APPLICATION/REQUÊTE N° 12158/86

Anne MERCIER DE BETTENS v/SWITZERLAND

Anne MERCIER DE BETTENS c/SUISSE

DECISION of 7 December 1987 on the admissibility of the application

DÉCISION du 7 decembre 1987 sur la recevabilité de la requête

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Article 26 of the Convention *The running of the six month period is interrupted by the first letter from the applicant setting out summarily the object of the application, provided that the letter is not followed by a long delay before the application is completed Examination of the circumstances which might, in such a case, suspend the running of the period*

Article 26 de la Convention *Le cours du delai de six mois est interrompu par la premiere lettre du requérant exposant sommairement l'objet de la requête à condition que cette lettre ne soit pas suivie d'un long laps de temps avant que la requête soit completée Examen des circonstances, susceptibles, en pareil cas, de suspendre le cours du delai*

(TRANSLATION)

THE FACTS

The applicant is a Swiss national born at Echichens (Vaud) in 1925. She is resident in Saint-Prex (Vaud).

The facts of the case go back to the year 1952, when Mr. Adrien Mandrot, the applicant's grandfather, died. Mr. Mandrot had designated as heirs his four sons, one of whom was the applicant's father, who himself died in 1955, leaving as heirs his two children, namely the applicant and her brother.

As the heirs of Adrien Mandrot had been unable to agree on the division of the land and buildings constituting the joint property, in particular of the estate at Echichens on which stand a large house and another detached villa occupied by the applicant, the President of Morges Civil Court, in a judgment of 20 July 1961 gave the applicant until 31 December 1961 to leave the villa. This judgment was upheld on 7 November 1961 by the Appeals Chamber of the Cantonal Court of the Canton of Vaud. In a judgment of 14 February 1962, the Federal Court rejected, insofar as it was admissible, a public law appeal by the applicant. The applicant subsequently left the villa in pursuance of a court order.

Furthermore, the applicant applied to the Colombier District Court for a ruling that a lease of indefinite duration had been concluded between herself and the Mandrot estate, that this lease was still valid and that she was consequently authorised to remain in occupation of the premises until such time as the contract might be terminated in accordance with the legal terms. This application was rejected on 22 November 1962. In a judgment of 15 January 1963, the Cantonal Court of the Canton of Vaud upheld the judgment. The applicant's public law appeal against the Cantonal Court judgment was rejected by the Federal Court on 16 April 1963.

On 28 November 1963, the applicant instituted proceedings for the division of the estate. Upon application by the parties, the President of Morges Civil Court decided, on 17 November 1966, that the disputed properties formed part of joint family property of which the applicant had been tacitly accepted as a member until such time as notice to terminate it was given. He further noted that the parties were agreed that the applicant's institution of proceedings to divide the estate constituted notice of termination of the joint property with regard to her share therein, this share therefore being the only one to be realised, and that the administration of the real estate should be entrusted to the notary D.

In May 1968, the defendants asked that an expert opinion be sought on the return which might be expected on the assets constituting the joint property. As the first expert report had been challenged by two of the defendants, the President of the Morges Court ordered a second expert opinion and then a supplementary expert opinion.

A further decision by the same judge that the applicant was no longer a joint owner was confirmed by the Appeals Chamber of the Cantonal Court of the Canton of Vaud

In a judgment dated 3 January 1974, the President of the Morges Court decided that the defendants were joint debtors to the applicant and were to pay her the sum of 472,000 Swiss francs with interest for late payment at 5% from the day on which the judgment became final and enforceable, and that, upon payment of the aforementioned sum, the joint property of the Mandrot family was and would be continued by the defendants alone He further ordered the Keeper of the Land Register to make the necessary entries and amendments, as the applicant was to be struck off the list of owners of the properties forming the joint property or held in joint ownership with the defendants

This judgment was partly altered by the Appeals Chamber of the Cantonal Court of the Canton of Vaud on 21 May 1975. In particular, this Court decided that the defendants were joint debtors for the sum of 480,000 Swiss francs, with interest at 5% per annum from 1 January 1974

The applicant then filed an appeal ("recours en réforme") and a public law appeal on the ground that the decision was arbitrary The latter appeal was rejected on 13 April 1976

In its judgment of 10 June 1976, the Federal Court amended the impugned judgment and held that the defendants were joint debtors in respect of the sum of 480,000 Swiss francs, with interest at 5% per annum from 10 June 1976, and that the applicant was entitled to one eighth of the net income of the joint property until 10 June 1976

It is thought that the applicant subsequently submitted applications to the Federal Court for the case to be reviewed

