



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

SECOND SECTION

CASE OF SIMKÓ v. HUNGARY

(Application no. 42961/98)

JUDGMENT

STRASBOURG

8 April 2003

FINAL

08/07/2003

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 Simkó 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. 42961/98) 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 Mr and Mrs András Simkó, Hungarian nationals, (“the applicants”), on 5 June 1998.

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

3. The applicants alleged, in particular, that the proceedings concerning an action brought by them on 9 October 1992 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 1955 and 1953 respectively and live in Sopron, Hungary. Their previous application (no. 27587/95) was declared inadmissible by a Committee of the Commission on 16 May 1996.

9. Seeking judicial review and compensation for damages on account of administrative decisions taken in a protracted dispute over their licence to sell folk-art items on public premises, the applicants brought an action on 9 October 1992 against the Sopron Mayor's Office ("the 1992 action"). The action was first registered at the Sopron District Court, which on 4 November 1992 issued an order for the completion of the file. The applicants complied with this order on 12 November 1992.

10. On 1 March 1993 the District Court rejected the action, holding that it had no competence to hear the case. On 23 March 1993 the applicants appealed.

11. On 5 August 1993 the Győr-Moson-Sopron County Regional Court quashed the District Court's decision. It transferred the case-file to its own competent bench.

12. In the proceedings before the Regional Court, on 16 September and 28 October 1993 orders were issued for the completion of the file. The applicants complied with these orders on 28 September and 5 November 1993, respectively. On 19 November 1993 the defendant authority was eventually notified of the action.

13. Meanwhile, on 1 March 1993, the applicants brought an official liability action in the context of the above-mentioned proceedings before the District Court ("the 1993 action"). The defendant authority was notified of this action on 22 October 1993. On 20 November 1993 the District Court held a hearing and, on 29 November 1993, it transferred the case-file to the Regional Court for reasons of competence.

14. Following a hearing held on 14 December 1993, the Regional Court on 9 February 1994 discontinued the proceedings concerning the applicants' 1992 action. The Regional Court observed that the defendant authority had been notified earlier of the 1993 action and, for that reason, the applicants' claims were to be pursued in the proceedings relating to the latter action. On 21 February 1994 the applicants appealed to the Supreme Court, which, on 13 October 1994, upheld the decision to discontinue the proceedings on the 1992 action.

15. Meanwhile, following repeated exchanges of observations between the parties in the proceedings concerning the 1993 action, the Regional Court held hearings on 25 August and 18 October 1994. Another hearing was scheduled for 25 October 1994. In the context of procedural disputes concerning the applicants' motion to hear certain witnesses, their obligation to pay outstanding stamp duties, as well as questions of legal aid, on

2 November 1995 the Supreme Court decided the applicants' procedural appeals.

16. On 9 July 1996 the Regional Court awarded the applicants compensation in a total amount of 300,000 Hungarian forints (“HUF”), plus accrued interest. The Regional Court dismissed the remainder of their claims. Having reviewed numerous related administrative files and decisions, the Regional Court ruled that the defendant authority's conduct had hindered the applicants in the exercise of their rights derived from their licence to trade on public premises. In reasoning its ten-page decision, the Regional Court relied on documentary evidence.

17. On 6 August 1996 the applicants appealed. On 2 September 1996 they supplemented their appeal.

18. On 5 February 1998 the Supreme Court, acting as a second instance jurisdiction, held a hearing. On 13 February 1998 the Supreme Court upheld the Regional Court's decision. The decision was served on the applicants on 8 April 1998.

THE LAW

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

19. 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...”

20. The Government contested this view.

A. Period to be taken into consideration

21. The Court first observes that the proceedings started on 9 October 1992, when the applicants lodged their claim with the Sopron District Court. However, the period to be taken into consideration by the Court did not begin on that date, but on 5 November 1992, when the declaration whereby Hungary recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect.

22. The proceedings ended on 8 April 1998 when the Supreme Court's decision was served on the applicants. The total length of the applicants' case accordingly amounted to 5 years and 6 months, of which the period of 5 years and 5 months falls within the Court's jurisdiction *ratione temporis*.

The proceedings involved three levels of court jurisdiction and two separate cases during the first year.

23. In order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 5 November 1992 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Reasonableness of the length of the proceedings

24. 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, *Humen v. Poland* cited above, § 60; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

1. Complexity of the case

25. The Government contended that the case was complex, in particular as it concerned multiple claims.

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

27. The Court notes that the case concerned the applicants' claims for judicial review and compensation for damages on account of administrative decisions taken in a dispute over a sales licence, as well as a related official liability action. The Regional Court relied exclusively on documentary evidence; its ten-page decision was upheld by the Supreme Court after a single hearing. In these circumstances, the case cannot reasonably be regarded as complex. The Court is of the view that the 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

28. 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 contest this.

29. The Court observes that, in the proceedings before the Regional Court, on 16 September and 28 October 1993 orders were issued for the completion of the file. The applicants complied with these orders on 28 September and 5 November 1993, respectively, showing due diligence. Moreover, while it is true that the events in a period which only yielded procedural decisions (from 25 October 1994 until 2 November 1995)

concerned, at least in part, the applicants' appeal against an order of the Regional Court obliging them to pay outstanding stamp duties, the Court notes that, simultaneously, their motion to hear certain witnesses as well as questions of legal aid were disputed. In these circumstances, the Court is hesitant to impute any significant delay to the applicants.

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

30. The Government considered that the courts had acted with due diligence in handling the applicants' case. They submitted that the length of the proceedings was reasonable having regard to the absence of any requirement on the part of the national authorities to act with special diligence. The applicants contested this.

31. The Court notes that the applicants' initial claim introduced on 9 October 1992 did not reach the competent court until 5 August 1993; an unexplained delay of ten months thus occurred. The resultant delay in notifying the defendant of the action rendered, in the light of the Regional Court's decision of 9 February 1994, any preceding procedure devoid of relevance. Moreover, it took the domestic court more than a year (between 25 October 1994 and 2 November 1995) to decide on, *inter alia*, the applicants' motion to hear witnesses and their request for legal aid. Lastly, it was not until 5 February 1998 that the Supreme Court held a hearing concerning the applicants' appeal lodged, in its finalised form, on 2 September 1996.

32. For the Court, these three significant periods of inactivity are attributable to the authorities. As regards the apparent disorganisation of 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*). Therefore the Court concludes that delay in the proceedings must be mainly attributed to the national authorities.

33. Having regard to the circumstances of the case and what was at stake for the applicants, 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

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.”

A. Damage

35. The applicants claimed HUF 5,002,543 for pecuniary and HUF 2,000,000 for non-pecuniary damage arising out of the length of proceedings.

36. The Government submitted that the applicants' claims were excessive and argued that the damage should be assessed in the light of the relevant case-law of the Court in its cases against Hungary.

37. There is no evidence of any causal link between the violation of Article 6 § 1 of the Convention found above and the applicants' claim for pecuniary damage. However, the Court accepts that the applicants suffered damage of a non-pecuniary nature as a result of the length of the proceedings instituted by them. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicants EUR 4,000 as compensation for non-pecuniary damage.

B. Costs and expenses

38. The applicants made no claim under this head.

C. Default interest

39. 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 the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the respondent State's national currency;

(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