

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

FIFTH SECTION

DECISION

Application no. 44984/05
Božidar and Karmen SUBAN
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 6 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 21 November 2005,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Božidar Suban and Ms Karmen Suban, are Slovenian nationals who were born in 1960 and 1964, respectively, and live in Brežice. They were represented before the Court by Ms B. Avsec, a lawyer practising in Ljubljana. The Slovenian Government ("the Government") were 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 22 October 1996 the applicants instituted proceedings before the Krško District Court requesting the determination of the co-ownership share on a disputed property.

On 14 January 2003 the first-instance court delivered a judgment, rejecting the applicants' request. They appealed.

On 14 January 2004 the Ljubljana Higher Court rejected the appeal. They lodged an appeal on points of law.

On 1 September 2005 the Supreme Court rejected the appeal on points of law. They lodged a constitutional complaint.

On 10 July 2007 the decision of the Constitutional Court, rejecting the applicants' complaint was served on the applicants' representative.

B. Relevant domestic law

A description of the relevant domestic law can be found in the *Kešelj and 6 Others v. Slovenia* decision (nos. 20674/05, 20680/05, 28380/05, 28441/05, 38861/05, 39198/05 and 44915/05, 19 May 2009).

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

The Court notes that, after the Government had been given notice of the application 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. 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,* cited above).

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 application; therefore, it 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.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Stephen Phillips
Deputy Registrar

Ann Power-Forde
President