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

SECOND SECTION

CASE OF NYÍRŐ AND TAKÁCS v. HUNGARY

(Applications nos. 52724/99 and 52726/99)

JUDGMENT

STRASBOURG

21 October 2003

FINAL

11/11/2003

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 Nyírő and Takács 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 JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 17 September 2002 and on 30 September 2003,

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

PROCEDURE

1. The case originated in applications (nos. 52724/99 and 52726/99) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Hungarian nationals, Mrs Lászlóné Nyírő and Mrs Lajosné Takács ("the applicants"), on 2 August and 16 July 1999, respectively.

2. The applicants were represented by Mr I. Barbalics, a lawyer practising in Nagyatád, Hungary. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. The applicants alleged that the proceedings concerning their actions for damages for work-related illnesses lasted an unreasonably long time, in breach of Article 6 § 1 of the Convention.

4. The applications were 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.

5. On 1 February 2001 the applications were joined.

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 17 September 2002 the Court declared the applications admissible.

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

THE FACTS

9. Mrs Lászlóné Nyírő ("the first applicant") was born in 1947 and lives in Budapest. Mrs Lajosné Takács ("the second applicant") was born in 1944 and lives in Budaörs, Hungary.

10. In the late 1980s the applicants, employed by a State-owned Hungarian company, were working in Tengiz, at a mineral, oil and gas mining construction site in Kazakhstan (former USSR).

11. On account of various obscure illnesses, the applicants were forced to retire prematurely. The applicants pointed out in their observations that they became disability pensioners after their return to Hungary.

A. Proceedings instituted by the first applicant

12. On 16 December 1991 the first applicant brought an action before the Budapest Labour Court. She claimed that her illnesses had been caused by the hazardous working environment in Tengiz and that her former employer should be ordered to pay her compensation.

13. The first hearing in the case took place on 11 March 1993. On that occasion, two witnesses were heard and a medical expert was appointed. On 17 June 1993 another hearing was held and a chemistry institute was designated to provide an expert opinion.

14. Following the first applicant's complaint to the Ministry of Justice about the slowness of the procedure, on 15 May 1995 another bench was assigned to deal with the case.

15. Another hearing took place on 30 August 1995. An expert witness failed to appear at the hearing. According to the Government's observations, the defendant was ordered to file with the court the expert opinions which had been previously drawn up in connection with the construction work in Tengiz. The court decided that further experts should be appointed, if necessary, in the light of the documents to be submitted by the defendant company.

16. On 26 March 1996 the judge in charge of the case specified the questions to be put to the chemistry institute. On 2 October 1996 the institute declined to give answers to the questions put by the court as it had no experts available who could address such complex matters.

17. On 21 January 1997 the Budapest Technical University, which was subsequently appointed as the expert institution, also declined to carry out

the examination as it lacked the competence to deal with air-pollution matters.

18. At the request of the first applicant's lawyer, her proceedings were joined to those of the second applicant on 10 June 1997.

B. Proceedings instituted by the second applicant

19. On 22 July 1991 the second applicant brought an action before the Budapest Labour Court against her former employer for compensation for damage caused by work-related illnesses. The first hearing was held on 19 March 1992. However, the second applicant failed to appear.

20. The next hearing was held on 9 July 1993. However, the second applicant did not attend the hearing. The court ordered the defendant company to submit various expert opinions as well as the results of medical examinations carried out on other persons employed at Tengiz.

21. At a hearing on 17 January 1995 the second applicant was heard and her doctor was invited to submit the second applicant's medical files.

22. On 26 April 1996 the court appointed a medical expert. On 26 September 1996 the medical expert submitted his opinion. He relied on the previously submitted medical files, as the second applicant refused to undergo further medical examinations.

23. At a hearing on 26 November 1996, the court appointed a legal aid lawyer at the second applicant's request and the medical expert's opinion was discussed.

24. Further hearings were held on 28 January, 11 March and 15 April 1997. On these occasions, several witnesses failed to appear, but four witnesses, including experts in the area of chemistry and labour protection, were heard. Numerous related documents were examined and further clarifications were sought from an ophthalmologist.

C. The joined proceedings

25. At the hearing on 10 June 1997 the Labour Court heard a third plaintiff in the case. Moreover, a report from 1991 on an on-site inspection at Tengiz presented by the National Labour Institute was discussed by the parties. The court confirmed that an expert in the fields of geology and oil had still to be designated.

