



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

THIRD SECTION

CASE OF SIEGEL v. FRANCE

(Application no. 36350/97)

JUDGMENT

STRASBOURG

28 November 2000

FINAL

28/02/2001

In the case of Siegel v. France,

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

Mr W. FUHRMANN, *President*,

Mr J.-P. COSTA,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mrs H.S. GREVE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 7 November 2000,

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

PROCEDURE

1. The case originated in an application (no. 36350/97) against the French Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Auguste Siegel (“the applicant”), on 24 April 1997.

2. The applicant was represented by Mr S. Graff, of the Strasbourg Bar. The French Government (“the Government”) were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs, and by their Deputy Agent, Mr P. Boussaroque, administrative court judge on secondment to the Department of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged an infringement of his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. In a decision of 28 September 1999 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry.].

7. The applicant and the Government each filed written observations on the merits of the case (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who was born in 1938, is unemployed and lives in Albi.

9. The widow of Paul Siegel, Mrs Schmitt, died on 4 July 1990. She left her estate in equal shares to her two children, Auguste Siegel (the applicant in the present case), and his brother, Louis Siegel, the latter enjoying full possession of the property until division.

10. On 8 January 1993 the applicant lodged an application with the presiding judge of the Illkirch-Graffenstaden District Court (*département* of Bas-Rhin) for partition of the deceased's estate. He sought the appointment of a notary (*notaire*) to deal with the partition, specifying that it should not be Mr Kirschner, Louis Siegel's representative.

11. On 23 April 1993 Louis Siegel was notified of the application. In a letter of 27 April 1993 Louis Siegel applied to the same District Court for partition of the estate of Paul Siegel, who had died on 27 December 1984. He pointed out that all the documents concerning the disposal of his parents' estate were being held by Mr Kirschner and requested that, if Mr Kirschner could not be appointed first notary for the purpose of dividing the estate, he be appointed second notary.

12. On 2 June 1993 the court forwarded Louis Siegel's application to the applicant's lawyer, inviting him to submit within one month his observations on commencing the procedure for partition of the father's estate. On 15 June 1993 the applicant's lawyer informed the court that he did not oppose commencing the procedure for partition or extending it; he also stated that he maintained his earlier submission regarding the choice of notary to deal with the partition of the estate.

13. In an order of 8 July 1993 the presiding judge of the Illkirch-Graffenstaden District Court granted the application and ordered partition by the court of Mrs Schmitt's and Paul Siegel's estate. He instructed the parties to address their claims to Mr Deck, a notary in Benfeld, who had been appointed first notary, and to Mr Kirschner, a notary in Erstein, who had been appointed second notary. That decision was served on Louis Siegel on 5 August 1993 and on the applicant on 7 October 1993. In the Government's submission, the delay in service of the decision on the applicant was due to his failure to inform the court registry of his change of address.

14. Mr Deck convened a first meeting of the parties on 22 November 1993. All the parties were present or represented at the meeting, a record of which was sent to them on 27 December 1993.

15. On 24 August 1994 Mr Deck sent the parties a draft scheme of partition of the estate and requested their observations.

16. On 25 November 1994 the applicant's lawyer sent his observations to Mr Deck.

17. On 6 April and 18 July 1995 the applicant enquired of the notary as to progress in the proceedings. He never received a reply.

18. On 15 November 1995 a reminder was sent – in vain – to the presiding judge of the Illkirch-Graffenstaden District Court. A copy was sent to Mr Deck and Mr Kirschner on 27 November 1995.

19. On 13 November 1996 the applicant sent a further reminder to the presiding judge of the District Court, asking him to contact the two notaries with a view to concluding the proceedings.

20. The presiding judge of the court drew up an order forwarding the application to the court registry's temporary premises in Erstein. On 18 November 1996 the same reminder was sent to the court registry's permanent premises in Erstein. That letter also remained unanswered.

21. On 29 November 1996 the District Court judge sent both notaries the applicant's letter of 18 November 1996 and requested them to inform him of any reason why partition of the estate should not proceed and to indicate how they intended to deal with the applicant's application.

22. In a letter of 19 February 1997 the applicant's lawyer lodged a complaint with the Chairman of the Chamber of Notaries. He asked the chairman to instruct the two notaries in question to dispose of the case before 31 March 1997. He stated that, should they fail to do so, he had been instructed to bring an action for damages in the appropriate court.

23. On 17 March 1997 Mr Deck informed the Chairman of the Chamber of Notaries and the District Court judge that on 24 August 1994 he had prepared a draft scheme of partition of the estate and had since been waiting for Mr Kirschner's counter-proposal.

24. Mr Deck convened a further meeting of the parties on 9 April 1997.

25. Following that meeting, the two notaries officially drew up the final scheme of division; in that document the parties undertook to discontinue the proceedings for partition by the court which had commenced with the order of 8 July 1993. Having regard to that undertaking, Mr Deck decided to discontinue the proceedings and, in an order of 4 December 1997, the District Court judge stayed the proceedings.

