



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

FOURTH SECTION

CASE OF HUNGUEST ZRT V. HUNGARY

(Application no. 66209/10)

JUDGMENT
(Merits)

STRASBOURG

30 August 2016

FINAL

30/11/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hunguest Zrt v. Hungary,

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

Vincent A. De Gaetano, *President*,

András Sajó,

Nona Tsotsoria,

Krzysztof Wojtyczek,

Egidijus Kūris,

Iulia Motoc,

Marko Bošnjak, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 5 July 2016,

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

PROCEDURE

1. The case originated in an application (no. 66209/10) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian company, Hunguest Zrt (“the applicant”), on 4 November 2010.

2. The applicant was represented by Mr Gy. Magyar, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. On 3 December 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is a company limited by shares registered under Hungarian law. It has its seat in Budapest.

5. On 31 May 2000 a property claim was brought against the applicant requesting it to pay mandate fees in the amount of 275 million Hungarian forints (HUF) (approximately 1,057,000 euros (EUR) at the time).

6. On 6 June 2000 the Budapest Regional Court ordered the applicant, under section 187(1) of Act no. LIII of 1994 on Court Execution, to deposit on the bailiff’s trust account a security in the amount of HUF 275 million. The applicant appealed against the decision but this was to no avail. The money was deposited on the bailiff’s trust account on 27 March 2001.

7. Under the law, such deposits yield no interest.

8. The applicant requested to have the money released arguing that its financial situation was satisfactory, there was no need for such a deposit and that this measure contradicted the principle of economic rationality.

9. The applicant's request was dismissed on 8 May 2001. The Supreme Court as second-instance court upheld the decision on 8 November 2001. The applicant's subsequent requests to have the money released, in exchange for other securities offered, were also turned down.

10. After remittals on 27 November 2002 and 8 June 2007, on 16 October 2008 the Regional Court adopted a judgment, partly found for the plaintiff and ordered the applicant to pay HUF 137,280,000 (EUR 514,000 at the actual rate) plus interest accrued as of 6 January 2000. On 16 October 2009 and 29 April 2010, respectively, the Budapest Court of Appeal and the *Kúria* upheld this judgment.

11. Although the plaintiff succeeded only partly in the litigation, the amount actually payable by the applicant exceeded the amount of the entire deposit. This outcome was the consequence of the fact that whilst the applicant was ordered to pay accrued interest on the money due to the plaintiff in the amount of approximately HUF 189,500,000 (EUR 700,000 at the actual rate), its own money deposited on the bailiff's trust account had yielded no interest. Ultimately, the applicant had to surrender the whole deposit and pay about another HUF 90 million (EUR 330,000).

12. The applicant challenged the impugned provisions of Act no. LIII of 1994 on Court Execution before the Constitutional Court; but its constitutional complaint was dismissed on 7 June 2011. This court held that 'interest' as such was consideration for the 'use' of another person's money; however, the authorities had not in any way 'used' the deposited amount. Furthermore, the Constitution did not provide any safeguards against the depreciation of an asset, including a deposit of money subject to inflation, and that such depreciation for economical or other reasons did not amount to a deprivation of property.

II. RELEVANT DOMESTIC LAW

13. Act no. LIII of 1994 on Judicial Enforcement as in force in the relevant period, provided:

Section 185

"If an enforcement order for the satisfaction of a claim cannot ... yet be issued but the creditor seeking enforcement has substantiated that the satisfaction at a future time of the claim is at risk, the court shall, upon request of the creditor seeking enforcement, order as a measure aimed at securing the claim:

a) the securing of the monetary claim. ..."

Section 187

“(1) A measure to secure a claim may be ordered for the enforcement of a claim for which

...

c) another action has been filed and the existence, size and expiry of the claim has been proved by a notarial deed or by a private document having full probative force. ...”

Section 200

“(1) The measure aimed at securing a claim shall remain effective until enforcement with a view to satisfying a secured claim is ordered or the measure is terminated by the court.