26. At a hearing on 9 September 1997, five witnesses, including four experts, were heard.

27. In 1998 yet another judge was assigned to deal with the case. At the hearing on 30 September 1998 an expert in the field of toxicology was heard.

28. Subsequently, the first applicant extended her action against the Hungarian State, as was permitted under section 146 § 1 of the Code of

Civil Procedure. On 16 November 1998 the State was ordered by the court to join the proceedings as the second defendant.

29. At a hearing on 18 January 1999, at which five witnesses failed to appear, the Labour Court appointed several institutions to act as experts as well as a medical expert to examine the first applicant.

30. On 28 January 1999 the second applicant also extended her action against the Hungarian State. On 2 February 1999 she modified her claims.

31. At a hearing on 3 March 1999, the judge in charge of the case issued an order urging the appointed expert institutions to submit their opinions. She repeatedly ordered that the first applicant be examined by a medical expert and that writs be served on witnesses.

32. At a hearing on 28 April 1999 two witnesses were not present and three others were heard. On 14 December 1999 a medical expert opinion on the first applicant's condition was filed.

33. On 18 and 21 January 2000 the applicants made their final submissions to the Labour Court.

34. On 21 February 2000 the Labour Court delivered its judgment in which it found the Hungarian State liable to the applicants. In so far as the applicants' claims had been directed against their former employer, the Labour Court discontinued the proceedings.

35. The Labour Court awarded the first applicant 1,905,000 Hungarian forints (HUF), plus accrued interest, by way of compensation for pecuniary damage, HUF 1 million for non-pecuniary damage and HUF 154,250 for legal costs. It awarded the second applicant HUF 1,710,000, plus accrued interest, for pecuniary damage, HUF 1 million for non-pecuniary damage and HUF 144,500 for legal costs. Both applicants were awarded *pro futuro* a monthly allowance of HUF 15,000. The remainder of their claims was dismissed.

36. The judgment was corrected and supplemented on 6 May 2000. In June 2000 the applicants and the Hungarian State appealed.

D. Appeal and review proceedings

37. On 22 September 2000 the Budapest Regional Court held a hearing and appointed the Forensic Committee of the Scientific Health Council to review the previous medical opinions. A hearing scheduled for 17 January 2001 was postponed twice.

38. Meanwhile, the applicants were examined by the Scientific Health Council on 13 December 2000 and its review of the various opinions was submitted on 19 March 2001.

39. In a judgment delivered on 11 May 2001, the Regional Court, as regards the Hungarian State, quashed the first instance decision and discontinued the proceedings. The court also quashed the first instance

judgment in the part concerning the first defendant and, in this respect, dismissed the applicants' action.

40. On 28 February 2002, on the parties' petition for review, the Supreme Court quashed, in regard to the applicants, the first and second instance decisions and remitted them to the first instance court. It held that the second instance decision relied on contradictory expert opinions, that a more thorough taking of evidence was required and that the responsibility of the Hungarian State in the matter was unclear.

41. In the resumed proceedings, a hearing took place on 30 September 2002. A further hearing was scheduled for 30 November 2002. The proceedings are pending at first instance.

THE LAW

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

42. 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..."

43. The Government contested this view.

A. Period to be taken into consideration

44. The Court first observes that the proceedings initiated by the first applicant started on 16 December 1991 and those brought by the second applicant on 22 July 1991.

45. These proceedings, which were subsequently joined, are still pending before the first instance court. The total length of the applicants' case, subsequent to the Convention's entry into force with respect to Hungary on 5 November 1992 to date, amounts to almost eleven years. The proceedings involved three levels of jurisdiction and a remittal of the case.

B. Reasonableness of the length of the proceedings

46. 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

47. The Government contended that the questions which had to resolved in the case were extremely complex. Several experts had to be appointed. However, the judges trying the case had found it difficult to locate persons with the required expertise. This problem, together with the fact that the courts had had to hear numerous witnesses, resulted in the protraction of the proceedings.

The applicants contested this view.

48. The Court notes that the case primarily concerned the presence or absence of a causal link between the working conditions or environmental factors at the Tengiz site and the deterioration in the applicants' health, as well as the possible civil responsibility of the applicants' former employer in this connection. Notwithstanding the need to obtain expert opinions on various matters raised by the litigation, the Court is not convinced that the complexity of the case alone can explain the length of the proceedings.

