



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

THIRD SECTION

CASE OF ŠAKANOVIC v. SLOVENIA

(Application no. 32989/02)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Šakanovič v. Slovenia,

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

Mr C. BÎRSAN, *President*,

Mr B.M. ZUPANČIČ,

Mrs E. FURA-SANDSTRÖM,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 32989/02) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bosnia and Herzegovina national, Mrs Minka Šakanovič (“the applicant”), on 11 January 2001.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which she was a party was excessive. In substance, she also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention).

4. On 28 September 2006 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Registrar informed the Government of Bosnia and Herzegovina of their right to submit written comments. They did not indicate that they wished to exercise their right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Jesenice, Slovenia.

7. On 18 February 1995 the applicant's alleged common law partner (*izvenzakonski partner*), S.A.K., died.

8. On 21 March 1995 the Jesenice Local Court (*Okrajno sodišče na Jesenicah*) received the coroner's certificate (*smrtovnica*). S.A.K. was survived by three daughters – one of them, K.Š., was also a daughter of the applicant.

9. On 12 June 1995 the applicant was given notice of the court's intention to hold a hearing and an invitation to attend it. The hearing took place on 28 June 1995. It appears from the records of the hearing that the applicant participated in the proceedings on her own behalf – as the potential heir – and also represented her juvenile daughter.

10. The second hearing fixed for 21 January 1998 was cancelled at the applicant's request.

11. At the third hearing, held on 28 February 1998, the court stayed the inheritance proceedings and instructed the applicant to institute separate civil proceedings with a view to determining the legal nature of her relationship with S.A.K.

12. Consequently, on 9 March 1998 the applicant lodged a claim with the Jesenice Local Court, which, due to lack of jurisdiction, referred the case to the competent Kranj District Court (*Okrožno sodišče v Kranju*).

The first hearing, scheduled for 13 September 1999, was called off at the request of the applicant. The Kranj District Court afterwards held three hearings between 10 February 2000 and 5 December 2000.

Between 13 September 1999 and 3 November 2000 the applicant lodged five preliminary written submissions.

At the hearing on 5 December 2000 the court issued a judgement rejecting the applicant's claim. The court found that she could not be considered S.A.K.'s common law partner at the time of his death and thus had no inheritance rights in respect of his estate.

The applicant appealed to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) in January 2001. On 6 March 2002 the court dismissed her appeal. The Ljubljana Higher Court's judgment was served on the applicant on an unspecified day in March 2002.

13. Subsequently, the inheritance proceedings continued before the Jesenice Local Court. The latter issued a decree of distribution (*sklep o dedovanju*) on 12 February 2003. Relying on the judgments of 5 December 2000 and 6 March 2002 (paragraph 12 above), the court did not

include the applicant as one of S.A.K.'s heirs. The decision was served on the parties to the proceedings on 28 February 2003.

II. RELEVANT DOMESTIC LAW

1. The Inheritance Act

14. Section 164 of the Inheritance Act (Official Gazette SRS, no. 15-645/1976, with amendments, – *Zakon o dedovanju*) provides that inheritance proceedings should begin *ex officio* as soon as the court learns that somebody has died or has been pronounced dead. In inheritance proceedings the court should establish the heirs, the property which is to be included in the deceased's estate and the rights of heirs, beneficiaries and others (section 162).

15. According to section 199, after receiving the coroner's certificate (a document concerning personal data about the deceased and his estate and information relevant for the inheritance, normally prepared by a registrar – *matičar*), the court examines whether it is competent to hold a hearing and, if not, sends the case to the competent court. According to sections 203 and 205, the court must hold a hearing if the deceased owned immovable property. It is the court's obligation to invite those who might be affected to the hearing (section 205).

2. The Act on the Protection of the Right to a Trial without undue Delay

16. 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) has been implemented since 1 January 2007. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed for a party to court proceedings, a participant under the Act governing non-contentious proceedings and an injured party in criminal proceedings.

17. 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 had filed 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 after 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. ...

(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 after the date on which the party filed its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months after 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 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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

18. The applicant complained about the excessive length of the proceedings. She 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 ... hearing within a reasonable time by [a] ... tribunal..."

19. In substance, the applicant further complained that the remedies available for excessive length of legal proceedings in Slovenia were ineffective.

Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

20. The Government pleaded non-exhaustion of domestic remedies, in particular after the implementation of the Act on the Protection of the Right to a Trial without undue Delay (the "2006 Act") from 1 January 2007.

21. The applicant did not comment on that issue.

22. The Court notes that section 25 of the 2006 Act explicitly refers to proceedings before international courts and provides for certain remedies in cases of domestic proceedings which had terminated before 1 January 2007. However, the Court found in the *Grzinčič* judgment that the conditions laid down in that section were not fulfilled as regards applications concerning terminated proceedings which had been notified to the Slovenian

Government before 1 January 2007, such as the present one (see *Grzinčič v. Slovenia*, no. 26867/02, § 67, 3 May 2007).

23. The Court therefore notes that the present application is similar to that examined in the relevant part of the *Grzinčič* judgment (cited above, § 68), in which the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicant's disposal were ineffective.

24. The Court finds that the Government have not submitted any convincing arguments which would require the Court to depart from its established case-law.

25. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1

(a) Applicability

26. It was not disputed between the parties that, in principle, Article 6 applies to inheritance proceedings in Slovenia. The Court, having in mind its case-law on the subject (see, *Gluhar v. Slovenia*, no. 14852/03, 21 December 2006, *mutatis mutandis*, *Siegel v. France*, no. 36350/97, §§ 33-38, ECHR 2000-XII and *Osinger v. Austria*, no. 54645/00, 24 March 2005, and), sees no reason to disagree. As regards the applicability of Article 6 to particular stages of the proceedings in the present case, the Court considers it appropriate to deal with this matter in the context of the period to be taken into consideration (see paragraphs 32-38 below).

(b) Compliance with Article 6 § 1

(i) The parties' submissions

27. The Government submitted that, according to domestic legislation, a court should initiate inheritance proceedings *ex officio* immediately after receiving the information about a person's death. On the basis of this information, the case is entered into the court records. According to the Government, this represents the commencement of inheritance proceedings. The Government further submitted that before a hearing is held, the competent court may take the necessary preparatory measures, such as an appraisal of the deceased's estate.

28. The Government argued that this stage of inheritance proceedings, i.e. before the court invites potential heirs to a hearing, is conducted by a court independently from the parties to the proceedings. Therefore, it does not affect their situation and should not be taken into account in calculating the relevant period. In their opinion, the relevant period in the present case should start running only on 12 June 1995, which is the day the applicant was invited to a hearing.

29. The Government averred that the proceedings ended on 28 February 2003 when the decree of distribution was served on the parties.

30. As regards the “reasonableness” of the length of the proceedings, the Government submitted that the applicant had contributed significantly to the delay in the proceedings.

31. The applicant did not comment on the Government's observations.

(ii) The Court's assessment

32. The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the “determination of ... civil rights and obligations”, not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see *Robins v. the United Kingdom*, judgment of 23 September 1997, Reports of Judgments and Decisions 1997-V, § 28).

33. As regards the beginning of the period to be taken into consideration in determining the length of the proceedings, the Court observes that under section 164 of the Inheritance Act (see paragraph 14 above) a competent court should always start inheritance proceedings *ex officio* as soon as it is informed of a person's death. That moment, as the Government confirmed, represents the commencement of inheritance proceedings (see paragraph 27 above).

34. The Government, however, argued that the period which should be taken into account for calculating the length of proceedings had started only on the day the applicant was first invited to a hearing.

35. The Court sees no reason why in the present case the relevant period should start running only at that point. As in other types of judicial proceedings concerning the determination of civil rights and obligations, the fact that certain stages are exclusively controlled by the domestic court does not exclude them from the protection of Article 6. To hold otherwise in the present case would entail that the courts dealing with inheritance proceedings could delay the first hearing and, as a result, the determination of the parties' inheritance rights, without being subject to the “reasonable time” requirement.

36. In view of the above, and since it is not disputed that the applicant had been aware of S.A.K.'s death and of the issue of inheritance being pending before the domestic court, the Court considers that the relevant

period started running at the latest on 21 March 1995, when the Jesenice Local Court received the coroner's certificate (see paragraph 8 above).

37. As regards the end of the relevant period, the Court notes that it was established by the judgment of 5 December 2000, which was upheld by the Ljubljana Higher Court on 6 March 2002, that the applicant could not be considered S.A.K.'s heir and thus had no inheritance rights over his estate. It transpires from the case-file that since then the applicant has not been involved in the inheritance proceedings. Even if it might be that the applicant continued to represent her daughter in the proceedings, the Court must conclude, in the absence of any convincing argument to the contrary, that the inheritance proceedings further to the Ljubljana Higher Court's judgment of 6 March 2002 did not involve a determination of the applicant's civil rights. The period to be taken into account therefore ended in March 2002 (paragraph 12 above).

38. Regard being had to the above, the relevant period lasted about seven years and involved two sets of proceedings: the inheritance proceedings and the related set of civil proceedings.

39. 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).

40. The Court considers that the case was not particularly complex to determine and, although two hearings were adjourned at the request of the applicant (see paragraphs 10 and 12 above), it cannot be said that her behaviour contributed in a significant way to the length of the proceedings. The Court observes that significant periods of inactivity occurred in the course of the proceedings; in particular, between 28 June 1995 and 21 January 1998 (see paragraphs 9 and 10 above) and between 9 March 1998 and 13 September 1999 (see paragraph 12 above).

41. Having examined all the material submitted to it, and 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.

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

2 Article 13

42. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier

cases (see *Grzinčič*, cited above) and sees no reason to reach a different conclusion in the present case.

43. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding her right to have her case heard within a reasonable time, as set forth in Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed approximately 30,000 euros (EUR) in respect of non-pecuniary damage and cost and expenses.

46. The Government submitted that the claim was exaggerated.

47. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,200 under that head.

B. Costs and expenses

48. The applicant also claimed, under the above stated amount (paragraph 45 above), the reimbursement of her costs and expenses without further specifying the claim.

49. The Government contested the claim.

50. Under the Court's case-law, an applicant is entitled to the reimbursement of her 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 information in its possession and the above criteria, the Court rejects the claim for costs and expenses insofar it might relate to the domestic proceedings but considers that the applicant, who was not represented by a lawyer, must have had to bear expenses in connection with the proceedings before the Court. The Court considers it reasonable to award her the sum of EUR 150 in that connection (see, for example, *Bauer v. Slovenia*, no. 75402/01, § 26, 9 March 2006, and *Vidic v. Slovenia*, no. 54836/00, § 31, 3 August 2006).

C. Default interest

51. 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 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 2,200 (two thousand two hundred euros) in respect of non-pecuniary damage and EUR 150 (one hundred fifty euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Corneliu BÎRSAN
President