

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

FIFTH SECTION

DECISION

Application no. 2467/05
Ivan ARISTOVNIK and others
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 20 March 2012 as a Committee composed of:

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 January 2005,

Having regard to the comments submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ivan Aristovnik, Mr Peter Aristovnik and Ms Ela Aristovnik, are Slovenian nationals who were born in 1944, 1997 and 1947 respectively and live in Velenje. They were represented before the Court by Mr B. Verstovšek, a lawyer practising in Celje. The Slovenian Government ("the Government") are represented by their Agent.

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

In 1994 the applicants' son and brother was killed in a car accident.

On 5 December 1994 the Office of the Public Prosecutor in Celje lodged a request for investigation against M.Z. on the grounds of suspicion of a serious criminal offence against public transport safety.

On 12 May 1998 the public prosecutor dismissed the criminal prosecution. The applicants were notified on 18 May 1998.

On 29 May 1998 the applicants, acting as a subsidiary prosecutor, lodged an indictment against M.Z.

On 22 June 1999 the applicants lodged the pecuniary claim for compensation and were subsequently directed by the first-instance court to institute civil proceedings. The civil proceedings were instituted on 30 July 1999.

On 25 February 2003 the Celje District Court delivered a judgment acquitting the defendant. The applicants appealed.

On 23 December 2003 the Celje Higher Court upheld the appeal and remitted the case for re-examination.

On 22 September 2004 the first-instance court rendered a judgment, whereby it found the defendant guilty as charged. Both parties appealed.

On 21 December 2004 the Celje Higher Court rejected the appeals and upheld the first-instance judgment. The defendant lodged a request on protection of legality.

On 24 November 2005 the Supreme Court rejected the defendant's request.

The civil proceedings were terminated on 27 September 2006.

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention about the excessive length of civil proceedings and under Article 13 of the Convention about the lack of an effective domestic remedy in that regard.

THE LAW

Further to the notification of the case under Rule 54 § 2 (a) of the Rules of Court, the Government informed the Court that the State Attorney's Office had refused to apply section 25 to the present case, stating that since the applicants were acting as subsidiary prosecutors in criminal proceedings they do not fall into the categories of parties entitled to compensation under the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act").

The Government further stated that the applicants had reached a settlement with the State Attorney's Office under section 25 of the 2006 Act and received compensation for non-pecuniary damage for the undue length of the civil proceedings, where they pursued their pecuniary claim for compensation.

The applicants contested those arguments.

The Court notes that the applicants were not the accused but the injured parties in the criminal proceedings complained of. Thus, the criminal limb of Article 6 does not apply. However, Article 6 § 1 under its "civil head" applies to criminal proceedings involving a determination of pecuniary claims asserted by the injured parties ("civil-party complaints") and, even in the absence of such claims, to those criminal proceedings the outcome of which is decisive for the "civil right" in question (see *Perez v. France* [GC], no. 47287/99, §§ 65-67 and 71, ECHR 2004-I).

In the present case the applicants instituted criminal proceedings on 29 May 1998. The criminal proceedings ended on 24 November 2005. Following the instructions of the criminal court they pursued a civil claim in civil proceedings, which started on 30 July 1999 and ended on 27 September 2006.

The Court further notes that the applicants lodged a separate application before the Court concerning the undue length of the above mentioned civil proceedings, which was struck out of the list of cases following a settlement reached with the State Attorney's Office (see *Bokan v. Slovenia*, no. 289/05, 16 June 2009).

Assuming that the outcome of the criminal proceedings could have had an impact on the civil proceedings, the Court notes that Article 6 applied to the criminal proceedings only in so far as they concerned the applicants' civil interests. The applicants' civil claim, initially made in criminal proceeding, was determined in the civil proceedings, which in most part overlapped with the criminal and continued after the termination of the latter. Noting that the applicants have already received compensation for non-pecuniary damage resulting from the undue length of civil proceedings, the Court finds that they can no longer claim to be victims in the present case.

It follows that this application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Ann Power-Forde
President