



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

FIRST SECTION

CASE OF EIGENSTILLER v. AUSTRIA

(Application no. 42205/06)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Eigenstiller v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 42205/06) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Hans Eigenstiller (“the applicant”), on 11 October 2006.

2. The applicant was represented by Mr G. Egger, a lawyer practising in Innsbruck. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. On 17 November 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

4. The applicant was born in 1943 and lives in Innsbruck.

5. On 23 September 1997 the applicant instituted divorce proceedings against his wife, A., before the Innsbruck District Court (*Bezirksgericht*).

6. On 16 January 1998 the District Court dismissed A.'s request for legal aid (*Verfahrenshilfe*).

7. Hearings were held in the divorce proceedings on 4 and 27 February 1998.

8. On 6 November 1998 a further hearing was held in the divorce proceedings, in the course of which A.'s lawyer asked the court to adjourn

the hearing in order to examine whether a guardian should be appointed to represent A. He considered that there were strong indications that she was mentally ill and lacked full legal capacity. Subsequently, in separate proceedings, a guardian was appointed for her.

9. A further hearing in the divorce proceedings was fixed for 7 April 1999 and, at the request of A.'s lawyer, postponed until 21 April 1999. During the hearing on 21 April 1999 A.'s guardian stated that he was unable to approve the previous steps taken in the proceedings.

10. In order to establish how long A. had lacked legal capacity and to what extent this had affected the previous proceedings, the District Court, on 12 May 1999, appointed Dr H., a psychiatrist, as an expert. On 7 October 1999 the expert submitted his report. On 26 November 1999 this report was discussed by the parties before the District Court.

11. On 7 January 2000 the District Court declared the proceedings void because A. had been incapable of following the proceedings conducted so far. The applicant appealed against this decision. On 3 March 2000 the Regional Court (*Landesgericht*) dismissed his appeal.

12. On 11 April 2000 the applicant requested the District Court to serve the petition for divorce on A.'s guardian.

13. On 7 June 2000 the District Court scheduled a hearing in the fresh proceedings. The hearing was postponed and eventually took place on 20 September 2000. In the course of that hearing the District Court decided what evidence was to be taken. The applicant objected to the appointment of Dr H. as the expert as he considered him biased.

14. A further hearing was fixed for 21 November 2000 but, at the applicant's request, was adjourned until 1 December 2000.

15. Meanwhile, in August 2000, A. requested an interim injunction on the payment of maintenance. The District Court stayed these proceedings pending the receipt of expert opinions on A.'s legal capacity. Proceedings were resumed in December 2003. The request was eventually refused at second instance by the Regional Court on 30 April 2004.

16. A., represented by her guardian, also requested an interim measure to prevent the applicant from selling parts of the real property that he had acquired during their marriage. This request was partly granted by the District Court on 7 December 2000. On 23 March 2001 the Regional Court dismissed an appeal by A. against that decision.

17. Meanwhile, on 9 January 2001, the applicant had requested the District Court to hear witnesses in the main proceedings.

18. On 27 February 2001 Dr H. commented on the applicant's allegation of bias. On 18 June 2001 the District Court appointed another expert, Dr K., to prepare a report on the legal capacity of A. prior to 1996.

19. Between 19 April 2002 and 4 November 2002 the expert was repeatedly urged by the District Court to submit his report. Although the AKH hospital, where Dr K. had worked until the summer of 2002,

repeatedly told the District Court that the file, together with the expert report, had already been sent to the court, the court had not received it. Enquiries with the post office were also to no avail. Eventually, on 13 November 2002, Dr K.'s report, dated 13 February 2002, arrived at the District Court.

20. Following comments made by the parties on Dr. K.'s report, the District Court returned the report to him on 15 January 2003, ordering him to supplement it.

21. On 28 April 2003 the applicant filed a request for the acceleration of the proceedings (*Fristsetzungsantrag*) under Section 91 of the Court Act, because the expert had not yet submitted his new report. The applicant also challenged the judge, alleging bias.

22. On 18 June 2003 the expert, Dr K., submitted his supplemented report attesting that A. had lacked legal capacity at the relevant time. On the same day the District Court dismissed the applicant's challenge concerning the judge.

23. On 31 July 2003 the applicant requested the District Court to issue an injunction prohibiting A. from selling, encumbering or mortgaging real estate without his agreement. On 29 August 2003 the District Court dismissed that request.

24. On 25 September 2003 a further hearing took place in the divorce proceedings. At the applicant's request, the District Court appointed a further expert (*Obergutachter*), Dr N. from Munich (Germany). The expert report by Dr N., dated 22 January 2004, was served on the applicant on 18 March 2004.

25. Thereupon the applicant requested that this expert also supplement his report on certain points. Dr N. submitted his supplementary opinion on 16 December 2004.

26. On 9 August 2004 the case was assigned to a new judge.

27. On 3 February 2005 a further hearing took place, at which A. requested the hearing of twenty-two witnesses. On 8 August 2005 the applicant requested the hearing of a further ten witnesses. The District Court heard witnesses on 21 April 2005, 14 July 2005, 24 November 2005, 1 December 2005, 15 December 2005, and 4 July 2006. In addition, four witnesses were heard by other courts on letters rogatory between 29 September 2005 and 11 May 2006.