II. RELEVANT DOMESTIC LAW

26. Article 837 of the Civil Code provides:

“If a dispute should arise in connection with proceedings referred to a notary, the notary shall draw up a record of matters causing difficulty and of the statements of the parties and forward them to the judge designated to deal with the partition ...”

27. The procedure for partition of an estate applicable in the law of succession in Alsace and Moselle is a non-contentious procedure governed by the provisions of the Act of 1 June 1924. Section 220 of that Act provides: “Partition by the court shall be effected as prescribed in the present Act by means of a non-contentious procedure. The right shall be reserved to interested parties to institute contentious proceedings if they wish to obtain a decision on the merits and admissibility of the partition.” Article 25 of the new Code of Civil Procedure, relating to non-contentious proceedings, provides that a court can rule only where there is no dispute. Lastly, under section 232 of the above-mentioned Act, “if difficulties arise during proceedings before the notary and those difficulties are not resolved, the notary shall draw up a record of the matters in dispute and instruct the parties to bring contentious proceedings”.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

28. The Government reiterated their objection to admissibility on the ground of failure to exhaust domestic remedies which they had raised during examination of the admissibility of the application, namely that the applicant could have sued the notaries in the ordinary courts on account of their conduct and thus possibly have obtained compensation.

29. In its decision on the admissibility of the application the Court concluded that an award of damages to the applicant for negligent acts or omissions by the notaries would not have been a substitute for the measures which the domestic legal system should have afforded the applicant to deal with the delay in proceedings which were taking place at the request and under the supervision of a court. The Court does not see any reason to depart from that conclusion and, accordingly, dismisses the objection in question.

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

30. The Government contended, firstly, that the proceedings for partition of the Siegel estate, as they had been conducted, did not fall within the scope of application of Article 6 § 1.

31. In its decision on the admissibility of the application, the Court decided to join that objection to the merits of the case.

32. More specifically, the Government observed that the applicant had chosen not to bring proceedings in the *tribunal de grande instance* and had

allowed the non-contentious proceedings to follow their course despite the fact that a dispute had arisen on the merits of the partition. The role of the Illkirch-Graffenstaden District Court had therefore been confined, in accordance with Article 969 of the (former) Code of Civil Procedure, to declaring the proceedings to have begun and appointing two notaries to deal with the partition. Moreover, the court in question had never formally approved the partition by notary provided for in section 235 of the Act of 1 June 1924 because, as the terms of the notarial deed drawn up on 24 November 1997 showed, the parties had undertaken to discontinue the proceedings for partition by the court commenced by an order of 8 July 1993. The only decision taken by the court had ultimately been to stay the proceedings by an order of 4 December 1997, which could not be regarded as a decision determining a civil dispute. In support of their submissions, the Government relied on the decision of the European Commission of Human Rights in the *Gauthier v. France* case (application no. 26488/95, Commission's report of 9 April 1997, unpublished), which was a somewhat similar case concerning the division of jointly owned property between spouses after their divorce; in that case the Commission had assessed the length of the proceedings from the date on which the notary had drawn up a record of matters causing difficulty. In the absence of such a record in the instant case, a court-appointed notary could not be likened to a tribunal within the meaning of Article 6 § 1 of the Convention, because his or her duties consisted not in determining a dispute, but in dealing with the partition of an estate in so far as that partition did not give rise to any dispute.

33. The Court accepts that the applicability of Article 6 § 1 may at first sight appear debatable. The partition proceedings – as conducted in the instant case – were neither wholly contentious nor wholly non-contentious. They were conducted exclusively before two notaries and were concluded on a friendly basis with the signing of an agreement on partition and an undertaking to discontinue the proceedings, without the District Court intervening.

34. The Court considers, however, that to accept the Government's reasoning would result in removing judicial proceedings ordered by a court – which was, moreover, responsible for approving the partition – from any scrutiny by that court.

35. The Court reiterates that since Mr Auguste Siegel and Mr Louis Siegel had been unable to reach an agreement as to how the estate should be divided, they applied to the Illkirch-Graffenstaden District Court for partition by the court. Although an estate is divided (at the court's request) by court-appointed notaries and any dispute between the parties in that connection must be submitted to the judge (*juge-commissaire*), also designated by the court (Article 837 of the Civil Code), the entire proceedings for judicial partition – which are, moreover, extremely

formalistic – are conducted in the court for the place where the succession occurs and under its supervision. It is this court which gives judgment ordering partition, appoints a notary to distribute the estate and designates a judge to deal with the matter; above all, it is this court which must approve the scheme of division of the estate drawn up by the notary. In short, this court is required to determine a “*contestation* (dispute) over civil rights” submitted to it in the form of an application for partition, in the instant case the one dated 8 January 1993. The possibility left open to the parties of resuming partition on a non-contentious basis – a possibility of which the applicant and Mr Louis Siegel availed themselves in the instant case – does not in any way detract from the jurisdiction of the court, which remains seised of the case until such time as the parties decide to discontinue the proceedings.

