



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

FIFTH SECTION

DECISION

Application no. 16346/06
Ivana BREZNIK
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 15 January 2013 as a Committee composed of:

Ann Power-Forde, *President*,

Boštjan M. Zupančič,

Helena Jäderblom, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 March 2006,

Having regard to the comments submitted by parties,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Ivana Breznik, is a Slovenian national, who was born in 1947 and lives in Ljubljana. She was represented before the Court by Mr R. Završek, a lawyer practising in Ljubljana.

The Slovenian Government (“the Government”) were represented by their Agent.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. First set of proceedings (O 133/78)

On 1 September 1995 the applicant lodged a request before the Ljubljana District Court to institute inheritance proceedings concerning her late father (Vojteh Adalbert Breznik).

On 28 September 1995 the court informed her that inheritance proceedings cannot be instituted before it is determined what constitutes his inheritance. It appears that this was connected with the resolution of restitution issues considered in denationalisation proceedings.

On 16 November 1995 she lodged again the same request since aside from immovable property she claimed that there were two savings books that belonged to her father.

On 18 January 1996 the court rejected her request after obtaining information from the bank that no such books existed. She appealed.

On 27 June 1996 the Ljubljana Higher Court rejected her appeal.

2. Second set of proceedings (I D 1159/94)

On 18 September 1991 the Supreme Court issued a judgment annulling a decision from 1948 on confiscation of property and ordered the restitution of the property to the late Ivana and Alfonz Breznik (the parents of the applicant's father Vojteh Adalbert Breznik).

On 18 January 1994 a request was lodged with the Ljubljana District Court for an inheritance hearing regarding the property of Alfonz Breznik.

Between 20 December 1994 and 1 October 1996 two hearings were held.

On 14 January 1997 the parties were directed to settle the issue of the validity of a will in contentious proceedings.

On 7 February 1997 the applicant lodged a civil claim as instructed. The civil proceedings ended in 2000.

The inheritance proceedings resumed and between 21 December 2000 and 8 March 2001 two hearings were held.

On 22 November 2001 the court issued a partial decree of distribution, since proceedings concerning a part of the property were still pending. The applicant appealed.

On 12 February 2002 the court issued a decree of distribution concerning the remainder of the property. An appeal was lodged.

On 2 October 2002 the Ljubljana Higher Court rejected the appeals against both decrees and thus the decrees became final.

On 26 September 2005, on request of the parties, the Ljubljana District Courts issued an additional decree of distribution of property based on a decision issued in non-contentious proceedings concerning new property. An appeal was lodged.

On 13 December 2006 the Ljubljana Higher Court rejected the appeal.

3. Third set of proceedings (I D 1160/94)

Following the Supreme Court's judgment (see above) the Ljubljana District Court held a hearing on 20 December 1994 regarding the property of the late Ivana Breznik.

On 14 January 1997 the parties were directed to settle the issue of the validity of the will in contentious proceedings. The civil proceedings ended in 1999.

The inheritance proceedings resumed and between 21 December 2000 and 23 November 2001 three hearings were held.

On 12 February 2002 the court issued a decree of distribution. The parties appealed.

On 29 January 2003 the Ljubljana Higher Court rejected the appeals and the decree became final.

On 29 August 2003, on request of the parties, the Ljubljana District Courts issued an additional decree of distribution of property based on a decision issued in non-contentious proceedings concerning new property. An appeal was lodged.

On 6 October 2004 the Ljubljana Higher Court rejected the appeal.

On 7 June 2005 the court issued an additional decree of distribution on request of the parties based on a decision issued in non-contentious proceedings.

4. Fourth set of proceedings (I D 140/2003)

On 5 March 2003 following the termination of the second and third set of proceedings and based on the decrees of distribution issued on 12 February 2002, the heirs of the applicant's father Vojteh Adalbert Breznik lodged a request before the Ljubljana District Court for the institution of inheritance proceedings regarding his property.

The hearing scheduled for 20 June 2003 was postponed on request of the applicant.

