



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

SECOND SECTION

CASE OF SIKÓ v. HUNGARY

(Application no. 53844/00)

JUDGMENT

STRASBOURG

4 November 2003

FINAL

04/02/2004

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 Sikó 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 53844/00) 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 a Hungarian national, Mr Attila Sikó, on 29 September 1999.

Following Mr Sikó’s death, on 21 August 2000 his lawyer informed the Court that Mr Sikó’s son and successor, Mr Attila Sikó JR. (“the applicant”), wished to pursue the application.

2. The applicant was represented by Mr G. Papp, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by their Agent, Mr L. Hölzl, Deputy State-Secretary of the Ministry of Justice.

3. On 23 April 2002 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1958 and lives in Hetes, Hungary.

5. In February 1990 the applicant’s father (“the plaintiff”) had a traffic accident. With a view to seeking compensation for pecuniary and non-pecuniary damage and for loss of work capacity, he brought an action on 30 December 1991 against his insurer before the Pest Central District Court.

6. Hearings took place on 22 May and 12 November 1992. On the latter date, the District Court appointed medical and agricultural experts. The person who had caused the plaintiff's injuries intervened in the case.

7. Meanwhile, on 30 September 1992 the District Court dismissed the plaintiff's request for interim measures to be applied. On 3 March 1993 the Budapest Regional Court dismissed his appeal against this decision.

8. The medical expert submitted his opinion on 25 May 1993. On 16 June 1993 the District Court held a hearing and on 12 July 1993 the agricultural expert presented his opinion.

9. The next hearing took place on 28 January 1994. Pursuant to a change in legislation, the action was extended to include the National Institute for Development.

10. On 4 February 1994 the District Court decided to award 89,550 Hungarian forints (HUF) plus accrued interest to the plaintiff and granted him an allowance.

11. On appeal, on 10 November 1994 the Budapest Regional Court quashed the appealed part of the first instance decision and remitted the case in this respect.

12. On 21 December 1994 the District Court dismissed the plaintiff's renewed request for interim measures. This decision was upheld by the Budapest Regional Court on 27 April 1995.

13. In the resumed proceedings, the District Court held a hearing on 14 June 1995 and decided to obtain the opinions of medical, agricultural and motor-vehicle experts. A hearing took place on 15 November 1995. On 14 December 1995 the District Court ordered that the agricultural expert's opinion be completed. On 27 February 1996 the court appointed a new expert.

14. On 22 April 1996 the District Court excused the agricultural expert since he had previously worked for the first defendant and appointed a third one.

15. On 21 May 1996 the agricultural expert appointed informed the court that he was not competent to provide an opinion on the issues raised. On 23 May 1996 the District Court discharged the expert and invited the parties to submit proposals for a competent agricultural expert.

16. On 23 August 1996 the District Court dismissed the request of the Hungarian State to join the proceedings due to a change in legislation. On the appeals of the first defendant and the State, the Budapest Regional Court quashed the decision and gave the State leave to join the proceedings.

17. On 17 December 1996 the District Court appointed another agricultural expert. On 24 March 1997 he was warned that he would be fined in the event of his non-compliance with his duties. This expert was replaced by another expert on 2 April 1997.

18. On account of the wishes of the experts to be excused for reasons of lack of competence or other commitments, they had to be replaced on 30 May, 5 June, 11 July and 5 September 1997.

19. On 5 November 1997 the District Court ordered the expert who was eventually appointed to submit her opinion as soon as possible and warned her that in the event of non-compliance she would be fined. On 9 December 1997 the court imposed a fine of HUF 25,000 on the expert. Despite warnings, the expert repeatedly failed to comply with the order and the court imposed another fine of HUF 50,000 on her.

20. On 14 July 1998 a newly appointed expert submitted an opinion in reply to the court's questions as to the value, before the accident, of the plaintiff's livestock, the income which the plaintiff could have expected from his livestock and the number of workers and the working hours required for tending to it.

21. The next hearing took place on 21 October 1998. The plaintiff failed to appear at the hearing and his counsel's replacement was not prepared to make a statement in the case.

22. Meanwhile, on the defendant's appeal, on 25 January 1999 the Budapest Regional Court upheld an order of 27 August 1997 concerning the agricultural expert's fee. A hearing scheduled for 27 January 1999 had to be postponed as the case-file had not yet been returned by the District Court.

23. In order to reconcile different medical opinions, the District Court ordered the medical expert to complete his opinion. The opinion submitted on 5 May 1999 was further supplemented on 7 July 1999 in view of the defendant's observations.

24. Further hearings took place on 27 September and 18 October 1999. On the latter occasion both the plaintiff and his representative failed to appear or to request that the hearing be held in their absence. Therefore, the District Court ordered the suspension of the proceedings. On 29 October 1999 the proceedings were reinstated at the plaintiff's request.

