



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

THIRD SECTION

CASE OF KLINAR v. SLOVENIA

(Application no. 34544/02)

JUDGMENT

STRASBOURG

8 April 2008

FINAL

08/07/2008

This judgment may be subject to editorial revision.

In the case of Klinar v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele, *judges*,

Rajko Pirnat, *ad hoc judge*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 34544/02) 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 Slovenian national, Mrs Andreja Klinar (“the applicant”), on 6 December 2000.

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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and lives in Jesenice.

6. On 20 August 1994 the applicant’s mother, A.K., died.

7. On 7 October 1994 the Jesenice Local Court (*Okrajno sodišče na Jesenici*) received the coroner's certificate (*smrtnica*).

8. On 22 March 1995 the applicant was given notice of the court's intention to hold a hearing in the inheritance proceedings and received an invitation to attend it.

9. The court held hearings on 5 April and 25 October 1995.

10. Meanwhile, on 5 July 1995, the applicant lodged written submissions.

11. On 16 June 1997 the court issued an interim decision concerning the inheritance of A.K.'s ownership certificate (*lastninski certifikat*).

12. On 27 June and 5 September 2000 hearings were held. They were adjourned so as to allow the heirs to reach an agreement in respect of the inheritance. The subsequent negotiations were apparently unsuccessful.

13. On 8 November 2000 the applicant lodged written submissions.

14. At the hearing held on 14 November 2000 the court decided to stay the proceedings and instructed the parties to institute separate contentious proceedings with a view to determining the extent of A.K.'s estate which was disputed by the heirs.

15. On 5 February 2001 one of the heirs lodged a civil claim with the Kranj District Court (*Okrožno sodišče v Kranju*) in accordance with the Jesenice Local Court's instructions (paragraph 14 above). On 27 October 2003 the civil proceedings ended with an agreement between the heirs and the inheritance proceedings subsequently continued.

16. In the meantime, on 19 December 2000 the Jesenice Local Court rejected the applicant's request for interim measures. In addition, on 15 March 2001 the Jesenice Administrative Unit (*Upravna enota Jesenice*) issued a decision indicating that the farmland which was part of A.K.'s estate was not under the special protection which would prevent its division. The Jesenice Local Court received that decision on 18 May 2001.

17. On 28 November 2003 the Jesenice Local Court issued a decree of distribution (*sklep o dedovanju*) dividing the remainder of A.K.'s estate (see paragraph 11 above) between her four daughters. The decree was served on the applicant on an unspecified date in December 2003.

II. RELEVANT DOMESTIC LAW

1. *The Inheritance Act*

18. 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).

19. 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

20. 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.

21. 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

22. 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...”

23. In substance, the applicant further complained that the remedies available for excessively lengthy court 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

24. 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.

25. The applicant contested that argument, claiming that the remedies available were not effective.

26. 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).

27. 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.

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

29. 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) The parties' submissions

30. 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.

31. 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 at the earliest on the day the notice inviting the applicant to a hearing was sent to the applicant's address, which is on 22 March 1995.

32. The Government considered that the proceedings ended with the decree of distribution.

33. As regards the "reasonableness" of the length of the proceedings, the Government submitted that the case was a very complex one due to, *inter alia*, the fact that A.K.'s estate included specially protected farmland. Furthermore, the length of the proceedings should mostly be attributed to the applicant and other heirs, who were unable to reach an agreement concerning the inheritance at the earlier stage of the proceedings. Due to their attempts to reach an agreement, two hearings were adjourned and the proceedings were subsequently stayed since the heirs had still disputed the extent of A.K.'s estate.

34. The applicant disputed the Government's arguments. She submitted that the farmland had not been under special protection and argued that her case was an obvious example of a violation of the right to a trial within a reasonable time.

(b) The Court's assessment

35. 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).

36. 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 18 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 31 above).

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

38. 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.

39. In view of the above, and since it is not disputed that the applicant had been aware of 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 7 October 1994 when the Jesenice Local Court received the coroner's certificate (see paragraph 7 above).

40. Taking into account that the decree of distribution was served on the applicant in December 2003, the Court notes that the relevant period lasted about nine years and two months.

41. 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).

42. In the present case, the Court observes that the dispute concerning A.K.'s estate might have complicated the proceedings to some extent. It further observes that two hearings were adjourned due to the heirs' attempts to reach an agreement (see paragraph 12 above) and that the inheritance

proceedings were interrupted by the separate set of contentious proceedings (paragraph 14 above).

43. However, the Court must note that the disputed issues relating to the inheritance arose and were to be determined in proceedings conducted under the supervision of the courts, which remained responsible for the speedy conduct of the case. Furthermore, the introduction of the separate set of contentious proceedings is, obviously, a normal course of resolving disputes arising in inheritance proceedings and, in the present proceedings, the judge instructed the parties to make use of this possibility.

44. As regards the Government's argument concerning the alleged special protection of the farmland included in A.K.'s estate (see paragraphs 33 and 34 above), the Court notes that the case-file does not disclose any particular complications in the proceedings which would relate to this issue.

45. Finally, the Court observes that the Government did not provide any explanation as to the obvious periods of inactivity which occurred in the course of the proceedings, in particular between 16 June 1997 and 27 June 2000 (see paragraphs 11 and 12 above) and between 5 February 2001 and 27 October 2003 (see paragraph 15 above).

46. In view of the above and having regard to its case-law on the subject, the Court considers that the length of nine years and two months for two sets of related proceedings which were conducted only at one level of jurisdiction cannot be regarded as reasonable and that there has accordingly been a breach of Article 6 § 1 of the Convention.

2. Article 13

47. 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.

48. 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

49. 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

50. The applicant claimed 41,576 euros (EUR) in respect of both pecuniary and non-pecuniary damage.

51. The Government contested the claim. They submitted that there was no causal link between the alleged pecuniary damage and the alleged violation of the right to a trial within a reasonable time. As regards the non-pecuniary damage, the Government asked the Court to decide the applicant’s claim on the basis of its established case-law.

52. As regards the claim for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. The Court, however, considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 6,000 under that head.

B. Costs and expenses

53. The applicant also claimed approximately EUR 739 for the cost and expenses incurred in the domestic proceedings and EUR 14 for the costs and expenses incurred before the Court.

54. The Government contested the claim for the cost and expenses incurred in the domestic proceedings, submitting that it did not relate to the applicant’s complaint concerning the length of the proceedings.

55. 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 were reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and awards the applicant, who was not represented by a lawyer, the full sum claimed in respect of the proceedings before the Court, namely EUR 14.

C. Default interest

56. 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 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 14 (fourteen 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 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President