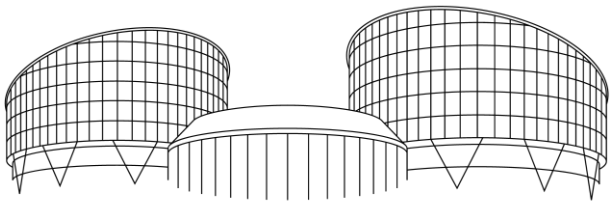

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF HARTMAN v. SLOVENIA

(Application no. 42236/05)

JUDGMENT

STRASBOURG

18 October 2012

FINAL

18/01/2013

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

In the case of Hartman v. Slovenia,

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

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 42236/05) 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 Andrej Hartman ("the applicant"), on 15 November 2005.

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

3. The applicant complained, in particular, under Article 6 § 1 of the Convention that the length of the criminal proceedings against him was excessive. In substance, he also complained that there was no effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 8 September 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Žabnica.

6. On 14 November 1997 the Ministry of the Interior, Kranj Criminal Police Unit (*Ministrstvo za notranje zadeve - Urad kriminalistične službe Kranj*) issued a decision on detention of the applicant. He was arrested on the same day.

7. On 16 November 1997 the applicant was brought before the investigating judge for questioning. On the same day the investigating judge remanded the applicant in custody.

8. On 17 November 1997 the Public Prosecutor's Office sent a request to open a criminal investigation against the applicant and six others.

9. On 27 November 1997 the investigating judge issued a decision on the opening of a criminal investigation.

10. On 11 May 1998, after the investigation had been terminated, an indictment was lodged against the applicant. He was charged with six criminal offences connected with unlawful manufacture of and trade in narcotic drugs (heroin). The indictment was lodged against six other accomplices for some twenty criminal offences of the same kind. The case concerned an organised network of drug traffickers.

11. On 6 October 1998 the Kranj District Court (*Okrožno sodišče v Kranju*) held the first hearing.

12. Between 6 October 1998 and 15 March 2000 the Kranj District Court held sixty-nine hearings and heard forty-eight witnesses. It inspected numerous video cassettes, read reports on secret surveillance, listened to wiretaps and examined documents sent from Spain, the United Kingdom, Hungary, Austria, Bulgaria and Romania.

13. In the meantime, on 30 December 1999, the applicant was placed under house arrest.

14. At the last hearing, on 15 March 2000, the first-instance judgment was issued. The applicant was sentenced to fifteen years' imprisonment. The judgment was served on the applicant on 11 April 2000.

15. On 21 April 2000 the applicant lodged an appeal with the Ljubljana Higher Court (*Višje sodišče v Ljubljani*). So did the other parties in the criminal proceedings and the State Attorney's Office.

16. On 30 November 2000 the Ljubljana Higher Court mainly upheld the first-instance judgment and remitted the remainder for re-examination. In addition, the applicant's sentence was mitigated to fourteen years' imprisonment.

17. On 3 December 2000 the Kranj District Court issued an arrest warrant in respect of the applicant. It appeared that he had fled the country while he was being kept under house arrest.

18. On 3 January 2001 the second-instance judgment was served on the applicant's attorney.

19. On 31 March 2001 the applicant's attorney lodged a request for protection of legality (*zahteva za varstvo zakonitosti*) with the Supreme Court (*Vrhovno sodišče*).

20. On 25 May 2001 the Supreme Court received the case file.

21. On 5 June 2002 the Kranj District Court issued a decision on termination of the proceedings in respect of the applicant concerning the remitted part of the case, following the withdrawal of the indictment.

22. As it transpires from the case file, on an unknown date the applicant lodged a request for the reopening of the proceedings. On 5 August 2004 the Kranj District Court rejected his request on procedural grounds.

23. On 10 December 2002 the police brought the applicant to the Dob pri Mirni prison, where he was supposed to serve his sentence. The applicant had returned to Slovenia (on an unspecified date) and turned himself in to the authorities.

24. On 21 December 2004 the Supreme Court issued a judgment rejecting the applicant's request for protection of legality.

25. On 7 January 2005 the judgment was served on the applicant.

26. On 1 March 2005 the applicant lodged a constitutional complaint.

27. On 3 August 2005 the Ljubljana Higher Court rejected his appeal against the rejected request for the reopening of the proceedings (see paragraph 22 above).

28. On 5 May 2006 the Constitutional Court (*Ustavno sodišče*) rejected the constitutional complaint as unfounded. The decision was served on the applicant on 11 May 2006.

29. On 17 November 2006 the applicant lodged a request for extraordinary mitigation of sentence (*zahteva za izredno omilitev kazni*).

30. On 21 June 2007 the Supreme Court granted the request and mitigated his sentence to thirteen years and eight months.

31. On 13 December 2007 the applicant's attorney lodged the second request for the reopening of the proceedings with the Kranj District Court. On 26 February 2008 the first-instance court received a request for the reopening of the proceedings lodged by the applicant.

32. On 16 September 2008 the requests for reopening were rejected. He appealed.

33. On 12 March 2009 the Ljubljana Higher Court upheld the appeal and remitted the case for re-examination.

34. On 16 July 2009 the Kranj District Court rejected his request on procedural grounds. Following an appeal the case has been pending before the appeal court as of 13 October 2009; the Court has not received any up-dates on the matter.

II. RELEVANT DOMESTIC LAW

35. For relevant domestic law see judgment *Ribič v. Slovenia* (no. 20965/03, 19 October 2010, §19).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

36. The applicant complained that the proceedings to which he was a party had been excessively long. He relied on 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 ..."

