

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

FIFTH SECTION

DECISION

Applications nos. 18656/06, 2636/07, 2696/07 and 7113/07
by Gabrijela PETKOVIČ and Others
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 30 August 2011 as a Committee composed of:
Ganna Yudkivska, *President,*
Boštjan M. Zupančič,
Angelika Nußberger, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*
Having regard to the applications listed in the annex,
Having regard to the settlement agreements signed by the parties,
Having deliberated, decides as follows:

THE FACTS

All the applicants are all Slovenian nationals living in Slovenia.

Also the applicant Mr Alojz Dreo was a Slovenian national who lived in Slovenia. He was represented before the Court by Mr B. Verstovšek, a lawyer practising in Celje. He died on 31 August 2008, in the course of the proceedings before the Court. On 25 February 2010 the applicant's widow, Ms Bogdana Dreo, declared that she wished to pursue the application of her late husband before the Court. Like the applicant, also his widow, who lives in Maribor, was represented before the Court by Mr B. Verstovšek, a lawyer practising in Celje.

The applicant Ms Gabrijela Petkovič was represented before the Court by Ms M. Petkovič, a lawyer practising in Ljubljana. Mr Anton Plantarič was

represented before the Court by Mr D. Đuragić, a lawyer practicing in Ljubljana.

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

The applicants were parties to civil proceedings which were finally resolved (*pravnomočno končan postopek*) before 1 January 2007, that is, before the 2006 Act on the Protection of the Right to a Trial without Undue Delay ("the 2006 Act") became operational. Subsequently, they lodged appeals on points of law with the Supreme Court (*Vrhovno sodišče*) and in some cases also a constitutional appeal to the Constitutional Court *(Ustavno sodišče).*

The details concerning each particular case are indicated in the attached table.

COMPLAINTS

All 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.

Moreover, Ms Gabrijela Petkovič also complained that the domestic proceedings were unfair, since at the first-instance court the case was first assigned to a judge whose relative was a good friend of the director of the company against which she instituted the proceedings and invoked in substance Article 6 § 1 of the Convention. From the documents she submitted it follows that the judge at issue had withdrawn from the case and that the case was assigned to another judge, who had heard the case and delivered the first-instance court judgment. The applicant also complained under Article 6 § 1 of the Convention that the first-instance court did not hear all the witnesses she proposed. From the applicant's constitutional complaint it transpires that the applicant did not raise this complaint before the Constitutional Court. The applicant also complained under Article 1 of Protocol No. 1 to the Convention that in the domestic proceedings she did not succeed with her claims from a business contract with the company, since all the domestic courts, including the Constitutional Court, rejected her claims.

THE LAW

A. Legal standing of Ms Bogdana Dreo before the Court

The Court must first examine whether Ms Bogdana Dreo has standing to pursue Application no. 7113/07 originally lodged by the applicant Mr Alojz Dreo, who died on 31 August 2008, in the course of the proceedings before the Court.

On 25 February 2010 Ms Bogdana Dreo, who is the applicant's widow, declared that she wished to pursue her late husband's application before the Court. In support of her standing before the Court she submitted several documents. First, she submitted the Maribor Local Court's decision of 21 January 2009, issued in the framework of the inheritance proceedings, that no hearing should be held since the applicant did not own any assets which could be inherited. Second, on 15 January 2009 the Agency for Health Insurance declared that the applicant's widow was entitled to a family allowance (*posmrtnina*) after her deceased husband. Third, on 23 September 2008 the Agency for Elderly and Disability Insurance declared that the applicant's widow was entitled to receive the old-age pension to which previously the applicant had been entitled to (*vdovska pokojnina*). Fourth, in order to support her entitlement to pursue the application before the Court, the applicant's widow also submitted the declaration of the applicant, in the form of a notary certificate dated 22 April 2008, in which he authorised her, *inter alia*, to represent him in all court proceedings and proceedings before other public authorities and to deal with his assets.

