

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

FIFTH SECTION

CASE OF ŽELE v. SLOVENIA

(Application no. 21308/06)

JUDGMENT

STRASBOURG

8 November 2012

This judgment is final but it may be subject to editorial revision.



In the case of Žele v. Slovenia,

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

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

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 21308/06) 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 Marisa Žele ("the applicant"), on 26 April 2006.

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

3. On 11 February 2009 the President of the Section decided to inform the Government of the application and to request them to submit information under Rule 54 § 2 (a) of the Rules of Court. Further to receipt of the information requested, on 4 October 2010, the President decided to communicate the application under Rule 54 § 2 (b) of the Rules of Court. In accordance with Protocol No. 14, the application was assigned to a committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1990 and lives in Maribor.

5. On 20 August 1999 the applicant through guardian instituted proceedings against her father before the Maribor District Court seeking an increase in alimony.

6. On 11 October 2000 the first-instance court held the first hearing. A hearing scheduled for 8 December 2000 was postponed at the applicant's request and was held subsequently on 16 February 2001.

7. On 22 May 2001 the first-instance court rendered a judgment upholding the applicant's request in part by increasing the amount of alimony. The defendant appealed.

8. On 27 November 2001 the Maribor Higher Court upheld the appeal and remitted the case for re-examination.

9. On 8 May 2002 the first-instance court held a hearing.

10. On 30 May 2002 the first-instance court issued a judgment upholding the applicant's request in part. The defendant appealed.

11. On 19 November 2002 the appeal court rendered a judgment and remitted the case once more for re-examination. The court found that the operative part of the first-instance judgment was not clear and the judgment insufficiently reasoned in some parts.

12. Further to the remittal the Maribor District Court held two hearings on 27 October 2004 and 13 July 2005.

13. After the last hearing the court rendered a judgment upholding the applicant's request. The defendant appealed.

14. On 11 April 2006 the Maribor Higher Court rejected the appeal.

II. RELEVANT DOMESTIC LAW

15. 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

16. The applicant complained that the proceedings to which she was a party had been excessively long. She relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

17. 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

18. The Court notes that 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,* no. 20965/03, 19 October 2010, §§ 37-42). It must therefore be declared admissible.

B. Merits

1. Article 6

19. The period to be taken into consideration began on 20 August 1999 and ended on 11 April 2006, when the second-instance court's decision was rendered.

20. 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).

21. In this connection the Government argued that the delays were not attributable to the State but were a consequence of an objective fact, namely the fact that the defendant kept lodging appeals against the first-instance judgments.

22. Firstly, the Court notes that the case cannot be considered as complex.

23. As regards the conduct of the relevant authorities, the Court observes that the case was remitted for re-examination three times, mostly since the first-instance judgments contained unclear operative parts and were not sufficiently reasoned (see paragraph 11 above). The Court acknowledges that the domestic courts were in the best position to judge whether the case ought to be referred back to the lower courts under the relevant provision of domestic law *(Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, § 43). Nonetheless, as it has already stressed in previous cases (see, for example, *Deželak v. Slovenia*, no. 1438/02, § 25, 6 April 2006), since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, as indeed appears to have happened in the applicant's case, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. That deficiency is attributable to the authorities, not the applicant (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

24. Furthermore, the Court notes that it took the first-instance court almost a year before the first hearing was scheduled (see paragraph 6 above)

and after one of the remittals almost two years to continue with the examination of the case (see paragraph 11 and 12 above).

25. On the other hand however, there seem to be no significant delays attributable to the applicant.

26. Having regard to the above and its case-law on the subject (see, *Ješič v. Slovenia*, no. 38341/02, §§ 17-19, 27 April 2006; *Bizjak Jagodič v. Slovenia*, no. 42274/02, §§ 16-18, 6 April 2006, *Rodič v. Slovenia*, no. 38528/02, §§ 18-20, 27 April 2006 and *Umek v. Slovenia*, no. 35463/02, 8 January 2009, §§ 44-47) the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Article 13

28. 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).

29. The Court recalls the case of *Ribič v. Slovenia* (see paragraph 19 above) and notes that the Government have not submitted any convincing arguments which would require it to distinguish the present application from the aforementioned case. The Court therefore 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 her right to have her case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant requested the Court to award her fair compensation in respect of non-pecuniary damage.

32. The Government contested the claim.

33. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award her EUR 4,000 under that head.

B. Costs and expenses

34. The applicant also claimed EUR 1,500.00 for the costs and expenses incurred before the Court.

35. The Government contested the claim.

36. 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, she did not itemise or substantiated her claims. The Court therefore makes no award under this head.

C. Default interest

37. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Articles 6 § 1 and 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 5,200 (five 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;

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

Done in English, and notified in writing on 8 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Ann Power-Forde
Deputy Registrar	President