Between 8 October 2003 and 19 November 2003 the court held two hearings.

On 26 November 2003 the court issued a decree of distribution. An appeal was lodged.

On 17 June 2004 the Ljubljana Higher Court rejected the appeal. The applicant lodged a constitutional appeal.

On 23 September 2005 the Constitutional Court rejected the appeal. The decision was served on the applicant on 27 September 2005.

Subsequently upon request of the parties, on 5 April 2006 and 11 June 2007 the court issued two additional decrees of distribution of property, based on decisions issued in non-contentious proceedings concerning new property.

B. Relevant domestic law

The relevant provision of the Inheritance Act (Zakon o dedovanju, Official Gazette of the Socialist Republic of Slovenia in accordance with the Constitutional Act Implementing the Basic Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, Official Gazette of Republic of Slovenia, no. 1/91) reads as follows:

VIII. INHERITANCE CLAIMS FOLLOWING THE FINALITY OF THE DECREE OF DISTRIBUTION

Subsequently found property

Article 221

- (1) If after the decree of distribution becomes final, property is found which at the time when the decree was issued was not known to the parties, the court shall not hold another hearing, but distribute such property by issuing an additional decree of distribution in accordance with the previous decree of distribution.
- (2) The court shall hold a hearing only if the subsequently found property concerns immovable property and no hearing was held beforehand.
- (3) If the property found subsequently concerns movable property, the court shall hold a hearing only upon request of the parties.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the undue length of the proceedings and the lack of an effective remedy in that regard (Article 13).

The applicant also complained under Article 14 of the Convention that she was discriminated against by the domestic courts compared with other heirs in similar situations. She further complained under Article 8 of the Convention that the domestic court unlawfully broadened the concept of family by giving three half-siblings the right to inherit. Lastly, she complained that her share of the inheritance had been diminished and as a consequence her rights under Article 1 of Protocol No. 1 were breached.

THE LAW

Further to the communication of the case under Rule 54 § 2 (b) of the Rules of Court, the Government argued that the first three proceedings should be declared inadmissible as being lodged out of time and the remainder as manifestly ill-founded. The applicant contested these arguments.

As regards the first, second and third set of proceedings the Court notes that the proceedings ended in 1996, 2002 and 2003, respectively. Although in the second and third set of proceedings there were additional decrees issued after new property had been discovered, the Court finds that having regard to the relevant domestic law and the nature of the inheritance proceedings these additional decrees cannot be considered as an integral part of the main proceedings. If this were the case, inheritance proceedings could never be considered as terminated, since there would always be the uncertainty of new property being discovered. Having regard to the foregoing and given that the application before the Court was introduced on 21 June 2006, this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention as being lodged out of time.

As to the fourth set of proceedings the Court notes that the period to be taken into consideration started on 5 March 2003, when the inheritance proceedings were instituted, and ended on 27 September 2005, when the Constitutional Court's decision was served on the applicant. The proceedings thus lasted two years and six months at three levels of jurisdiction which cannot be considered as excessive.

The Court therefore finds that this part of the application is manifestly ill-founded and must be rejected under Article 35 § 4 of the Convention..

As to the complaint regarding the lack of effective remedies the Court recalls that Article 13 requires the State to provide an effective legal remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, 8 June 2006). Considering that the complaint about the excessive length of the proceedings is inadmissible as manifestly ill-founded, the Court finds that the applicant did not have an arguable claim that her right to an effective remedy within the meaning of Article 13 was violated. Therefore, this claim does not reveal any appearance of violation of this provision.

Accordingly, this complaint is manifestly ill-founded and must be declared inadmissible in the meaning of Article 35 §§ 3 and 4 of the Convention.

Lastly, as regards the remaining complaints the Court finds that having regard to all material in its possession and in so far as the matters complained of are within its competence, this part of the application does not disclose any appearance of a violation of the Convention. It follows that

it is inadmissible as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Ann Power-Forde
President