

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

FIFTH SECTION

DECISION

Applications nos. 18716/05 and 16011/06
Ivan Potočnik and others
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 22 February 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 above applications lodged on lodged on 13 May 2005 and 20 March 2006 respectively,

Having regard to the Government's settlement proposals made to the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are all Slovenian nationals.

Mr Ivan Potočnik was born in 1947 and lives in Rogaška Slatina. He had no representative before the Court. Mr Franc Trampuž and Ms Danica Trampuž were born in 1941 and 1945 respectively and live in Sežana. They were represented before the Court by Mr D. Železnik, a lawyer practising in Sežana.

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

A. The circumstances of the case

The applicants were parties to proceedings which terminated before 1 January 2007, that is, before the 2006 Act became operational (see below).

B. Relevant domestic law

The Act on the Protection of the Right to a Trial without Undue Delay *(Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006 – "the 2006 Act") became operational on 1 January 2007.

Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

Section 25 - Just satisfaction for damage sustained prior to implementation of this Act

> "(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party has made a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within a period of four months at the latest.....
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> (2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months of the date on which the party made its proposal, the party may lodge a claim [*for just satisfaction*] with the competent court under this Act. The party may lodge a claim within six months of receiving the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide whether to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court."

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 applicants further complained under Article 6 of the Convention about the unfairness of the domestic proceedings.

THE LAW

A. Complaints about the length of the proceedings and the lack of an effective remedy in that respect under Articles 6 and 13 of the Convention

The Court notes that, after the Government had been given notice of the applications under Article 54 § 2(a) of the Rules of Court, the applicants received the State Attorney's Office's settlement proposal under section 25 of the 2006 Act acknowledging a violation of the right to a trial within a reasonable time and offering redress for non-pecuniary damage. It further notes that the applicants have since then been in a position to either negotiate a settlement with the State Attorney's Office or, if that were to be unsuccessful, lodge a "claim for just satisfaction" in accordance with the relevant provisions of the 2006 Act (see "Relevant domestic law" above). The latter has been considered by the Court to constitute appropriate means of redressing a breach of the reasonable time requirement of Article 6 that has already occurred (see *Pohlen v Slovenia* (dec.), no. 28457/03, §§ 40-43, 3 June 2008, and *Kešelj and 6 others v. Slovenia* (dec.), nos. 20674/05, 20680/05, 28380/05, 28441/05, 38861/05, 39198/05 and 44915/05, 19 May 2009).

The Court reiterates 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
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> ...
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> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
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> 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.

Having regard to the foregoing, the Court considers that it is no longer justified to continue with the examination of the applications as far as they concern the length of the proceedings and the lack of an effective remedy in that respect; therefore, this part of the applications should be struck out of the list of cases in accordance with Article 37 § 1 (c). In reaching this conclusion, the Court has taken into account its competence under Article 37 § 2 of the Convention to restore the case to its list of cases if it considers that the circumstances justify such a course.

B. Complaints about the unfairness of the proceedings

Having regard to all material in its possession, the Court considers that, even assuming that the applicants have complied with the requirement of

exhaustion of domestic remedies in this respect, this part of the applications does not disclose any appearance of a violation of the Convention.

It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to strike the applications out of its list of cases with regard to the complaints about the length of the proceedings and the lack of an effective remedy in that respect under Articles 6 and 13 of the Convention;

Declares inadmissible the remainder of the applications.

Stephen Phillips
Deputy Registrar

Ganna Yudkivska
President