In various cases in which an applicant has died in the course of the proceedings the Court has taken into account the statements of the applicant's heirs or of close members of his family who have expressed the wish to pursue the proceedings before the Court (see, for example, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 189-192, 3 October 2008, *Mlakar v. Slovenia* (dec.), no. 30946/02, 12 December 2006 and *Trnovšek v. Slovenia* (dec.), 20844/03, 1 June 2010).

The Court notes that Ms Bogdana Dreo had not been formally declared as the applicant's heir in the inheritance proceedings, since at the time the Maribor Local Court issued on 21 January 2009 the decision with respect to his inheritance the applicant was considered as having no assets which could be inherited. However, the Court observes that in the subsequent proceedings before the domestic authorities and in particular before the Agency for Elderly and Disability Insurance the applicant's widow has been recognised under national law as being entitled to receive assets to which previously the applicant was entitled to. Finally, the Court also observes that in the present case the State Atorney's Office concluded a friendly settlement with respect to the applicant's complaints before the Court with

the applicant's widow. The Court therefore considers that she has a legitimate interest in pursuing the application before the Court. The Court must accordingly continue to examine the application at her request.

B. Complaints about the length of the proceedings under Articles 6 and 13 of the Convention

In the present cases the Court notes that, after the Government had been given notice of the applications, they submitted their observations and informed the Court that they had made a settlement proposal to each of the applicants.

By the settlement agreements signed by the State's Attorney's Office and the applicants, the former acknowledged a violation of the right to a trial within a reasonable time and accepted to pay the applicants the non-pecuniary damage sustained and costs and expenses incurred. The applicants accepted the amount as full compensation for the damage sustained due to the length of the above proceedings and waived any further claims against the Republic of Slovenia in respect of this complaint.

The applicants subsequently informed the Court that they had reached settlements with the State's Attorney's Office and that they wished to withdraw their applications introduced before the Court.

The Court recalls Article 37 of the Convention which, in the relevant part, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court takes note that following the settlement reached between the parties the matter has been resolved at the domestic level and that the applicants do not wish to pursue their applications. It is satisfied that respect for human rights as defined in the Convention or its Protocols does not require the examination of the application to be continued (Article 37 § 1 *in fine* of the Convention).

In view of the above, it is appropriate to strike the cases out of the list, including Application No. 7113/04 in the part concerning the complaints about undue length of proceedings under Article 6 § 1 of the Convention and lack of effective remedies in this regard under Article 13 of the Convention, in accordance with Article 37 § 1 (a) of the Convention.

C. Remaining complaints

As far as the complaints of Ms Gabrijela Petkovič under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention are concerned, the Court considers that, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, these complaints do not disclose any appearance of a violation of the Convention. It follows that they are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court

Decides that Ms Bogdana Dreo has standing to continue Application No. 7113/07 in the applicant's stead;

Decides to join the applications;

Decides to strike the applications out of its list of cases, including the part of Application No. 7113/07 concerning complaints about the length of domestic proceedings under Article 6 § 1 of the Convention and lack of effective remedies in this regard under Article 13 of the Convention;

Declares inadmissible the remainder of Application No. 7113/07.

Stephen Phillips
Deputy Registrar

Ganna Yudkivska
President

Annex

No.	Application No.	Applicant's Name	Year of Birth	Address	Date of Introduction	Date of withdrawal
1.	18656/06	Gabrijela PETKOVIČ	1962	Ljubljana	21/04/2006	15/11/2010
2.	2636/07	Anton PLANTARIČ (II)	1940	Ljubljana	22/12/2006	24/03/2011
3.	2696/07	Anton PLANTARIČ (III)	1940	Ljubljana	22/12/2006	24/03/2011
4.	7113/07	Alojz DREO (Bogdana DREO, continuing the application in the applicant's stead)	1942 (1956)	Maribor (Maribor)	28/12/2006	10/03/2011