



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

SECOND SECTION

CASE OF LÉVAI AND NAGY v. HUNGARY

(Application no. 43657/98)

JUDGMENT

STRASBOURG

8 April 2003

FINAL

24/09/2003

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 Lévai and Nagy 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 L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 March 2002 and 18 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 43657/98) 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 two Hungarian nationals, Mr György Lévai and Mr György Nagy (“the applicants”), on 10 May 1998.

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

3. The applicants alleged, in particular, that the proceedings concerning their labour-law action lasted an unreasonably long time, 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.

6. 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 (Rule 52 § 1).

7. By a decision of 12 March 2002 the Court declared the application partly admissible.

THE FACTS

8. The applicants were born in 1959 and 1952 respectively and live in Szigethalom, Hungary.

9. On 8 February 1993 the applicants were dismissed by their employer, a car manufacturer.

10. On 4 March 1993 the applicants brought an action before the Pest County Labour Court for unlawful dismissal.

11. On 24 November 1993 the Labour Court held a hearing and transferred the case to the Economic *Collegium* of the Pest County Regional Court. The Labour Court observed that liquidation proceedings were pending against the applicants' former employer.

12. On appeal, on 28 February 1994 the Regional Court quashed the Labour Court's decision and remitted the case to it.

13. On 31 August 1994 the Labour Court decided that the applicants' dismissal had been unlawful. It transferred their pecuniary claims to the Regional Court's Economic *Collegium*.

14. On appeal, on 27 February 1995 the Regional Court quashed the Labour Court's decision and remitted the case to it a second time.

15. On 28 September 1995 the Labour Court annulled the applicants' dismissal on grounds of unlawfulness. On 25 March 1996 the Regional Court upheld this decision.

16. Subsequently the applicants lodged various pecuniary claims with the Labour Court for outstanding wages and severance pay. On 3 July 1996 the Labour Court held a hearing, ruled that it lacked competence to hear the claims and transferred the file to the Bankruptcy and Liquidation Section of the Regional Court, which was in charge of the liquidation of the defendant company.

17. On 22 October 1996 the Supreme Court, acting as a review instance, quashed the decisions of 28 September 1995 and 25 March 1996. Simultaneously, it discontinued those proceedings and transferred that part of the applicants' claims to the Regional Court. The Supreme Court pointed out that, according to section 38 § 3 of the Insolvency Act, pecuniary claims against a business entity under liquidation could only be pursued in the framework of liquidation proceedings.

18. In the context of the liquidation proceedings, the Regional Court held a hearing on 18 December 1996 and ordered the liquidation trustee in charge of the defendant company to complete the case-file.

19. By a decision of 29 January 1997, the Regional Court annulled the applicants' dismissal. On 24 April 1997 the Supreme Court, acting as a

second instance, upheld this decision and ruled that the applicants had been unlawfully dismissed.

20. As regards the quantification of the applicants' claims, the Regional Court held a hearing on 30 June 1997 and, on 3 July 1997, it awarded 1,827,792 Hungarian forints (HUF) to the first applicant and HUF 899,264 to the second applicant, for outstanding wages and severance pay. The decision was immediately enforceable.

21. On 8 September and 24 November 1997 the Regional Court held further hearings. On 28 November 1997, it awarded a further HUF 681,620 to the first applicant and HUF 305,685 to the second applicant, for loss of earnings. The Regional Court dismissed the applicants' claims for compensation for non-pecuniary damage.

22. On the applicants' appeal, on 26 November 1998 the Supreme Court, acting as a second instance, upheld the dismissal of the applicants' claims for compensation for non-pecuniary damages. However, it quashed the remainder of the first instance decision – to the extent that it was disputed on appeal – and remitted the claims in question to the first instance court.

23. The proceedings before the Regional Court were resumed on 24 March 1999. Another hearing took place on 30 June 1999. On 22 July 1999 the Regional Court appointed an expert accountant.

24. On 23 May 2000 the expert presented his report to the Regional Court. On 17 August 2000 the applicants objected to the expert's opinion. On 30 August 2000 the Regional Court held a hearing and ordered the expert to supplement his report within 15 days. On 10 January 2001 another hearing took place.

25. On 29 March 2001 the Regional Court awarded, under various heads, the amounts of HUF 58,200, 69,465 and 549,235, plus accrued interest, to the first applicant, and HUF 40,800, plus accrued interest, to the second applicant.

26. On 18 April 2001 the applicants appealed to the Supreme Court.

27. On 15 November 2001 the Supreme Court, sitting as second instance, dismissed the applicants' appeal.

28. On 4 March 2002 the applicants filed a petition for a review with the Supreme Court's review bench. The review proceedings are still pending.

