



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 9460/05
by Aleksandar SKOČAJIĆ and Tatjana BJELIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 18 September 2007 as a Chamber composed of:

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 2 March 2005,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Aleksandar Skočajić and Mrs Tatjana Bjelić, are Serbian nationals who were born in 1945 and 1943, and live in Beograd and

Zemun Polje, respectively. The Serbian Government (“the Government”) were represented by their Agent, Mr. S. Carić.

A. The circumstances of the case

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

On 27 February 1989 the Beograd Fourth Municipal Court stayed inheritance proceedings after the death of M.J., one of the applicants’ maternal uncles, and instructed the applicants’ mother, S.K., to institute regular civil proceedings in order to realise her claim.

On 19 July 1989 S.K. and her other two siblings brought a civil action in the Beograd First Municipal Court against M.J.’s widow, claiming their right to a share of his estate.

Following S.K.’s death, on 25 December 1992 the Beograd Third Municipal Court recognised the applicants as her heirs in the proceedings. The first applicant is representing himself and the second applicant in the proceedings.

Subsequently, the other two plaintiffs in the case died, and the court stayed the case pending the outcome of the respective inheritance proceedings and the determination of the heirs.

The proceedings resumed on 18 April 2004. The hearing scheduled for 20 May 2004 was adjourned, *inter alia*, due to the applicants’ absence.

The next hearing was held on 5 October 2004, when the first applicant objected to the fact that the court had changed the case number. The first applicant did not attend the next hearing, scheduled for 28 December 2004.

He had meanwhile filed another submission, which the court considered pointless and irrelevant.

At the next hearing held on 17 March 2005, the first applicant again complained about the new case number. The hearing scheduled for 22 June 2005 was adjourned because the court had not succeeded in serving the summons on the applicants.

At the hearing held on 16 September 2005, the two other plaintiffs withdrew their action. The first applicant requested the court to give him time to decide whether to maintain the action. It appears that, at the end of that hearing, the first applicant refused to sign the minutes thereof because they had been written on three pages, whereas he claimed they could have been written on two.

The next hearing scheduled for 1 December 2005 was adjourned due to the unsuccessful service of the summons on the applicant.

Since neither of the duly summoned parties appeared at the next hearing, pursuant to section 296 (2) of the Civil Procedure Act on 12 January 2006 the court concluded that the action had been withdrawn.

In a submission sent to the court by the first applicant on 17 January 2006, he explained that he had been unable to attend the hearing of 12 January 2006 because of heavy traffic. However, he did not request the full restoration of the case (*povrat u pređašnje stanje*) pursuant to section 111 of the Civil Procedure Act.

The court attempted to serve its decision of 12 January 2006 on the applicant on 23 and 24 February, 3 and 5 April, 4 and 8 May, 15, 22 and 26 June, 4, 5 and 26 September and 2 October 2006. Each time, the bailiff instructed the first applicant to be present at a certain place at a certain time with a view to service, but he never appeared.

The court subsequently decided to serve the said decision through its bulletin board, pursuant to section 140 of the Civil Procedure Act. It did so on 6 November 2006. The notice was removed on 14 November 2006, which date constituted service of the decision on the applicants.

On 2 February 2007, following an examination of the case file, the first applicant appealed against the decision of 12 January 2006.

On 6 February 2007 the court declared his appeal inadmissible. Since the decision had been served on him through the bulletin board on 14 November 2006, the statutory time-limit for filing the appeal had elapsed.

On 28 February 2007, when the court bailiff attempted to serve the decision of 6 February 2007 on the first applicant, he refused to accept it. The bailiff noted the time and date of the first applicant's refusal, which, pursuant to section 138 of the Civil Procedure Act, constituted service of the decision on him.

On 12 March 2007 the first applicant appealed against the first-instance court's decision of 6 February 2007. The case file was forwarded to the Beograd District Court, being the second-instance court, where it is apparently still pending.

B. Relevant domestic law

The relevant provisions of the Civil Procedure Act 2004 (*Zakon o parničnom postupku*; published in OG RS no. 125/04) read as follows:

Section 111 (1)

“If a party does not appear at a hearing or fails to observe a time-limit for undertaking a certain action and thereby loses the right to that action, the court shall, upon that party's request and if there exists a valid reason, allow for the subsequent resumption of that action (*restitutio in integrum*).”

Section 138

“When the addressee of a letter... without a legal reason, refuses to accept the letter, the bailiff shall leave it in the flat... or hang it on the door of the flat... [The bailiff]

shall indicate on the service receipt the date, time and reason for refusal of service, as well as where the letter was left, and thereby it shall be deemed served.”

