



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

FIRST SECTION

CASE OF A. AND E. RIIS v. NORWAY (No. 2)

(Application no. 16468/05)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

17/04/2008

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 A. and E. v. Norway,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens

Giorgio Malinverni, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 16468/05) against the Kingdom of Norway lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Norwegian nationals, Mrs Amelia Riis and Mr Einar Riis (“the applicants”), on 16 March 2005.

2. The applicants were initially represented by Mr H. Berge, a lawyer practising in Oslo. On 20 October 2006 he informed the Court that the second applicant had died on 30 May 2006 and that he no longer represented the first applicant or her children. Subsequently, Mr O.K. Aabø-Evensen represented the first applicant. The Norwegian Government (“the Government”) were represented by their Agent, Mrs F. Platou Amble, Attorney- General's Office (Civil Matters).

3. On 2 October 2006 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the applications at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1930 and 1922, respectively, and have been living in Oslo, Norway. The second applicant deceased on 30 May 2006. The first applicant is living in Monaco.

5. This is one of several applications brought by the applicants under the Convention in relation to the same case complex, the factual background of which is summarised in *Amelia and Einar Riis against Norway* (dec.)(no. 23106/02, struck out on 8 July 2004).

6. On 29 June 1990 the second applicant, on the first applicant's behalf, instituted proceedings (case no. 90-2020 A/01) against the State seeking 8,000,000 United States Dollars (USD) in compensation of pecuniary damage allegedly caused by the Ministry of Finance by having blocked the bankruptcy against the Reksten companies when these had announced their insolvency in April 1975.

7. The above suit was lodged on 29 June 1990, after a first action lodged on 7 March 1989 had been dismissed (*avvist*) by the Oslo City Court on 10 November 1989 and the Eidsivating High Court had upheld the dismissal on 20 February 1990.

8. On 17 March 1992 the City Court informed the parties that an oral hearing was scheduled for 17 and 18 November 1992, which hearing took place after the City Court had refused a request by the second applicant to postpone it. At that hearing, which was devoted to an issue of statutory limitation, he abandoned his intention to intervene in the case.

9. On 26 November 1992 the City Court advised the parties that there was insufficient basis for adjudicating the case. On 1 February 1993 the City Court proposed to the parties to adjourn the proceedings pending the outcome of a request for the reopening of other civil proceedings against a bank. Their request was refused by a final decision of 23 April 1993.

10. On 6 December 1993 the communications resumed between the first applicant's lawyer, Mr T. Engelschiøn, and the City Court. After repeated requests for a hearing date, the City Court on 16 March 1995 scheduled a hearing for 15 April 1996.

11. After a number of communications between the parties and the City Court in December 1995, on 10 January 1996 Mr Engelschiøn asked the City Court to adjourn the case pending the final outcome of separate compensation proceedings brought by the first applicant against *Falkefjell* Ltd. and Mr Kristoffer Olsen, in which the City Court had found for the latter and the first applicant had appealed (for details of the latter proceedings, see *A. and E. Riis v. Norway*, no. 9042/04, §§ 11-36, 31 May 2007).

On 7 March 1996 the City Court informed the parties that the proceedings in the present case were adjourned for one year (Article 105 of the Code of Civil Procedure).

12. On 16 January 2001 the City Court invited the parties to give their views on a question of dismissal of the case, no communications having taken place since 7 March 1996. It referred to Article 110 of the Code of Civil Procedure, according to which a case which had been adjourned was

to be discontinued unless the resumption of the proceedings had been demanded by one of the parties within a period of two years.

13. In response the first applicant stated in a letter of 28 February 2001 that, unless adjournment be granted until a final decision in the other case (see paragraph 11 above), she would demand resumption of those in the present case. After hearing the views of the Attorney General (Civil Matters), the City Court decided to stay the proceedings until 10 November 2002. On 29 October 2002 the first applicant's lawyer requested resumption of the proceedings.

14. On 23 January 2003 the City Court asked the parties whether the case was ready to be set down for main hearing, which question was answered in the negative by Mr Berge, on behalf of Mr O.P. Stavland, Advocate, acting for the first applicant. It was explained that there was a need for the first applicant to inspect various official archives.

15. On 23 June 2003 the Attorney General (Civil Matters) informed the City Court about a friendly settlement between the first applicant and the State in another case, which had been concluded on 5 June 2003 (for details see *Amelia and Einar Riis against Norway* (dec.) no. 23106/02, struck out on 8 July 2004).

16. Between 29 January 2004 and 26 April 2005 there were a few exchanges between the City Court and the parties. The exchanges concerned mainly the first applicant's legal representatives (Mr Stavland's withdrawal and Mr Berge's appointment), and a writ by the Attorney General (Civil Matters) stating that comments on the legal implications of the friendly settlement of 5 June 2003 for the present case would be submitted after the Ministry of Finance had considered the matter after the summer.

17. On 17 November 2005 the City Court scheduled the main hearing for 16 January 2006, despite a statement by Mr Berge that the case was not yet ready.

18. On 23 November 2005 Mr Berge requested on the behalf of the first applicant an opportunity to inspect various documents, which the City Court rejected on 2 January 2006.

19. The first applicant and her lawyer, Mr Berge, did not appear before the City Court either at a preparatory meeting held on 25 November 2005 or at the main hearing held on 16 January 2006. On 1 February 2006, after Mr Berge had been given an opportunity to comment in writing, the City Court upheld a request by the Attorney General (Civil Matters) to dismiss the case (Article 340 of the Code of Civil Procedure).

20. The first applicant appealed against the dismissal of her case by the City Court but on 26 September 2006 the Borgarting High Court upheld the City Court's decision.

