



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

SECOND SECTION

CASE OF MAGYAR v. HUNGARY

(Application no. 32396/96)

JUDGMENT

STRASBOURG

11 January 2001

FINAL

11/04/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court

In the case of Magyar v. Hungary,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 14 December 2000,

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

PROCEDURE

1. The case originated in an application (no. 32396/96) against Hungary lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Lajos Magyar (“the applicant”), on 9 August 1993.

2. The Hungarian Government (“the Government”) were represented by their Agent, Dr L. Hölzl, Deputy State-Secretary, of the Ministry of Justice.

3. The applicant alleged, in particular, that the court proceedings concerning the expropriation of his house had been unreasonably long in breach of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 13 January 2000 the Court declared the application partly admissible.

THE FACTS

7. In March 1988 the Budapest 5th District Council, by a decision upheld by the Budapest Metropolitan Council in June 1988, expropriated

the applicant's house. He was granted a flat in exchange and 1,110,000 Hungarian forints as indemnity.

On 1 August 1988 he brought before the Pest Central District Court an action against the Metropolitan Council, challenging the expropriation as such. On 10 August 1988 the District Court suspended the proceedings pending termination of the administrative proceedings concerning enforcement of the expropriation decision, the applicant's eviction and implementation of the indemnification scheme. The Government stated that these proceedings had later been discontinued since the applicant had not pursued the action.

8. In September 1989 the applicant brought a further action before the District Court, this time claiming additional indemnity for the expropriated property ("the 1989 action"). On 8 November 1989 the District Court held a hearing and appointed a real-estate expert. On 14 February 1991 the expert presented his opinion as to the value of the property.

9. Meanwhile, in 1990 the applicant had brought a third action ("the 1990 action") before the District Court against the Budapest 17th District Council and other defendants seeking judicial review of the expropriation proceedings and compensation for damage.

10. On 5 March 1991 the District Court held a joint hearing concerning both the 1989 and the 1990 actions, at which the proceedings concerning the former were suspended pending the outcome of the proceedings concerning the latter. On that occasion the applicant extended his 1990 action to include the Budapest Mayor's Office as defendant. The next hearing in the case was scheduled for 7 May 1991.

11. On 9 August 1991 the District Court separated the claim for compensation for damage ("the official liability action") from the remainder of the 1990 action, with a view to transferring the official liability action to the Budapest Regional Court for jurisdictional reasons. The applicant unsuccessfully appealed against the transfer. Owing to confusion between the various documents, the case-file of the official liability action was forwarded to the Regional Court only on 1 March 1995, following a complaint from the applicant.

On 19 December 1995, and 23 April and 17 September 1996 the Regional Court held hearings and, on the latter date, dismissed the official liability action, first examining the merits before deciding that it was time-barred under the relevant provisions of the Civil Code.

The applicant's appeal against this decision was filed with the Supreme Court on 3 December 1996.

On 29 May 1997 the Supreme Court held a hearing and suspended the proceedings which have been pending ever since.

12. As regards the remainder of the applicant's 1990 action, on 9 August 1991 the District Court discontinued the proceedings, holding that the action in this respect had been lodged out of time. On 8 October 1991 the Regional

Court finally dismissed an appeal by the applicant against the discontinuation order.

On 21 March 1994 the Supreme Court rejected his petition for review as it had been lodged after expiry of the 60-day statutory limit, counting from the date of service of the final decision, laid down in Article 272 (1) of the Code of Civil Procedure.

On 9 May 1996 the District Court rejected his request for the re-opening of the case. That decision was upheld by the Regional Court on 9 October 1996.

13. Meanwhile, on 8 January 1995 the applicant had requested the District Court to resume the proceedings concerning the suspended 1989 action. On 12 September 1996 the District Court held a hearing and again suspended the proceedings pending the decision as to whether to re-open the 1990 action. Subsequent to the Regional Court's above-mentioned decision of 9 October 1996, on 12 December 1996 the proceedings were resumed.

On 22 May 1998 the District Court decided to discontinue the proceedings, holding that the 1989 action had originally been lodged out of time. The applicant appealed to the Regional Court.

On 6 June 2000 the Regional Court upheld the first-instance decision.

On 30 August 2000 the applicant's petition for review was forwarded to the Supreme Court before which the proceedings are still pending.

THE LAW

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

14. The applicant complained that the court proceedings concerning the expropriation of his house had been unreasonably long, in breach of Article 6 § 1 of the Convention, which provides:

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

15. The applicant asserted that the litigation, which had started in 1988 and been pending in part ever since, had exceeded a “reasonable time”. The Government contested this.

16. The Court notes that the various sets of proceedings complained of commenced between August 1988 and early 1990 and that parts of the applicant's claims are still pending.

