



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

FIFTH SECTION

DECISION

Application no. 73886/11
Mary KIERAN
against Ireland

The European Court of Human Rights (Fifth Section), sitting on 28 May 2013 as a Committee composed of:

Boštjan M. Zupančič, *President*,

Ann Power-Forde,

Helena Jäderblom, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having regard to the above application lodged on 22 November 2011,

Having regard to the parties' agreement to a friendly settlement of the case,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Ms Mary Kieran, is an Irish national, who was born in 1952 and lives in County Kilkenny. The Irish Government ("the Government") were represented by their Agent, Mr Peter White, of the Department of Foreign Affairs.

During the applicant's relationship with JS, he arranged for a company to buy property and, later, for the company shares to be held in the applicant's favour. Their relationship ended and the applicant moved into the property.

In 2001 JS began proceedings for a declaration that he was the owner of the property. Between 2001 and 2003 pleadings were filed and motions were dealt with. Settlements were proposed in 2003 and 2004 but not pursued. On 6 April 2006 JS served a Notice of Intention to Proceed and on

15 February 2007 he set the matter down for trial. On 2 May 2007 the High Court hearing took place.

In July 2007 the High Court delivered its judgment. Although JS had funded the purchase of the property so that there was a “resulting trust” in his favour, the factual evidence rebutted the presumption. His claim was dismissed. In June 2011 the Supreme Court allowed JS’ appeal. JS had funded the purchase, a presumption of a resulting trust had therefore arisen in his favour and the applicant had not discharged the onus on her to rebut the presumption.

The applicant complained under Article 6 about the length of the proceedings. She also invoked Articles 6, 8, 13, 14 and Article 1 of Protocol No. 1 about the lack of a presumption of advancement in her favour as an unmarried cohabitee.

On 21 June 2012 the Court decided to communicate to the Government the complaint under Article 6 about the length of the proceedings.

On 24 September 2012 the Agent of the Government submitted the following declaration:

“I declare that the Government of Ireland offer to pay ex gratia to Ms Mary Kieran, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, 6,000 euros to cover any pecuniary and non-pecuniary damage.

This sum will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.”

By letter dated 11 January 2013 the applicant accepted the Government’s offer of a friendly settlement of the matter.

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reason to justify a continued examination of the application.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in accordance with Article 39 of the Convention.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President