation of Article 3 of the Convention in its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed 20,000 euros (EUR) with statutory default interest payable from 22 May 2006, the date on which she submitted this application to the Court, until settlement in respect of non-pecuniary damage. Moreover, without specifying the amount, the applicant claimed statutory default interest payable over the period from 22 May 2006 until 12 June 2009 in respect of the compensation in the amount of EUR 5,000 she had received in the domestic proceedings. She alleged that the deficiencies in the conduct of the criminal proceedings concerning her rape, in particular the delays and the consequential prolonged uncertainty regarding the outcome of the proceedings, had caused her severe mental distress and unnecessary suffering which, to a large extent, could have been avoided, had the proceedings been conducted in a more effective manner.

90. The Government disputed the applicant's claims, taking the view that her claim was excessive both from the standpoint of similar cases of other affected Member States of the Council of Europe, as well as with regard to the financial burden imposed on the respondent State.

91. The Court reiterates that the amount it will award under the head of non-pecuniary damage under Article 41 may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at the domestic level and compensation by using a domestic remedy. The Court considers, however, that where an applicant can still claim to be a "victim" after making use of that domestic remedy he or she must be awarded the difference between the amount actually obtained from the national authorities and the figure which, but for the national compensation, the Court would have awarded on equitable principles.

92. Regard being had to the above criteria, and taking into account the gravity and duration of the violation found, as well as the compensation she has received at the domestic level, the Court, deciding in equity, awards the applicant EUR 15,000.

B. Costs and expenses

93. The applicant also claimed EUR 2,652.50 for costs and expenses incurred before the Court.

94. The Government submitted that the applicant's claim was excessive as to quantum and, moreover, did not contain specification of the costs incurred. Under these circumstances, the Government were of the opinion that no award should be made under this head.

95. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,800 for the proceedings before the Court.

C. Default interest

96. 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 UNANIMOUSLY

1. *Joins* to the merits the Government's plea of lack of victim status and rejects it;

2. *Declares* the applicant's complaint under procedural limb of Article 3 admissible;

3. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention;

4. *Holds*

   (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, the following amounts:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,800 (one thousand and eight 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President