(2) The effect of a seizure done during the enforcement of a measure aimed at securing the claim shall also extend to the enforcement for satisfaction ordered with a view to satisfying the claim.”

Section 237

“(4) The bailiff shall not pay any interest on the money deposited on the trust account and shall not be entitled to charge any costs or fees.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of 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 ...”

The Government did not disagree.

15. The period to be taken into consideration began on 31 May 2000 and ended on 29 April 2010. It thus lasted almost nine years and eleven months for three levels of jurisdiction.

16. In view of such lengthy proceedings, this complaint must be declared admissible.

17. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement (see *Gazsó v. Hungary*, no. 48322/12, § 17, 16 July 2015).

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

18. The applicant also complained about the fact that it was ordered to deposit a significant amount of money on the bailiff's trust account; for almost ten years, the duration of the measure, the deposited amount had yielded no interest, in breach of Article 1 of Protocol No. 1 which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The Government contested this view.

A. Admissibility

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

20. The applicant argued that there had been an interference with its peaceful enjoyment of possessions and that this interference had imposed an excessive individual burden on it, in particular, because while its deposit did not yield any interest, the amount which it had to pay to the plaintiff accrued interest.

21. The Government argued that although there had been an interference with the applicant's right to property, it had been necessary and proportionate since the measure aimed at securing the future satisfaction of the plaintiff's claims. The Government further endorsed the arguments of the Constitutional Court in the matter (see paragraph 12 above).

2. The Court's assessment

22. The Court considers at the outset that the main issue arising in the present case under Article 1 of Protocol No. 1 is not solely – or indeed, not primarily – the measure ordering the deposit or the absence of interest, but

rather the applicant's inability to use its financial means for an unreasonably long time; and that this protracted situation, which itself represented a violation of the Convention (see paragraph 17 above; see also *Károly Hegedűs v. Hungary*, no. 11849/07, § 26, 3 November 2011), resulted in a significant sum of interest accrued on the amount which the applicant had eventually to pay to the plaintiff.

23. In this connection the Court recalls that it often considers it unnecessary to determine the complaint based on Article 1 of Protocol No. 1 separately (see, among many authorities, *Zanghi v. Italy*, 19 February 1991, § 23, Series A no. 194-C; *Mahieu v. France*, no. 43288/98, § 27, 19 June 2001; *Michailidou and Others v. Greece*, no. 21091/07, § 12, 12 March 2009), once a violation of Article 6 § 1 has been found on account of the protraction of the underlying civil proceedings.

24. Nevertheless, the Court is of the view that the case at hand is to be distinguished from that practice because the grievance suffered on account of the mere protraction of the case has been effectively amplified by virtue of the impugned measure going directly to the applicant's property rights. In particular, although the litigation ended with partial success of the applicant, it nevertheless lost the entire deposited amount because of its own obligation to honour the rules on default interest payable on the award. This interest was very significant as a consequence of the courts' delay in deciding the case. At the same time, the applicant was not allowed to access or use its deposit, let alone to accumulate interest on it. In these circumstances, the Court considers that this complaint merits separate consideration.

25. At this juncture, the Court recalls that while Article 1 of Protocol No. 1 is essentially concerned with preventing unwarranted State interference with property rights, in certain situations the effective enjoyment of the rights guaranteed by that provision may entail the adoption of positive measures, even in cases involving litigation between private individuals or companies (see *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 79, 20 September 2011). In particular, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his or her rights, including, where appropriate, by claiming damages in respect of any loss sustained (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008). The Court has already held that when scrutinising an interference with an applicant's right to peaceful enjoyment of possessions, the state of uncertainty in which the applicants might find themselves as a result of delays attributable to the authorities is a factor to be taken into account in assessing the State's conduct in such litigations (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 54, ECHR 2000-I; and *Broniowski v. Poland*

[GC], no. 31443/96, §§ 151 and 185, ECHR 2004–V). This is so because – although there is no obligation under Article 1 of Protocol No. 1 to apply an inflation-proofed default interest rate to private claims (see *O.N. v. Bulgaria* (dec.), no. 35221/97, 6 April 2000; and *Grozeva v. Bulgaria* (dec.), no. 52788/99, 3 November 2005) – national law often provides for default interest payable to a successful plaintiff, whose amount will increase with time.

