

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

FIFTH SECTION

DECISION

Application no. 30499/06
Niko IGNJATIČ
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 10 July 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 13 July 2006,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having regard to the comments submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Niko Ignjatič, is a Slovenian national, who was born in 1951 and lives in Celje. He is represented before the Court by Mr T. Bromše, a lawyer practising in Celje.

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

A. The circumstances of the case

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

On 23 February 1998 the applicant lodged a request with the Šmarje pri Jelšah Welfare Centre ("the Welfare Centre") seeking sole custody of his daughter.

On 5 February 1999 the Welfare Centre issued decision rejecting his request and giving sole custody of the daughter to the mother. The applicant appealed.

On 30 July 1999 the Ministry of Labour, Family and Social Affairs ("the Ministry) upheld his appeal and remitted the case for re-examination.

On 15 March 2000 the Welfare Centre issued a new decision rejecting the applicant's request for custody. Following an appeal, the Ministry upheld the Welfare Centre's decision. The applicant instituted an administrative dispute on 28 September 2000.

On 15 October 2002 the Administrative Court upheld his request and remitted the case for re-examination before the Ministry.

Further to legislative changes the courts acquired jurisdiction to adjudicate custody cases.

On 1 April 2003 the applicant instituted civil proceedings before the Celje District Court.

On 7 May 2003 the judge sent a request to the Welfare Centre to submit an opinion on the case.

On 8 May 2003 the judge requested the applicant to submit all the relevant documents concerning his request for exemption from payment of court fees.

On 26 May 2003 the applicant submitted the requested documents.

On 28 May 2003 a decision on exemption of fees was issued.

On 3 July 2003 the court received the opinion of the Welfare Centre.

The first hearing was scheduled for 2 October 2003 but was cancelled on defendant's request.

On 2 October 2003 the judge made inquiries with the Ratanska vas primary school and the Celje Welfare Centre.

On 6 November 2003 the Celje Welfare Centre submitted an opinion on the case.

On 20 November 2003 the first hearing was held. A hearing scheduled for 8 January 2004 was postponed on applicant's request.

On 13 January 2004 the judge interviewed the child.

On 16 January 2004 the judge appointed an expert. The expert submitted his opinion on 6 September 2004.

On 17 January 2005 the judge requested reports from the Rogaška Slatina primary school and the Šmarje pri Jelšah Welfare Centre.

On 8 March 2005 the final hearing was held and a judgment issued. The applicant's request was rejected. He appealed.

On 22 June 2006 the Celje Higher Court rejected his appeal.

B. Relevant domestic law

For relevant domestic law see *Blekić v. Slovenia* (no. 14610/02, 7 July 2009).

COMPLAINTS

The applicant complained under Article 6 § 1 and 13 of the Convention about the undue length of the proceedings and the lack of an effective remedy in that regard.

THE LAW

As to the length of proceedings before the administrative authorities the Court observes that the applicant did not exhaust the available domestic remedies (see *Sirc v. Slovenia* (dec.), no. 44580/98, 16 May 2002) and thus the complaint regarding these proceedings must be rejected under Article 35 § 4 of the Convention.

As to the proceedings before the domestic courts the Court recalls that the "reasonable" length of proceedings must be assessed in accordance with the circumstances of the case and the following criteria: the complexity of the case, the behaviour of the applicant and that of the competent authorities and what was at stake for the applicant in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The Court observes that the time to be taken in consideration in the present case started on 1 April 2003 and ended on 22 June 2006, the date of the Higher Court's decision. The proceedings therefore lasted three years, one month and twenty-two days at two levels of jurisdiction.

The Court notes at the outset that the present case was of a certain complexity, since it dealt with child custody issues. The importance of the child's interest at stake made it necessary to strike the proper balance between the speedy conduct of the proceedings and cautious examination of the case.

As to the conduct of the applicant, the Court does not find that he substantially contributed to the length of the proceedings.

Neither could the domestic courts be blamed for being insufficiently active in the case. The first-instance court held three hearings, heard the parties to the proceedings, obtained two reports from welfare centres and schools, and also a report from an expert in psychology. The Court notes that there were no substantial periods of inactivity on the part of the domestic courts dealing with the applicant's case. Assessing the relevant

facts as a whole, the Court does not find that the domestic courts failed to act with due diligence in handling the case.

Having regard to all the material submitted to it and having regard to the Court's case-law on the subject (see *Repar v. Slovenia*, no. 40739/05, *Felcser v. Hungary,* no. 14093/06, 25 May 2010 and *Hornak v. Slovakia,* no. 43527/04, 24 November 2009) the Court considers that in the instant case the length of the proceedings can be considered as reasonable.

The Court therefore finds that the complaint regarding the undue length of proceedings before the domestic courts is manifestly ill-founded and must be rejected under Article 35 § 4 of the Convention.

As to the complaint regarding the lack of effective remedies before the administrative authorities the Court has already found that the General Administrative Procedure Act and the Administrative Disputes Act did provide the applicants with an effective remedy in respect of their complaint about the length of the proceedings before the lower administrative authorities (see *Sirc v. Slovenia,* cited above).

As to the proceedings before the domestic courts, the Court recalls that Article 13 requires the State to provide an effective legal remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, 8 June 2006). Considering that the complaint about the excessive length of the proceedings is inadmissible as manifestly ill-founded, the Court finds that the applicant did not have an arguable claim for the purpose of Article 13.

Accordingly, this complaint is manifestly ill-founded and must be declared inadmissible in the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips	Ann Power-Forde
Deputy Registrar	President