THE LAW

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

29. The applicants complained that the length of the proceedings in their case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

30. The Government contested this view.

A. Period to be taken into consideration

31. The Court first observes that the proceedings started on 4 March 1993, when the applicants lodged their claim with the Pest County Labour Court.

32. The proceedings are still pending. The total length of the applicants' case to date accordingly amounts to ten years. The proceedings involved three levels of court jurisdiction.

B. Reasonableness of the length of the proceedings

33. 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, for instance, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

34. The Government contended that the case was complex as it concerned multiple claims and required the appointment of an expert.

35. The applicants disagreed with the Government and argued that the case was not complex.

36. The Court notes that the case concerned the applicants' allegedly unlawful dismissal and their related pecuniary claims. While it is true that an expert accountant assisted the court in quantifying the applicants' claims, his involvement was in essence limited to the period between 22 July 1999

and 30 August 2000. In these circumstances, the case cannot reasonably be regarded as complex solely on account of the expert's participation. Moreover, the Court is of the view that the other reasons invoked by the Government regarding complexity do not sufficiently explain the length of the present case (see, *mutatis mutandis*, *Malinowska v. Poland*, no. 35843/97, § 88, 14 December 2000, unpublished).

2. Conduct of the applicants

37. The Government argued that the applicants' conduct contributed to the protraction of the proceedings as their submissions to the courts were often inadequate or imprecise. The applicants contested this.

38. It does not appear that the applicants had to amend their claims substantially with the result that progress in the proceedings was delayed; nor is there anything to suggest that they abused their procedural rights. The Court thus finds that no periods of delay in the proceedings can be imputed to them.

3. Conduct of the judicial authorities and what was at stake for the applicants

39. The Government considered that the courts had acted with due diligence in handling the applicants' case and that there was no particular period of inactivity on the part of the authorities. The applicants contested this.

40. The Court notes that the applicants' initial claims introduced on 4 March 1993 reached the competent Bankruptcy and Liquidation Section of the Regional Court only by virtue of the decisions of 3 July and 22 October 1996. As shown by the Supreme Court's reasoning in its decision of 22 October 1996, the case fell to be examined from the outset within the framework of liquidation proceedings. Accordingly, the three-year period preceding the transfer of the case to the proper forum was in effect irrelevant and considerably delayed the examination of the applicants' claims.

The proceedings were then further delayed as a result of the Supreme Court's decision to quash part of the Regional Court's decision of 28 November 1997 and to remit certain claims to the first instance court on 26 November 1998. This resulted in an unexplained delay of one year. A further delay was occasioned by the involvement of an expert accountant whose completed report in reply to the order of 22 July 1999 was not submitted before mid-September 2000.

41. For the Court, these three significant periods of delay can only be explained by the inefficiency of the domestic procedures and the inactivity of the domestic courts in dealing with the case, including the belated submission of the expert report. As regards the apparent initial

disorganisation in the procedure, the Court recalls that Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, the *Duclos v. France* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2180–81, § 55 *in fine*).

The Court concludes that the delay in the proceedings must be mainly attributed to the national authorities.

42. Having regard to what was at stake for the applicants in the proceedings (cf., e.g., *Vallée v. France* judgment of 26 April 1994, Series A no. 289-A, p. 17, § 34) – the employment dispute at issue should have been dealt with speedily (cf. *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, p. 23, § 72) – and taking into account the periods of inactivity attributable to the authorities, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Mr Lévai claimed 553,384.59 US dollars (“USD”) for pecuniary and USD 2,000,000 for non-pecuniary damage arising out of the length of the proceedings.

45. Mr Nagy claimed USD 304,942.81 for pecuniary and USD 2,000,000 for non-pecuniary damage on the same ground.

46. The Government submitted that the applicants' claims were excessive and argued that any compensation to be awarded should be assessed in the light of relevant judgments of the Court against Hungary.

47. The Court observes that there is no evidence of any causal link between the violation of Article 6 § 1 of the Convention found and the applicants' claim for compensation for pecuniary damage. However, it accepts that the applicants must be considered to have suffered some moral damage on account of the frustration caused by the length of the proceedings, the outcome of which was of importance for their livelihood. Making its assessment on an equitable basis and having regard to the

circumstances of the case, the Court awards each of the applicants EUR 8,000 as compensation for non-pecuniary damage.

B. Costs and expenses

48. The applicants made no claim under this head.

C. Default interest

49. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 each of the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President