For the Court, the applicant’s grievance concerning the inability to dispose of the deposited sum must be examined in the context of the plaintiff’s right to vindicate damages plus default interest on the one hand and from the statutory exclusion of interests on the applicant’s sustained deposit, on the other.

26. As already noted before, the court proceedings commenced on 31 May 2000 and ended almost ten years later, on 29 April 2010. The applicant was obliged to deposit a significant amount of money which was blocked on the bailiff’s trust account from 27 March 2001 until the end of the proceedings. It yielded no interest. By contrast, upon the domestic court’s final decision, the applicant was ordered to pay default interest in the approximate amount of HUF 189,500,000 which amount actually exceeded the principal sum awarded.

27. The Court considers that the cumulative effect of these elements constitutes an interference with the applicant’s right to the peaceful enjoyment of its possessions, conferred by the first sentence of Article 1 of Protocol No. 1 to the Convention. It must therefore be ascertained whether this interference was justified for the purposes of that provision.

28. It has not been disputed that the measure complained of was implemented “subject to the conditions provided for by law” within the meaning of Article 1 of Protocol No. 1; and the Court sees no reason to hold otherwise.

29. Moreover, the Court is satisfied that the impugned measure pursued the public interest consisting in guaranteeing the payment of a future court award and, generally, the security and predictability of trade and transactions.

30. In assessing the proportionality of the interference, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the protection of the individual’s fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 68, Series A no. 52). The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Străin and Others v. Romania*, no. 57001/00, § 44, ECHR 2005–VII).

31. In the present application, owing to the domestic courts’ serious delay in handling the case, an extraordinarily high amount of default interest became due and had to be paid by the applicant. In covering the principal award and this interest, the applicant’s entire deposit became subject to

set-off; but this amount, which could not be augmented by any interest, was nevertheless insufficient to settle the final award made to the plaintiff. The applicant ended up having to pay an additional, significant amount of money, on top of the deposit.

32. In the Court's view, this state of affairs – flowing in essence from the protraction of the case, the rejection of the applicant's requests to have the deposit released in exchange for other securities (see paragraphs 8-9 above) and, ultimately, the statutory exclusion of interest on the deposit – must be seen as having upset the balance which had to be struck between the general interest in securing the plaintiff's rights and the applicant's interest in the peaceful enjoyment of its possessions. The interference with the applicant's right was accordingly disproportionate to the aim pursued in that it had to bear an individual and excessive burden.

33. Having regard to the foregoing, the Court finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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.”

35. Concerning the violation of Article 6 § 1 of the Convention, the applicant claimed EUR 15,000 in respect of pecuniary and non-pecuniary damages combined. Concerning the violation of Article 1 of Protocol No. 1 to the Convention, the applicant claimed EUR 1,062,115 in respect of pecuniary damages and EUR 20,000 in respect of non-pecuniary damages.

36. The applicant also claimed EUR 7,321 for the costs and expenses incurred before the Court including VAT. This amount corresponds to 35 hours of legal work billable by its lawyer, charged at an hourly rate of HUF 50,000 plus VAT.

37. The Government contested these claims as excessive.

38. The Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant company (Rule 75 §§ 1 and 4 of the Rules of Court).

39. Accordingly, the Court reserves these questions and invites the Government and the applicants to notify it, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach.

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 1 of Protocol No. 1 to the Convention;
4. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
 - (a) reserves the said question in whole;
 - (b) invites the Government and the applicant to notify the Court, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 30 August 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mariáléna Tsirli
Registrar

Vincent A. De Gaetano
President