Section 140

“1. When during the course of the proceedings it is impossible to serve a letter, this shall be executed through the [court’s] bulletin board.

2. The letter shall be deemed served on the eighth day following its announcement on the bulletin board.”

Section 296 (2)

“If both the plaintiff and the respondent unjustifiably fail to appear at the main hearing, the action shall be deemed to have been withdrawn.”

COMPLAINTS

The applicants complained under Article 6 § 1 of the Convention about the length of the proceedings and, under Article 13, about the lack of an effective remedy in that respect.

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention

The applicants’ first complaint relates to the length of the proceedings. They rely on Article 6 § 1 of the Convention, which, insofar as relevant, provides as follows:

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

The Court observes that the proceedings at issue began on 19 July 1989, when the applicants’ late mother filed her civil action. However, the period that falls within the Court’s competence *ratione temporis* began on 3 March 2004, the date when the Convention entered into force in respect of Serbia.

As regards the end of the relevant period, the Court does not attach importance to the fact that the proceedings concerning the admissibility of the applicants’ appeal against the first-instance decision are still pending, since they concern merely procedural issues rather than the determination of their civil rights or obligations (see, *mutatis mutandis*, *Kunić v. Croatia*, no. 22344/02, § 54, 11 January 2007).

Accordingly, the Court shall consider the proceedings to have ended on 29 February 2007, the date of the service of the dismissal of the applicants’

appeal against the first-instance decision. The period to be taken into account therefore amounts to nearly three years before one court instance.

1. The parties' arguments

According to the applicants, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention because their case has been pending since 1989.

The Government rejected that allegation, submitting that the applicants had failed to exhaust various domestic remedies. Concerning the merits of their complaint, the Government argued that the case was factually complex and that the three original plaintiffs had died in the course of the proceedings. The case therefore had to be stayed and resumed several times. The Government further pointed out that the first applicant, who was also representing the second applicant, had to a large extent contributed to the length of the proceedings. He had failed to appear at numerous hearings; his conduct at the hearing at which he did appear had been inappropriate or irrelevant for the final resolution of the case; he had filed various pointless submissions and numerous ill-founded motions for the withdrawal of the judges appointed to hear the case.

2. The Court's assessment

The Court does not consider it necessary to examine the issue of exhaustion of domestic remedies, as the present case is in any event inadmissible for the following reasons:

The Court recalls that it is well-established that the reasonableness of the length of the proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's jurisprudence, in particular the complexity of the case and the conduct of the applicant and of the competent authorities (see, among many other authorities, *Richard v. France*, judgment of 22 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 824, § 57).

The Court reiterates that only delays imputable to the authorities can justify a finding that a case has lasted an unreasonably long time, contrary to Article 6 § 1 of the Convention (see, for example, *Angelopoulos v. Greece*, no. 49215/99, § 43, 11 April 2002; *Kurt Nielsen v. Denmark*, no. 33488/96, § 25, 15 February 2000).

In this connection, the Court notes that, following the entry into force of the Convention in respect of Serbia, the first applicant – representing himself as well as the second applicant – failed to appear at four hearings, which consequently resulted in the court's conclusion of 12 January 2006 that the action had been withdrawn. The Court further observes that the length of proceedings after that decision is solely attributable to this applicant. For example, the competent authorities unsuccessfully attempted

to serve the said decision on him on 13 different occasions. Once the decision was served through the bulletin board, the first applicant filed an out-of-time appeal, which was promptly declared inadmissible by the competent court. The first applicant refused service of that decision as well, and continued to appeal to higher instances on the issue of the admissibility of his appeal.

The Court considers that the first applicant's conduct, in particular his numerous groundless submissions, as well as his failure to cooperate with the domestic courts, caused substantial undue delays in the proceedings (see, *mutatis mutandis*, *Uglešić v. Croatia* (dec.), no. 50941/99, 11 October 2001). However, the domestic authorities showed no lack of diligence during this period.

In the light of the above, the Court finds that the overall length of the proceedings in the present case has not exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Article 13 of the Convention

The applicants also complain that they had no effective remedy at their disposal in respect of their length complaint, as required under Article 13 of the Convention, which 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."

The Court recalls that Article 13 guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

However, the Court finds that the applicants' complaint under Article 6 § 1 of the Convention about the length of civil proceedings is not arguable, given its preceding considerations. It follows that the applicants cannot claim a remedy under Article 13 of the Convention. Consequently this aspect of the case is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

Consequently, it is appropriate to discontinue the application of Article 29 § 3 of the Convention to the present case.

For these reasons, the Court unanimously

Declares the application inadmissible.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President