2. Conduct of the applicants

49. The Government argued that the second applicant contributed to the protraction of the case at an early stage of the proceedings by failing to appear at hearings and to attend a medical examination. However, they admitted that the delay caused was not significant, having regard to the total length of the procedure. The Government further contended that the applicants extended their action against the Hungarian State in 1998 (first applicant) and 1999 (second applicant) with the result that the courts were subsequently faced with additional issues.

The applicants denied that they had prolonged the proceedings through their conduct.

50. The Court observes that the second applicant did not attend two hearings in March 1992 and July 1993 and did not turn up for a medical examination in 1996. It notes that any delay caused by the second applicant's failure to appear at the March 1992 hearing is not within the scope of its examination *ratione temporis.* Moreover, the Court is reluctant to attach any particular significance to the second applicant's absence from a single hearing in July 1993 in view of the fact that the next hearing did not take place before 17 January 1995. Furthermore, the second applicant's failure to attend the 1996 medical examination would appear not to have slowed down the proceedings since the only consequence was to oblige the medical expert to rely on existing medical evidence.

51. As regards the applicants' decision to extend their action late in the day, the Court notes that this was permitted under domestic law (see paragraphs 28 and 30 above) and the applicants cannot be held responsible for any delay which may have resulted through the exercise of their procedural rights. There is, in addition, no appearance that the applicants abused their procedural rights.

52. In these circumstances, the Court considers that no significant periods of delay in the case can be imputed to the applicants.

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

53. The Government submitted that, despite some inactivity in the early stage of the proceedings, the courts acted with due diligence and even accelerated the proceedings at the applicants' request. The Government stated that the protraction of the case was caused by the difficulties to which they previously alluded when addressing the complexity of the case (see paragraph 47 above).

54. The Court observes that there was a delay of one year and three months – of which four months falls within the Court's competence *ratione temporis* – in scheduling the first hearing in the proceedings instituted by the first applicant. Thereafter, no hearing took place between 17 June 1993 and 30 August 1995. In the second applicant's case, one year and four months elapsed between the first and second hearing, of which eight months are within the Court's competence *ratione temporis*. Furthermore, during the period between 9 July 1993 and 17 January 1995, the Labour Court was inactive apart from giving a ruling that expert opinions should be obtained. In the joined proceedings, no hearing took place between 9 September 1997 and 30 September 1998. For the Court, no explanation for these periods of inactivity has been put forward by the Government.

55. As to the courts' apparent difficulties in finding competent experts and obtaining all the necessary witness evidence, it is to be noted that the experts were acting and the witnesses heard in the context of judicial proceedings under the supervision of the judges trying the case. The judges therefore remained responsible for the preparation of the case and the conduct of the hearings within a reasonable time (*Capuano v. Italy,* judgment of 25 June 1987, Series A no. 119, p. 13, § 30). It further recalls in this connection 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, *Duclos v. France* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2180–81, § 55 *in fine*).

56. The Court would also note that it took the Labour Court more than eight years to deliver a first instance decision in the case. Although the proceedings were thereafter accelerated, the Supreme Court had to quash

the first- and second instance decisions on account of shortcomings in the assessment of evidence and legal errors made.

57. In these circumstances, the Court considers that the delay in the proceedings must be mainly attributed to the national authorities.

58. Having regard to what was at stake for the applicants, both disability pensioners, (cf. *Vallée v. France*, judgment of 26 April 1994, Series A no. 289-A, p. 17, § 34), namely the establishment of their entitlement to compensation and an allowance in respect of occupational illnesses, and taking into account the overall length of the proceedings and the fact that there is as yet no final outcome, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. Each of the applicants claimed a total of 12,150,000 Hungarian forints ("HUF") plus accrued interest for pecuniary damage; moreover, they each claimed in respect of non-pecuniary damage, a total of HUF 5,000,000 plus accrued interest and a monthly allowance of HUF 90,000 *pro futuro*.

61. The Government submitted that the applicants' claims were excessive.

62. 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 12,000 by way of compensation for non-pecuniary damage.

B. Costs and expenses

63. Neither the applicants nor their lawyer made any claims under this head. The Court makes no award in consequence.

C. Default interest

64. 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 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 12,000 (twelve 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 the 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 21 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President