



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

SECOND SECTION

CASE OF ERDŐS v. HUNGARY

(Application no. 38937/97)

JUDGMENT

STRASBOURG

9 April 2002

FINAL

09/07/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Erdős v. Hungary,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNÐSSON,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 May 2001 and 12 March 2002,

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

PROCEDURE

1. The case originated in an application (no. 38937/97) against the Republic of Hungary lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Zoltán Erdős, on 16 August 1993.

Following Mr Erdős’s death, on 15 February 1999 his son and successor in the domestic proceedings, Mr Zoltán Erdős (“the applicant”) stated that he wished to pursue the application.

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

3. The applicant alleged, in particular, that the civil proceedings, which began in 1984 before the Buda Central District Court were excessively long.

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 3 May 2001 the Court declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

9. In October 1984 the applicant's father ("the plaintiff") brought an action against an upholstery workshop. He claimed some outstanding royalty fees on account of the workshop's manufacture and sale of a series of foldable beds based on his invention.

10. In September 1986 the Buda Central District Court informed the plaintiff that the upholstery workshop as such had no capacity to conduct legal proceedings and that its members were personally required to enter the proceedings as defendants.

11. On 28 April 1987 the District Court, for reasons of competence, discontinued the proceedings and transferred the case to the Budapest Regional Court. On 4 February 1988 the Regional Court held that it had no competence in the case either, and requested the Supreme Court to designate the competent court.

12. On 5 May 1988 the Supreme Court designated the Buda Central District Court to hear the case. On 10 November 1988, 16 February, 26 April, 21 June and 20 October 1989, 20 March and 29 June 1990, the District Court held hearings. Meanwhile, on 13 February 1989 and 15 June 1990 the plaintiff extended his claims.

13. In its judgment of 6 July 1990 the District Court awarded the plaintiff 714,070 Hungarian forints (HUF), plus accrued interest.

14. On appeal, on 22 May 1991 the Budapest Regional Court held a hearing, quashed the first-instance judgment and instructed its own competent bench to re-hear the case. It pointed out that, due to the plaintiff's repeated extensions of his claims, the case was no longer within the District Court's competence.

15. On 20 December 1991, 17 June, 15 July and 4 November 1992 the Regional Court held hearings. On the latter date it ordered the plaintiff to elaborate his claims within thirty days.

16. On 7 December 1992 the plaintiff again extended his action and, on 27 January 1993, he filed a memorandum with the Regional Court submitting the precise figures of his claims.

17. On 17 February and 28 April 1993 the Regional Court held hearings. The hearings scheduled for 1 September and 10 December 1993 and 9 March 1994 were adjourned.

18. On 4 May 1994 the Regional Court decided to obtain a technical expert opinion. On 28 September 1994 it put concrete questions to an expert institution, which on 27 October 1994 renounced the request. On

7 November 1994 another expert was appointed who presented his opinion on 19 December 1994.

19. On 1 March 1995 the Regional Court held a hearing. On this occasion the plaintiff again modified his claims. A hearing scheduled for 17 May 1995 was adjourned. On 16 June 1995 the plaintiff further extended his claims.

20. On 27 September 1995, 26 January and 3 July 1996 the Regional Court held further hearings. On the latter date the plaintiff was granted a 15-day time-limit to elaborate further the quantification of claims. His memorandum on that subject was returned for supplementation on 1 August 1996. The revised memorandum reached the Regional Court on 9 September 1996.

21. On 20 November 1996 the Regional Court held a further hearing and appointed an expert accountant. On 24 January 1997 the Regional Court ordered the plaintiff to advance payment for the expert.

22. On 6 June 1997 the Regional Court declared that the proceedings were interrupted on account of the death of one of the defendants. On 12 December 1997 the proceedings were resumed and a hearing was held.

23. On 13 February 1998 the Regional Court discontinued, on account of the plaintiff's partial waiver, the proceedings in respect of some of the defendants.