36. The Government submitted further that, under French law, there were two types of procedure for the partition of an estate in Alsace and Moselle: a non-contentious procedure, which was the norm if no difficulty of partition arose, and a contentious procedure, and that it was for the interested parties to choose which procedure was suitable in the particular case. Accordingly, it was at any time open to an heir who was dissatisfied with the conduct of his notary to bring proceedings in the district court or the *tribunal de grande instance* under section 220 of the Act of 1 June 1924.

37. In that connection the Court notes, as the applicant did, that once the parties have embarked on the partition procedure provided for in local law, their only means of switching to a contentious procedure is by referring the case to a court and drawing up a record of matters causing difficulty as provided in section 232 of the Act of 1 June 1924. In the instant case the notaries did not draw up such a record and did not instruct the parties to apply to the *tribunal de grande instance*.

38. The Court notes that the proceedings before the notaries were so closely linked to the supervision of the District Court that they cannot be dissociated from that supervision for the purposes of determining the applicant's civil rights and obligations. Consequently, the Court concludes that Article 6 § 1 of the Convention is applicable to the present case.

39. Lastly, the Government pointed out that the case was not in any way complex and that no delay was attributable to the District Court, which had received no record of matters causing difficulty that would have enabled it to give a decision on the determination and partition of the estate. The length of the proceedings was explained by the lack of diligence of the parties and the notaries, the latter of whom were not in any way subordinate to the state authorities.

40. More specifically, with regard to the conduct of the notaries, the Government submitted that, although they were certainly ministerial officers (*officiers ministériels*), they could not be considered to be part of the “judicial services”; although the prosecution service could exercise

supervisory and prosecuting powers over them, it could bring only disciplinary or criminal proceedings against them and could not in any circumstances intervene in the processing of cases in which they had been instructed. Nor could they be likened to the police or gendarmerie, whose officers engaged the State's liability if they committed any acts of gross negligence, because they were always subject to the authority and supervision of a judge or prosecutor.

41. With regard to the applicant and his brother, the former had moved without informing the court registry of his new address, so that the order of joinder of 8 July 1993 did not reach him until 7 October 1993; the latter, who had failed to send Mr Deck his observations on the draft scheme of division drawn up by the lawyer, had displayed a complete lack of interest in the outcome of the proceedings.

42. The Court notes that the proceedings in question began on 8 January 1993 when the applicant lodged an application for partition of the estate by the court, and ended on 4 December 1997 when the District Court made an order staying the proceedings. They therefore lasted four years, eleven months and twenty-six days.

43. During that period the Court notes the following facts, which appear to it to be relevant to an assessment of the course of the proceedings in question. On 6 April and 18 July 1995 the applicant enquired of the notary as to progress in the proceedings. His enquiry remained unanswered. On 15 November 1995 a reminder was sent – in vain – to the presiding judge of the Illkirch-Graffenstaden District Court. On 13 November 1996 the applicant sent a further reminder to the presiding judge of the District Court, asking him to contact the two notaries with a view to concluding the proceedings. The presiding judge of the court issued an order forwarding the application to the court registry's temporary premises in Erstein. On 18 November 1996 the same letter was sent to the registry's permanent premises in Erstein. That letter also remained unanswered. On 29 November 1996 the District Court judge sent both notaries the applicant's letter of 18 November 1996 and requested them to inform him of any reason why partition of the estate should not proceed and to indicate how they intended to deal with the applicant's application.

44. The Court also considers, in the light of the criteria established by its case-law relating to “reasonable time” (complexity of the case, conduct of the applicant and of the relevant authorities), and having regard to the foregoing observations, particularly as to the notaries' inertia and the Illkirch-Graffenstaden District Court's failure to act, that the applicant was deprived of his right to have his case heard within a “reasonable time”.

45. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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.”

47. In his application bringing the case before the Court, the applicant stated that he was seeking compensation for the loss he had sustained as a result of the infringement of his right to have his case heard within a reasonable time, given that he had been deprived for at least four years of the benefit of his share of the assets to be divided.

48. In a letter of 15 October 1999 informing him that his application had been declared admissible, the applicant was requested to indicate his claims for just satisfaction. However, the applicant, who had moreover been awarded legal aid, did not submit any claim. The Court does not consider that it must award him any compensation under this head of its own motion.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that Article 6 § 1 of the Convention is applicable to the instant case;
3. *Holds* that there has been a violation of that Article.

Done in French, and notified in writing on 28 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

W. FUHRMANN
President