25. On 8 December 1999, 13 March, 17 April and 15 May 2000 the District Court heard further witnesses.

26. On 21 May 2000 the plaintiff died. As the District Court had not been informed of this, it delivered its judgment on 22 May 2000. The judgment did not take effect. On 3 July 2000 the District Court ordered a stay of the proceedings.

27. On 14 August 2000 the applicant was declared his father's sole heir. On 6 September 2000 he joined the proceedings before the District Court as his late father's successor.

28. The parties failed to appear at the hearings held on 13 September, and 2 and 30 October 2000. On the latter date the District Court decided to award HUF 7,257,275 plus accrued interest to the applicant.

29. On appeal, the Budapest Regional Court held hearings on 17 April and 26 June 2001 in the applicant's absence. In a judgment of the latter date,

it amended part of the first instance decision and lowered the award to HUF 5,507,485.

THE LAW

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

30. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement provided in Article 6 § 1 of the Convention, which reads as relevant:

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

31. The Government contested that argument.

32. The proceedings started on 30 December 1991 when the action was filed with the Pest Central District Court. However, the period to be taken into consideration by the Court began only on 5 November 1992, when the Convention entered into force with respect to Hungary.

33. The proceedings ended on 26 June 2001 when the Budapest Regional Court delivered its judgment. The total length of the applicant’s case accordingly amounted to 9 years and 6 months, of which a period of almost 8 years and 8 months falls within the Court’s jurisdiction *ratione temporis*. The proceedings involved two levels of jurisdiction.

34. 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).

A. Admissibility

35. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

36. The Government accepted that the legal issues raised by the case were not particularly complex. They argued that the lengthy delay which had occurred between November 1995 and October 1998 was due to the difficulties experienced by the District Court in finding a competent

agricultural expert. The District Court had made all necessary efforts to obtain the opinion in question, including by imposing fines on one of the experts for her delay in submitting the opinion requested. Accordingly, this period could not be considered an unreasonable delay attributable to the State. The Government further stressed that the applicant, who had joined the proceedings as the heir of his father, had not been present at any of the hearings. His absence had further contributed to the protraction of the proceedings.

In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

37. The applicant contested the Government's observations. He argued that the questions which had been put to the agricultural experts had not been too difficult to answer and could not justify the courts' inability to appoint a competent expert or to hold a hearing between 15 November 1995 and 21 October 1998. Moreover, despite the fact that an expert eventually submitted his opinion on 8 July 1998, the first instance judgment was only delivered on 30 October 2000. Furthermore, the applicant stressed that, even though the case had not been particularly complex, it had taken nine years and six months for the courts to decide on it. As regards the Government's statement that the applicant himself had contributed to the protraction of the proceedings by failing to appear at hearings, he claimed that no hearings on the merits had been held following his father's death. His presence in court had not therefore been necessary. Lastly, the applicant highlighted what had been at stake for his father in the proceedings, namely compensation for the disability suffered in an accident. It was therefore wrong that they had lasted so long.

In conclusion, the applicant invited the Court to find that there had been a violation of Article 6 § 1 of the Convention.

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. The Court notes that the parties agreed that the case was not particularly complex (see paragraphs 36 and 37). It does not see any reason to hold otherwise.

40. As regards the conduct of the applicant, the Court observes that he failed to appear at the hearings held between 13 September 2000 and 26 June 2001. During the same period, the defendant too missed three hearings. This period of nine and a half months, which does not appear to have hindered the delivery of the first and second instance judgments, cannot be considered significant compared to the overall length of the

proceedings. Therefore, the Court finds that the applicant did not contribute significantly to the protraction of the case.

41. Moreover, the Court observes that the domestic courts had difficulties in finding competent experts between 15 November 1995 and 21 October 1998. These difficulties caused a three-year delay in holding a hearing in the case. It is to be noted that the experts were acting 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 is to be recalled 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*).

42. The Government argued that the courts had taken prompt action to accelerate the experts' work by imposing fines on them. The Court notes, however, that fines were only imposed on two occasions, and as late as December 1997 and January 1998. After that, yet another expert had to be appointed who only submitted his opinion in July 1998. In these circumstances it cannot be maintained that the court's actions resulted in any significant acceleration of the proceedings. The Court considers that the delay in the proceedings must be mainly attributed to the national authorities.

43. Having regard to what was at stake for the applicant (cf. *Vallée v. France*, judgment of 26 April 1994, Series A no. 289-A, p. 17, § 34), namely, compensation for injuries suffered in an accident causing disability, and taking into account the overall length of the proceedings, 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

44. 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

45. The applicant claimed 14,000 euros (EUR) in respect of non-pecuniary damage.

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

47. The Court accepts that the applicant must be considered to have suffered some moral damage on account of the frustration caused by the length of the proceedings. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 7,000 by way of compensation for non-pecuniary damage.

B. Costs and expenses

48. The applicant also claimed EUR 1,000 for costs and expenses incurred before the Court.

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

50. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for costs and expenses for the Convention proceedings.

C. Default interest

51. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage and costs and expenses, 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President