24. On 25 February 1998 the Regional Court gave a partial judgment and awarded the plaintiff HUF 858,200 plus accrued interest. On 18 March 1998 the plaintiff appealed to the Supreme Court.

25. On 27 December 1998 the plaintiff died. On 20 October 1999 the applicant and his late father's widow entered the domestic proceedings as the plaintiff's successors.

26. On 10 November 1999 the Supreme Court held a hearing.

27. On 22 February 2000 the Supreme Court gave a second instance judgment, partly amending the decision of 25 February 1998.

THE LAW

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

28. The applicant submitted that the civil action brought by his late father was not heard within a "reasonable time" as required by 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"

The Government rejected this submission.

A. Period to be considered

29. The period to be considered began in October 1984, when the applicant's father brought an action before the Buda Central District Court, and ended on 22 February 2000 when the Supreme Court gave its judgment. They therefore lasted about fifteen years and four months before three levels of jurisdiction.

The Court observes that, when examining the length of the proceedings, the period to be considered only begins on 5 November 1992, the date of the Convention's entry into force in respect of Hungary. However, in assessing the reasonableness of the time that elapsed after this date, account must be taken of the then state of proceedings (see the Foti and others v. Italy judgment of 10 December 1982, Series A no. 56, p. 18, § 53). After this date, the proceedings were pending for another seven years and four months during which period two court instances dealt with the case.

B. Reasonableness of the length of the proceedings

30. 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).

1. Complexity of the case

31. In the Government's submission, the case, although simple in nature, became rather complicated on account of the plaintiff's repeated extensions and modifications of his claims and an increase in the number of defendants.

32. Like the applicant, the Court considers that in fact the case was not very complex.

2. Conduct of the parties

33. The Government argued that the delays were largely imputable to the plaintiff's conduct – in particular, he was repeatedly ordered to supplement his claims – which contributed decisively to the slowing down of the proceedings. The applicant maintained, on the contrary, that his father had shown due diligence.

34. The Court points out that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time"

requirement (see, among other authorities, the *H. v. France* judgment of 24 October 1989, Series A no. 162, pp. 21-22, § 55). In the instant case, the Court observes that the plaintiff extended or modified his claims three times, which clearly caused some delay. The time required for him to supplement his claims (a 30-day period following 4 November 1992 and a further period between 3 July and 9 September 1996) amounted to some three months altogether. Moreover, some ten months elapsed before the applicant resumed the proceedings after his father's death (27 December 1998 - 20 October 1999).

These delays cannot, therefore, be imputed to the State.

3. Conduct of the judicial authorities

35. The Government submitted that the Hungarian courts had acted without procrastination. The applicant contested this.

36. In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility (see, among other authorities, the *H. v. France* judgment previously cited, § 58).

37. At least two periods of unexplained delay are apparent in the instant case: between 28 April 1993 and 1 March 1995, and 20 November 1996 and 6 June 1997 – periods amounting to some 28 months altogether – the Regional Court's activity being mostly limited to obtaining expert opinions.

38. Having regard to all the circumstances of the case and, more particularly its overall length, the Court considers that the total duration of the proceedings was excessive.

The Court concludes therefore that the case of the applicant's father was not heard within a "reasonable time". Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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. Damage

40. The applicant claimed 9 million Hungarian forints (HUF) (approximately EUR 37,043) for non-pecuniary damage.

41. The Government found the applicant's claim excessive.

42. Having regard to the overall length of the proceedings and ruling on an equitable basis, the Court awards the sum of EUR 5,500 in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant claimed HUF 161,749 (approximately EUR 666) for costs and expenses incurred in the domestic proceedings and before the Convention institutions.

44. The Government noted that the applicant was not represented by a lawyer before the Court and submitted that the costs and expenses claimed were mainly incurred in the domestic proceedings.

45. 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). Therefore the Court, making an assessment on an equitable basis, awards the applicant EUR 500.