28. After the parties had already been heard by the District Court on 15 December 2005, the applicant, on 23 March 2006, requested to be heard once more. This hearing took place on 4 July 2006. Thereupon the District Court closed the taking of evidence and decided that the judgment was to be given in writing.

29. On 12 October 2006 the District Court dissolved the marriage between the applicant and A. on grounds of mutual fault, while holding that A.'s fault prevailed.

30. On 29 March 2007 the Regional Court dismissed an appeal by A. against the divorce judgment.

31. On 26 June 2007 the Supreme Court rejected an extraordinary appeal (*außerordentliche Revision*) by A. This decision was served on the applicant's counsel on 31 July 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained that the length of the divorce proceedings had been incompatible with the “reasonable time” requirement laid down in 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 ...”

33. The Government contested that argument.

A. Admissibility

34. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

35. The applicant submitted that the case had been dealt with very slowly by the District Court. Practically no evidence had been taken in the first phase of the proceedings by 7 January 2000, when the District Court declared them null and void. He also considered that the later proceedings had not been conducted as expeditiously as the subject matter required. The District Court had decided to obtain an expert report at a hearing on 20 September 2000 but had appointed Dr K. only on 18 June 2001, and his report had been submitted to the court only on 19 November 2002. No hearing had taken place between 20 September 2000 and 22 October 2003 and, while the applicant had asked for the hearing of witnesses in January 2001, the District Court was still hearing witnesses as late as 2005.

36. The Government emphasised that the proceedings at issue had been extremely difficult and complex. Besides dealing with the divorce proceedings themselves, various other issues, such as maintenance claims

and injunction proceedings concerning the disposal of property had had to be decided by the Austrian courts. In all these proceedings the mental condition of the defendant A. had been a decisive issue. However, since she had not been receiving regular medical treatment, this was a particularly difficult question for the experts to determine. They had arrived at divergent results, which had made it necessary for them to supplement their reports and to appoint additional experts. In order to obtain these reports as quickly as possible the District Court had made considerable efforts to urge the experts to expedite their reports. The applicant himself had repeatedly asked for the supplementing of expert reports and the appointment of further experts, which had further delayed the proceedings. Another element which had prolonged the proceedings and which could not be blamed on the Austrian courts was the refusal of A's guardian to approve the previous procedural steps at the advanced stage of the proceedings, so that part of the proceedings had to be repeated.

37. The Court notes that the proceedings began on 23 September 1997, when the applicant filed his action for divorce, and ended on 31 July 2007 when the Supreme Court's judgment was served on the applicant. Thus, the proceedings took nine years and ten months at three levels of jurisdiction.

38. 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).

39. The Court considers that the case was quite complex because of questions concerning the issue of mental health and the legal capacity of A., which necessitated the taking of extensive evidence and, in particular, the obtaining of expert reports by psychiatrists. However, this cannot, in the Court's view, account for the entire length of the proceedings, which lasted for more than nine years at first instance.

40. As regards the conduct of the parties, the Court observes that the applicant, and also A., made numerous requests for the taking of evidence which contributed to the length of the proceedings, but most of these requests were accepted by the District Court. As regards the conduct of the Austrian courts, the Court observes that on 7 January 2000 the District Court had to declare the previous proceedings null and void because the applicant's opponent, A., lacked legal capacity. This cannot be blamed on the District Court, but even after that the taking of evidence, in particular the obtaining of expert reports on A's legal capacity, proceeded particularly slowly and lasted for another six years and six months. In this respect the Court observes that the District Court made considerable efforts to obtain the expert report of Dr K. which had been commissioned on 18 June 2001. However, these efforts date only from 19 April 2002. Thus it took one year

and five months to obtain this report and even then it had to be supplemented, which the expert eventually did on 18 June 2003. As regards the hearing of witnesses, the Court notes that the applicant first made his request for the District Court to hear witnesses on 9 January 2001, and reiterated it on 3 February 2005. The District Court started to hear witnesses on 21 April 2005 and only completed the taking of evidence on 4 July 2006, that is, approximately eight years and ten months after the initial petition for divorce had been filed. It is true that the proceedings at second and third instance were particularly speedy, but this could not make up for the extraordinary length of the proceedings at first instance.

41. Having regard to these elements, the Court cannot find that the above proceedings complied with the “reasonable time” requirement of Article 6 § 1 of the Convention. There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government submitted that the claim was excessive.

45. The Court finds that the applicant has sustained non-pecuniary damage which cannot be compensated by the finding of a violation. Assessing the claim on an equitable basis, it awards EUR 6,000 under this head.

B. Costs and expenses

46. The applicant also claimed EUR 5,084.70 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. This amount included Turnover Tax.

47. The Government did not dispute this claim.

48. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,200, covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

49. The Court considers it appropriate that the default interest 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 Article 6 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 4,200 (four thousand two hundred euros) plus any tax that may be chargeable to the applicant in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President