37. In substance, the applicant further complained that the remedies available for excessively long proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

38. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds (see *Ribič v. Slovenia*, cited above, §§ 37-42). It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

39. The period to be taken into consideration began on 14 November 1997, the day of the applicant's arrest, and ended on 11 May 2006, when the Constitutional Court's decision was served on the applicant.

40. The applicant also lodged two requests for the reopening of proceedings and a request for an extraordinary mitigation of sentence. The Court notes that, in accordance with its established case-law, Article 6 § 1 does not apply to proceedings for reopening a trial, given that someone who applies for his case to be reopened and whose sentence has become final, is not "someone charged with a criminal offence" within the meaning of the said Article (*Fischer v. Austria* (dec.), no. 27569/02, 6 May 2003). The same principle applies to the proceedings following the request for an extraordinary mitigation of sentence, considering that in accordance with the case-law Article 6 § 1 does not apply to proceedings for review of a sentence after the decision has become *res judicata* (*X v. Austria*,

no. 1237/61, 5 March 1962). Thus, these proceedings cannot be taken into account for calculating the overall length.

41. In view of the above, the overall length of the proceedings is eight years and six months at four levels of jurisdiction.

42. The Government argued that having regard to the complexity of the case (including six people accused for more than twenty criminal offences) the overall length of the proceedings cannot be considered as excessive, despite the fact that it took the Supreme Court almost four years to deliver its judgment. According to the Government the Court should not make its assessment only based on the duration of proceedings before the Supreme Court, but should look at it as a whole.

43. As to the duration of proceedings before the Supreme Court the Government argued that at the time the Supreme Court received the case file, it contained over 7,000 pages. Furthermore, they stated that this was the first case of drug trafficking of such a large scale in Slovenia and the Supreme Court had to therefore thoroughly examine it. The Government also stated that as the protection of legality is an extraordinary remedy, available after the case has become final, it can therefore not be considered that the applicant was a state of insecurity pending the outcome of the proceedings. Finally, the Government argued that during the time the Supreme Court was adjudicating the case the applicant fled the country and was gone for two years, which should also be taken into consideration.

44. 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).

45. The Court considers that it cannot be disputed that the case was complex. It concerned a drug trafficking network, six accused of various criminal offences and there was a vast amount of evidence to be considered (see paragraph 10 above). It took the first-instance court two years and three months to deliver a judgment and the appeal court deliberated it in only seven months. The Court cannot however ignore the fact that the proceedings before the Supreme Court were pending for almost four years.

46. In this connection, the Court observes that the request for protection of legality is an extraordinary remedy decided by the Supreme Court *in camera* based on the case-file. Although acknowledging the substantive size of the case-file and the numerous legal issues raised in the protection of legality, the Court finds that deliberating on the matter for three years and eight months is excessive and cannot be excused by the arguments put forward by the Government. As to the argument regarding the applicant's fleeing the country, the Court considers this had no effect on the

proceedings in question, as they were held *in camera* and did not require the presence or any other involvement from the applicant.

47. Having examined all the material submitted to it, and having regard to its case-law on the subject (see *Šubinski v. Slovenia*, no. 19611/04, §§ 72-74, 18 January 2007; *Hrustelj v. Slovenia*, no. 75628/01, §§ 18-20, 30 March 2006 and *Gorenjak v. Slovenia*, no. 77819/01, 30 March 2006, §§ 17-19) the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

48. There has accordingly been a breach of Article 6 § 1.

2. Article 13

49. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 for a case to be heard within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

50. In view of its findings in the case of *Ribič v. Slovenia* (cited above, §§ 37-42) and having regard to the fact that the Government have not submitted any convincing arguments which would require it to distinguish the present application from the aforementioned case the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Under Article 6 § 1 the applicant complained that the proceedings had been unfair and that the domestic courts used documents that should have been excluded, in particular the testimony of one of the accomplices obtained abroad. He further complained that he was not allowed to review the audio material in the case-file and that he could not present evidence in his favour. According to him there was no equality of arms in the proceedings, since all the judges were biased and gave more weight to the evidence and arguments submitted by the prosecution, which was particularly obvious when they appointed the Centre for Forensics to deliver one of expert opinions.

52. 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

53. 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

54. The applicant requested the Court to award him fair compensation in respect of non-pecuniary damage he had suffered, without specifying the amount.

55. The Government argued that since he did not specify an amount he should not be awarded any compensation.

56. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 1,200 under that head.

B. Costs and expenses

57. The applicant made no claim as regards the costs and expenses incurred before the Court. The Court therefore makes no award under this head.

C. Default interest

58. 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* unanimously the complaint concerning the excessive length of the proceedings and lack of an effective remedy admissible and the remainder of the application inadmissible;

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

3. *Holds* by six votes to one

(a) that the respondent State is to pay within three months EUR 1,200 (one thousand two hundred 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.

Done in English, and notified in writing on 18 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE

I disagree with the majority's finding of a violation of the applicant's right to a trial within 'reasonable time'. In my separate opinion in *Barišič v. Slovenia* (32600/05) I have set out the reasons why I cannot accept the Court's current 'broad brush' approach to 'length of proceedings' claims.

For the reasons set out therein and absent a detailed consideration of what, in fact, transpired at national level and in the light of such facts as can be ascertained from the judgment – particularly, the applicant's conduct in absconding – I cannot agree that there has been any violation of the Convention.