THE LAW

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

21. The applicants complained that the length of the proceedings, instituted first in 1989 and a second time in 1990, had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1. In this connection they also relied on Article 13 of the Convention. It is not clear what matters this allegation concerned other than the length aspect as such. In the view of the Court this matter can most appropriately be considered under Article 6 § 1 which, in so far as is relevant, reads:

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

22. The Government contested that argument.

A. Admissibility

1. The standing of the second applicant

23. From the outset, the Court observes that the second applicant was not a party to the domestic proceedings. He can therefore not be considered a “victim” for the purposes of Article 34 of the Convention. In so far as this applicant is concerned, the Court declares the application inadmissible under this provision.

2. Complaint under Article 6 § 1 about the duration of the proceedings

24. In the Government's opinion, the first applicant had not exhausted available domestic remedies according to Article 35 § 1 of the Convention with respect to her complaint about the duration of the proceedings. This question ought to be assessed with due regard to the effective remedies that were actually afforded to her under Norwegian law. Ever since the alleged wrongdoing had taken place, she had had the opportunity to claim compensation under national law based on the allegations put forward in her application to the Court. She had, however, not brought such a claim before the national courts. In the Government's view, the Norwegian law on compensation fulfilled the requirements of an effective remedy under Article 13 of the Convention. An allegation of violation of the Convention accompanied by a compensation claim was without doubt a sufficient reason for having *locus standi* before the national courts.

25. The Government further argued that, although the duration of the proceedings had been long, this was essentially attributable to the

applicants' own conduct and could not give rise to a violation of the requirement of reasonableness under Article 6 § 1 of the Convention.

26. The Court observes that the Government's reference to the non-exhaustion of domestic remedies has not been supported by any specific reference either to the legal ground or to any relevant case-law. Their contention must therefore be rejected as being unsubstantiated (see *A. and E. Riis v. Norway (No. 1)*, no. 9042/04, §§ 41 and 43, 31 May 2007 and the case-law referred to therein).

27. The Court further notes that the period to be taken into consideration began on 29 June 1990 and ended on 26 September 2006. It thus lasted 16 years and three months, for two levels of jurisdiction to dismiss the action without having examined it on the merits. In the view of the Court, the mere duration of the proceedings raises a serious issue under Article 6 § 1 of the Convention.

28. In the light of the above, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on grounds of non-exhaustion or on any other grounds. It must therefore be declared admissible.

B. Merits

29. The Government, while acknowledging that the duration of the proceedings had been long, maintained that this fact ought to be attributed to the applicants' own actions and requests and could not justify the finding of a violation. Only minor and insignificant periods of the time elapsed could be attributed to the national courts.

30. In fact, the Government pointed out that the City Court had made several attempts to hold the main hearing, in spite of protests from the first applicant. Not only had she made several requests for the postponement of the main hearing, but the pleadings and evidence had also been broadly based and voluminous, and thus necessarily making the preparation of the case a time-consuming exercise for the court. It had involved the reading of several hundred pages of written pleadings and supporting documents of questionable relevance. The time elapsed had also been due to the fact that the case had been closely related to other actions brought by the same party. In consultation with the first applicant, the case had been adjourned for several periods in accordance with her own wishes.

31. The first applicant pointed out that her main problem during this case had been the respondent Government's failure to disclose relevant documents, despite the requests made to this effect by the second applicant and by their lawyers. By not requiring such disclosure the courts had unduly favoured the State to the plaintiff's detriment.

32. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

33. 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).

34. 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. Not only were there several periods of inactivity before the national courts or lack of diligence on their part (see paragraphs 7, 8, 10, 15 to 17 above), but the total duration of the proceedings in question, 16 years and three months, was also particularly long. The Court is mindful of the fact that the present case was adjourned pending the outcome of another case brought against different parties (see paragraphs 11 to 13 above). However, the duration of the latter proceedings became the subject of a previous application under the Convention in which the Court found that they had exceeded a reasonable time in breach of Article 6 § 1 of the Convention (see in *A. and E. Riis v. Norway (No. 1)*, cited above, § 55). While the Court accepts that the first applicant has contributed to the length of the proceedings (see notably paragraphs 11 to 14 above), this could not absolve the authorities of the respondent State from their obligation under Article 6 § 1 to ensure that the proceedings be concluded within a reasonable time (see *Dattel and Others v. Luxembourg*, no. 13130/02, §§ 53-54, 4 August 2005; and *A. and E. Riis v. Norway (No. 1)*, cited above, § 55). 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The first applicant claimed compensation for damage caused by the State's contribution to undermine, delay or destroy legal proceedings, with

the consequence that the first applicant had sustained losses in inheritance rights amounting to 14,000,000 USD, plus interest.

37. The Government did not express an opinion on the matter.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the first applicant must have sustained non-pecuniary damage due to the excessive length of the proceedings. Ruling on an equitable basis, and bearing in mind the first applicant's own contribution to the protraction of the proceedings, it awards her EUR 20,000 under that head.

B. Costs and expenses

39. The applicants also claimed NOK 621,068 (corresponding approximately to EUR 80,000) for the costs and expenses incurred before the domestic courts.

40. The Government did not express an opinion on the matter.

41. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum. In the present case, the Court has received no vouchers or particulars regarding the costs incurred in the domestic proceedings. Nor is it satisfied that the domestic costs claimed were necessarily incurred in order to prevent the matter found to constitute a violation of the Convention. Accordingly, the Court does not find that it can make any award under this heading.

C. Default interest

42. 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 first applicant's complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the first applicant;

3. *Holds*

(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement 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;

4. *Dismisses* the remainder of the first applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President