COMPLAINTS

Before the Commission, the applicant alleges first of all a violation of Article 6 para 1 of the Convention She complains of the length of the proceedings concerning the division of the estate and asserts the courts were biased and that the decision to evict her from the family house was delivered in proceedings which were not [illegible]

The applicant further complains of having been "held guilty" even though her responsibility for the dispute was not proved, in violation of Article 6 par[illegible] of the Convention

In addition the applicant complains of an infringement of her right to respect for her private life and for her home In particular she alleges that her eviction set in motion interminable division proceedings and that her family life had been

seriously disturbed because of the need continually to find accommodation at a time when it was in short supply She relies on Article 8 para 1 of the Convention

The applicant requests compensation

THE LAW

The applicant complains of the length of the proceedings for the division of the estate and of the decision to evict her from the family house She further alleges that she was "held guilty" of causing the dispute, even though her responsibility had not been proved She also complains of an infringement of her right to respect for her private life and for her home The applicant relies on Article 6 paras 1 and 2 and Article 8 para 1 of the Convention

As the date of the final domestic decision in the proceedings for division of the estate was 10 June 1976 and that in the proceedings concerning the eviction from the family house was 14 February 1962, the Commission must first determine the date on which this application was introduced

In this connection, the Commission recalls that the applicant's first letter expressing her desire to introduce an application was dated 6 December 1976 In a letter of 22 January 1977 the applicant, who had in the meantime received the usual information supplied to persons wishing to lodge an application with the Commission, announced that she would send the Secretariat the documents relevant to the case as soon as they were in her possession

No news was received from the applicant, however, until 22 November 1985 when she announced that she wished to continue the proceedings begun in December 1976

The Commission recalls that, in accordance with its established practice, it considers the date of the introduction of an application to be the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the complaints to be made However, where a substantial interval follows before the applicant submits further information as to his proposed application, the Commission examines the particular circumstances of the case in order to decide what date shall be regarded as the date of introduction interrupting the course of the six month time-limit provided for in Article 26 of the Convention (see No 4429/70, Dec 1 2 71, Collection 37 p 109)

The Commission considers that the purpose of the six month rule is to ensure a degree of legal certainty and to ensure that cases raising problems under the Convention are examined within a reasonable time Furthermore, the rule is also intended to prevent the authorities and other persons concerned from being in a state of uncertainty for a prolonged period Lastly, the rule is designed to facilitate the

establishment of the facts of the case which, with the passage of time, would otherwise become increasingly difficult, and thus creating problems for a fair examination of the question raised under the Convention.

It is true that the specific obligation laid down in Article 26 of the Convention relates only to the introduction of an application, but hitherto the Commission has interpreted this requirement broadly, since it has accepted, without other restrictions, that the date of introduction was that of the first letter concerning the complaints.

However, the Commission is of the opinion that it would be contrary to the spirit and purpose of the six month rule laid down in Article 26 of the Convention that, by virtue of an initial letter, an applicant should be in a position to initiate the proceedings provided for in Article 25 of the Convention and then, without offering any explanation, take no further action for an unlimited period

Delays in the pursuance of the application by the applicant are acceptable only if they result from circumstances specific to the facts of the case, such as the requirement that domestic remedies be exhausted before application is made to the Commission (see No 9024/80 and No. 9317/81, Dec. 9.7.82, D R 28 p. 138). This is not the situation in the present case. The Commission recalls in particular that, in accordance with its case-law, proceedings to have a case re-opened or retried on the merits is not normally a remedy which needs to be exhausted and which can be taken into account for the purposes of the six month rule (see No. 7805/77, Dec. 5.5.79, D.R. 16 p. 68).

In the present case, the Commission notes that more than eight years elapsed (from 22 January 1977 to 22 November 1985) before the applicant wrote again to the Secretariat.

The Commission considers that the reasons given by the applicant to explain her silence over that period, namely a voluminous case-file, the recent sale of the disputed properties resulting from the division and the fact that she had seen no reason to send documentary evidence before completing the application form, are not sufficient to justify suspension of the six month time-limit laid down in Article 26 of the Convention.

Consequently, notwithstanding the applicant's original letter dated 6 December 1976, the Commission considers that the date to be taken into consideration as the date of introduction of this application is 22 November 1985.

It follows that since the application was introduced more than six months after the date of the final domestic decisions, namely 14 February 1962 as regards the proceedings concerning the applicant's eviction from the family house and 10 June 1976 as regards the proceedings for the division of the estate, it is out of time and must therefore be rejected in accordance with Article 27 para 3 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.