



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

FOURTH SECTION

CASE OF PINTÉR v. SLOVAKIA

(Application no. 18148/05)

JUDGMENT

STRASBOURG

14 December 2010

FINAL

14/03/2011

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

In the case of Pintér v. Slovakia,

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

Nicolas Bratza, *President*,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 23 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 18148/05) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Eduard Pintér (“the applicant”), on 4 May 2005.

2. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. On 1 September 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1944 and lives in Smižany.

1. The first set of inheritance proceedings

5. Following the death of the applicant's father on 24 June 1999, inheritance proceedings were instituted in respect of his estate. The parties to the proceedings were the applicant, his brother and his mother. In the course of the proceedings only the applicant's brother was heard and,

according to the applicant, his brother incorrectly declared that the deceased had not left an estate. The Nitra District Court discontinued the proceedings on 2 September 1999.

6. The decision was served on the applicant and his brother on 7 and 8 September 1999, respectively. On 8 September 1999 the decision was served on Ms Veronika Pintérová. The applicant alleges that the decision was erroneously served on his brother's wife instead of his mother who had the same name and lived at the same address. The applicant alleges that the decision had not yet become final as the delivery slip was not signed by the addressee. He presented evidence to that effect to the Constitutional Court.

7. The decision of 2 September 1999 to discontinue the proceedings stated that no appeal was available against it, with the exception of the costs of the proceedings.

8. The Government stated that the decision of 2 September 1999 had become final on 23 September 1999.

9. The applicant's mother died on 18 August 2000.

2. The second set of inheritance proceedings

10. On 29 January 2001 the applicant lodged a request for the above proceedings to be resumed as new assets had been found and accused the public notary, who had been appointed to deal with the case in the above proceedings, of having a conflict of interests. The applicant alleged that the public notary had erred in the above proceedings when he had stated, after having heard only his brother (and not the applicant or his mother), that no estate existed and that the proceedings had been erroneously discontinued as a result. Furthermore, the applicant objected that his mother had no knowledge of the fact that inheritance proceedings in respect of his father's estate had ended.

11. On 13 November 2001 the district court decided not to exclude the public notary in question from dealing with or deciding on the case.

12. On 25 August 2003 the applicant, when visiting the appointed public notary, became aware of the erroneous service on his brother's wife of the above decision of 2 September 1999.

13. On 26 August 2003 the applicant complained of undue delays in the proceedings and requested the Nitra District Court to withdraw the appointment of the public notary. Following the public notary's request to be excluded from dealing with the case because of a conflict of interests, the district court replaced him on 27 October 2003. The newly appointed public notary proceeded with the case.

14. At the hearing of 8 July 2004 the applicant argued that the district court's decision of 2 September 1999 in the original inheritance proceedings had not become final as it had never been served on one of the parties, namely his mother.

15. On 20 September 2004 and 9 May 2005 hearings took place.

16. On 6 June 2005 the district court delivered a decision which became final on 8 September 2005.

3. Constitutional proceedings

17. On 15 October 2004 the applicant complained about the length of the above proceedings to the Constitutional Court. He requested the Constitutional Court to order the court concerned to avoid further delays in the proceedings and to pay him 80,000 Slovakian korunas (the equivalent of 2,075 euros at that time) as just satisfaction for non-pecuniary damage.

18. On 27 January 2005 the Constitutional Court declared the applicant's complaint inadmissible as being manifestly ill-founded.

19. As to the first set of proceedings, the Constitutional Court stated that the applicant had failed to prove erroneous service of the decision of 2 September 1999. As the decision was served on all parties to the proceedings and they had not filed an appeal, the proceedings had come to an end on 23 September 1999 and, therefore, the district court could not be liable for any further delays.

20. As to the second set of proceedings, the Constitutional Court stated that the district court was not liable for undue delays, as following the applicant's complaint and request for replacement of the public notary and following the request of the public notary to be excluded, the district court had immediately replaced him. As the newly appointed public notary had proceeded with the case in an appropriate manner, the Constitutional Court considered the remedy used by the applicant as having been effective and did not find any appearance of any unreasonable delays.

II. RELEVANT DOMESTIC LAW

Code of Civil Procedure

21. Article 38 § 1 provides that the court shall appoint a public notary for dealing with inheritance matters. The appointment and any change thereto become effective upon their communication to the public notary.