17. The Court observes that the period to be considered began only on 5 November 1992, when Hungary's recognition of the right of individual petition took effect (see the *Foti and Others v. Italy* judgment of 10 December 1982, Series A no. 56, p. 18, § 53). In assessing the

reasonableness of the time that elapsed after that date, account must be taken of the then state of the proceedings. Accordingly, the period to be considered is more than eight years, during which time the applicant's claims had been examined altogether at three levels of jurisdiction.

18. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, as a recent authority, *Humen v. Poland*, [GC], no. 26614/95, § 60, 15 October 1999).

19. The Court considers that although the proceedings complained of originated in separate actions, they are in fact closely inter-linked and concern various aspects of the expropriation of the applicant's house, which in itself cannot be regarded as being particularly complex.

20. Although the applicant's conduct appears to have caused some delays, the substantial delays in the case are imputable to the judicial authorities. In particular, the Court notes that the applicant's 1989 action remained suspended most of the time between March 1991 and December 1996 and that the review proceedings are still pending before the Supreme Court. Moreover, the official liability action was forwarded to the Regional Court with a delay of about three and a half years and the appeal proceedings are at present suspended.

21. The Court is not persuaded by the Government's arguments that the nature of the applicant's 1990 claim for judicial review of the expropriation prevented an earlier examination of the 1989 action and, moreover, that the duration of the proceedings concerning the latter was partly due to the applicant's delayed request for a resumption of the case on 8 January 1995. The Court accepts that the claim for additional indemnity had indeed been premature before the final decision on the judicial review, i.e. before 8 October 1991, and that afterwards the applicant should have urged the resumption of the proceedings more diligently. However, these elements are not of such a nature as to detract from the facts that, subsequent to his eventual resumption request, the applicant had to wait until 22 May 1998 before the District Court passed a first-instance decision - a period including a further period of suspension lasting almost two years -, and that it took the Regional Court another two years to decide on the applicant's appeal.

22. The Court also notes the Government's arguments seeking to justify the length of the proceedings concerning the official liability action, namely that this claim was dismissed as time-barred and thus devoid of purpose, that the unsuccessful judicial review deprived such a claim of any potential legal basis, that the exercise of two inappropriate remedies against the discontinuation of the judicial review would in any event have hindered the adjudication of this claim and, moreover, that in the absence of any legal

basis it barely implied the “determination” of a “dispute” about “civil rights” and thus doubtfully attracted the application of Article 6.

However, having regard to the fact that the Regional Court held three hearings in the case and eventually dismissed the claim on the merits, the Court is not convinced that the case became devoid of a legal object. Furthermore, for the Court, speculation about the futility of remedies used by the applicant in another set of proceedings have hardly any bearing on the length of this case, in which administrative laxity in transferring the case-file resulted in a delay of more than three and a half years.

23. In sum, the Court concludes that the applicant’s case was not heard within a reasonable time and that there has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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.”

A. Damages

25. The applicant claimed 3,000,000 Hungarian forints (HUF) for non-pecuniary damages. As regards pecuniary damages, he claims HUF 88,386,956 which amount would correspond to his financial loss on account of the expropriation of his real estate itself and of missed income of his business and, moreover, to his spending on reinstallation of equipment for his industry and household and replacement of some motor vehicles.

26. The Government did not comment on the applicant’s claims.

27. As regards the applicant’s claim for pecuniary damage, the Court finds no causal link between the facts in respect of which it has found a breach of the Convention and the pecuniary damage for which the applicant seeks compensation. The Court accordingly dismisses this claim.

28. Having regard to the overall length of the proceedings and ruling on an equitable basis, the Court awards the sum of HUF 1,000,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant claimed HUF 2,100,000 for costs and expenses incurred altogether in the domestic proceedings and before the Convention institutions.

30. The Government did not comment on the applicant's claims.

31. Although it is true that only those costs incurred in domestic proceedings in an attempt to prevent or redress the violation found by the Court may be reimbursed, nevertheless unreasonable delays in proceedings necessarily involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). As regards the cost of the Convention proceedings, the Court observes that the applicant has not furnished any details as to the calculation of his claims in this respect. Therefore the Court, making an assessment on an equitable basis, awards the applicant HUF 250,000.

C. Default interest

32. According to the information available to the Court, the statutory rate of interest applicable in Hungary at the date of adoption of the present judgment is 12% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 1,000,000 (one million) Hungarian forints in respect of non-pecuniary damage;
 - (ii) 250,000 (two hundred fifty thousand) Hungarian forints for costs and expenses;
 - (b) that simple interest at an annual rate of 12% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 11 January 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President