C. Default interest

46. 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 11% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* by 6 votes to 1 that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by 6 votes to 1
 - (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,
 - (i) EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage, and
 - (ii) EUR 500 (five hundred euros) for costs and expenses;
 - (b) that simple interest at an annual rate of 11% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 April 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:

- (a) Concurring opinion of Judge Loucaides;
- (b) Dissenting opinion of Judge Mularoni.

J.-P.C.
S.D.

CONCURRING OPINION OF JUDGE LOUCAIDES

I agree with the finding that there has been a violation of Article 6 in this case because of unexplained delays in the proceedings attributable to the judicial authorities of the respondent State. However, my approach differs from that of the majority in two respects:

a) On the basis of the material before the Court, I confine my finding only to the periods 28 April 1993 until 28 September 1994 and 20 November 1996 until 6 June 1997, amounting to some 23 months altogether, which, I believe, are excessive. I do not find any other unexplained delays in this case attributable to the State. The nature of the proceedings and, in particular, the conduct of the applicant were basically responsible for the duration of the proceedings.

b) The majority took into account expressly the “overall length” of the proceedings. In my opinion it is wrong to rely on the “overall length” of any proceedings as being by itself a ground or factor for finding a breach of the obligation under Article 6 of the Convention for a hearing “within a reasonable time”. Such a breach can only be established if there are unreasonable delays in the proceedings attributable to the State. Proceedings may be protracted by the conduct of the applicant or by the complexity and general nature of the case. In such cases, even if the “overall length” of the proceedings is excessive, no responsibility should be borne by any State organ so long as the latter did not contribute in any way to the prolongation of the duration of the proceedings.

I reiterate here what I have said in the case of *Maczynski v. Poland* (application no. 43779/98, judgment, 15 January 2002).

“It is true that according to the case-law of the Court, the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. But there is no absolute or objective limit to the length of time that can be taken. The question whether there has been a delay contrary to the requirements of Article 6 § 1 cannot be decided *in abstracto* with reference only to the total length of the proceedings. Whether there has been an unreasonable delay is a matter that must be assessed in the light of the particular facts of the case and having regard to the criteria laid down in the Court’s case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, p. 12, § 30).”

A breach of Article 6 § 1 can only be found where it is established that there have been delays attributable to the State regardless of the total length of proceedings. Thus, in the case of *Ciricosta and Viola v. Italy* (judgment of 4 December 1995, Series A no. 337-A), in which the period in issue was more than 15 years for civil proceedings that were still pending at the time of the judgment, the Court held:

“even though a period of more than fifteen years for civil proceedings that are still pending may, on the face of it, seem unreasonable, the conduct of the applicants ... leads the Court to declare Mr Ciricosta’s and Mrs Viola’s complaint unfounded” (p. 11, § 32).

In the same case the Court stated the following:

“The Court reiterates in the first place that only delays attributable to the State may justify a finding of failure to comply with the ‘reasonable time’ requirement” (p. 10, § 28).

DISSENTING OPINION OF JUDGE MULARONI

I disagree with the majority that the length of the proceedings was unreasonable.

It is true that the proceedings lasted 15 years and 4 months, but apart from the fact that only about 7 years and 3 months are covered by the Convention (since Hungary ratified it on 5 November 1992), I emphasise that “only delays attributable to the State may justify a finding of a failure to comply with the ‘reasonable time’ requirement” (see, among other authorities, the *H. v. France* judgment of 24 October 1989, Series A no. 162, pp. 21-22, § 55).

Even if, according to the Court case-law, “in assessing the reasonableness of the time elapsed after this date, account must be taken of the then state of the proceedings” (see, among other authorities, *Foti and others v. Italy* judgment of 10 December 1982, Series A no. 56, p. 18, § 53), it seems to me that the delays were largely attributable to the plaintiff’s conduct.