22. Under Article 175zb, the court can withdraw the case from the appointed notary in circumstances when he/she, despite a warning, causes further undue delays in the inheritance proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant complained that his right to a “fair hearing” had been violated in the first set of proceedings and that the length of both sets of proceedings had been incompatible with the “reasonable time” requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. The first set of inheritance proceedings

24. The Government stated that on 29 January 2001 the applicant had for the first time objected that the decision of 2 September 1999 had not been served on his mother and, for that reason, had never become final. That was 5 months after his mother's death. The Government argued that the applicant had failed to provide any evidence to support his objection and reiterated the Constitutional Court's reasoning. They relied on the domestic courts' case-law stating that in the absence of any proof to the contrary, the particulars on a delivery slip were deemed to be correct. The Government further argued that the Court accepted the established practice of the Constitutional Court to examine constitutional complaints about length of proceedings only when the proceedings are pending before the authority liable for the alleged violation at the time when the complaint is lodged. Moreover, the Government proposed to reject the complaint about the length of these proceedings as being manifestly ill-founded. As to the alleged unfairness, they argued that the Constitutional Court's examination of an individual human rights complaint is limited by statute to the summary of the complaint, as formulated by the complainant. The applicant had failed to formulate his complaint about unfairness of the proceedings in a way which would have allowed its examination by the Constitutional Court. Therefore, the applicant had not exhausted domestic remedies in accordance with the applicable procedural requirements.

25. The applicant reiterated his argument that the decision of 2 September 1999 had not yet been served on his mother and, therefore, that the first set of inheritance proceedings had not yet ended. He had made an objection to that effect at the hearing of 8 July 2004. However, neither the Constitutional Court nor the Government took it into consideration.

26. The Court notes that the domestic courts, including the Constitutional Court, and the Government considered the proceedings as having been finally concluded on 23 September 1999. The Court has only a limited power to examine alleged errors of facts or law imputed to the national courts and finds no arbitrariness in the domestic courts' reasoning. The decision to discontinue the proceedings was duly served on the applicant on 7 September 1999. On 8 September 1999 the decision was served on Ms Veronika Pintérová, according to the applicant the applicant's brother's wife, who had the same name and lived at the same address as the applicant's mother. The domestic court concluded that the decision had become final on 23 September 1999. Subsequently, the applicant's mother died on 18 August 2000. In 2001 the applicant initiated a fresh set of inheritance proceedings in respect of the deceased's assets. In these circumstances, the Court accepts the Government's argument concerning the presumption of correctness of a delivery slip and concerning the date when the first set of inheritance proceedings ended, namely 23 September 1999.

27. The present application was introduced on 4 May 2005, that is outside the six months' time-limit laid down in Article 35 § 1 of the Convention.

28. The applicant exclusively requested the Constitutional Court to find a breach of his right to a hearing within a reasonable time. The Constitutional Court rejected it as according to its established practice it can examine such a complaint only at the time when the proceedings are still pending before the authority liable for the alleged violation. The Court accepted this approach (see, *e.g.*, *Mazurek v. Slovakia* (dec.), 16970/05, on 3 March 2009). Moreover, it is only since January 2002 that applicants were required to use the remedy available to them under Article 127 of the Constitution (*Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX). Therefore, the constitutional remedy lodged by the applicant cannot affect the above position.

29. It follows that this part of the application must be rejected as having been introduced out of time in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The second set of inheritance proceedings

30. The Government pointed to the Constitutional Court's decision stating that, following the applicant's request, a new public notary had been appointed and no further delays had occurred. They considered the remedy used by the applicant as having been effective and stated that this part of the application must be rejected as being manifestly ill-founded.

31. The applicant reiterated his complaint.

32. The Court notes that, at the time of the Constitutional Court's finding, the proceedings had been pending for four years at one level of jurisdiction. The Constitutional Court rejected the applicant's complaint as it considered the remedy used by the applicant as having been effective and did not find any undue delays in the proceedings.

33. Although it is true that the district court, upon the applicant's request, replaced the public notary on 27 October 2003, the Court, however, observes that the applicant had challenged the public notary for a conflict of interests already at the beginning of the second set of inheritance proceedings, *i.e.* in 2001. In view of the above, the redress afforded to the applicant was not adequate and sufficient. The Court therefore dismisses the Government's argument and concludes that the applicant did not lose his status as a victim within the meaning of Article 34 of the Convention.

34. Since the applicant was unable to obtain redress before the Constitutional Court, the Court concludes that, as to the period of the proceedings following the Constitutional Court's decision, he was not required, for the purposes of Article 35 § 1 of the Convention, to have again recourse to the remedy under Article 127 of the Constitution (see the recapitulation of the relevant principles in *Becová v. Slovakia* (dec.), no. 23788/06, 18 September 2007).

35. The period under consideration started on 29 January 2001 and ended on 8 September 2005 when the district court's decision became final. The proceedings lasted 4 years and more than 7 months.

36. It follows that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

37. 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).

38. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

39. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

40. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered the claim exaggerated.

44. The Court awards the applicant EUR 4,600 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant submitted no claim for costs and expenses.

C. Default interest

46. 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 complaint concerning the excessive length of the second set of inheritance proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,600 (four thousand six hundred

euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President