We know from the facts that:

1) in October 1984 the applicant’s father (“the plaintiff”) brought an action against an upholstery workshop. In September 1986 the Buda Central District Court informed him that the upholstery workshop as such had no capacity to conduct legal proceedings and that its members were personally required to enter the proceedings as defendants (hence, as far as I understand, about two years were lost due to the plaintiff’s mistake);

2) on 13 February 1989 and 15 June 1990 the plaintiff extended his claims. On 22 May 1991 the Budapest Regional Court, quashing the first-instance judgment, pointed out that “due to the plaintiff’s repeated extensions of his claims, the case was no longer within the District Court’s competence” (hence, as far as I understand, more than two years were again lost due to the plaintiff’s fault);

3) on 7 December 1992 the plaintiff again extended his action and, on 27 January 1993, he filed a memorandum with the Regional Court submitting the precise figures of his claims;

4) on 1 March 1995 the plaintiff again modified his claims;

5) on 16 June 1995 the plaintiff further extended his claims; we know from the Government’s observations that, at the hearing of 3 July 1996, the applicant again extended his claims; as a consequence the plaintiff was granted a term to elaborate further quantification of his claims; his memorandum was returned for supplementation on 1 August 1996 and the revised memorandum reached the Regional Court on 9 September 1996;

6) on 6 June 1997 the Regional Court declared that the proceedings were interrupted on account of the death of one of the defendants. The proceedings were resumed as early as 12 December 1997 (as far as I understand, the plaintiff waited about 6 months before resuming the

proceedings and the judicial authorities cannot be held responsible for this delay);

7) due to the plaintiff's partial waiver, on 13 February 1998 the Regional Court discontinued the proceedings in respect of some of the defendants;

8) after the plaintiff's death (27 December 1998), the applicant and his late father's widow entered the proceedings as the plaintiff's successors on 20 October 1999 (i.e., about 10 months later).

We also know from the Government's observations that:

1) on 28 April 1993 the court granted the plaintiff a respite till 1 June to enable him to elaborate his legal opinion on the defendant's submissions lodged in the meantime;

2) on 1 September 1993 the plaintiff requested the court for a respite as a new legal representative had entered the suit. Therefore the court adjourned the hearing till 10 December, pointing out the claims the plaintiff was expected to specify within 45 days. On 10 December 1993 some of the defendants requested the court to adjourn the hearing on account of the new claims raised;

3) the new hearing was held on 9 March 1994; the court had to adjourn it again due to new documents submitted at the hearing;

4) on 4 May 1994 the Budapest Regional Court appointed a technical expert from the Institute of Forensic Technical Expertise. On 28 September 1994 the court specified the questions to be answered by the expert and it fixed 60 days from the delivery of its decision for the presentation of the expert opinion. On 27 October 1994 the Institute indicated to the court that owing to lack of competence it was not able to present the expert opinion. Therefore, on 7 November, the Budapest Regional Court appointed another expert, who presented his opinion on 17 December 1994;

5) at the hearing of 26 January 1996 the plaintiff requested the court to transfer the case to the Prosecutor's Office concerning his allegations of abuses by the defendants. The court adjourned the hearing, transferred the case-file to the Prosecutor's Office (which found that the documents did not contain anything in particular which might call for the institution of criminal proceedings) and, after receiving the file back, fixed the date of the next hearing;

6) on 20 November 1997 the plaintiff again extended his claims.

In consideration of the above, I disagree that "at least two periods of unexplained delay are apparent in this case: between 28 April 1993 and 1 March 1995, and 20 November 1996 and 6 June 1997 - periods amounting to some 28 months altogether - the Regional Court's activity being mostly limited to obtaining expert opinions" (§ 37 of the judgment).

Even if the proceedings could have been dealt with faster at times, I believe that these delays did not exceed a reasonable time and that the length of the proceedings was mostly due to the plaintiff's conduct.

For all these reasons, I conclude that the length of the proceedings did not exceed the “reasonable time” requirement and that the applicant’s rights under Article 6 § 1 of the Convention have not been violated.