



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

SECOND SECTION

CASE OF VASS v. HUNGARY

(Application no. 57966/00)

JUDGMENT

STRASBOURG

25 November 2003

FINAL

24/03/2004

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 Vass 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 57966/00) 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, Mrs Mihályné Vass (“the applicant”), on 5 February 2000.

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

3. On 23 April 2002 the Court decided to communicate the applicant's complaint concerning the length of the proceedings 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 1915 and lives in Budapest.

5. On 12 January 1995 the applicant brought an action before the Budapest XVIII/XIX District Court. She requested that the invalidity of a contract, by which her late husband had sold their house, be established. On 25 June 1995 she completed her statement of claim.

6. On 9 December 1995 the applicant requested the District Court to hold a hearing urgently.

7. A hearing was held on 25 March 1996.

8. On 21 October 1996 the District Court dismissed the applicant's action. On 14 October 1997 the Budapest Regional Court dismissed her appeal of 27 December 1996.

9. On 19 December 1997 the applicant pursued a petition for review before the Supreme Court.

10. On 27 May and 18 August 1998 the applicant requested the Supreme Court to give her case priority.

11. On 1 September 1998 the Supreme Court appointed a legal-aid lawyer for the applicant. On 23 September 1998 the lawyer requested to be relieved of his duties. On 27 October 1998 the Supreme Court appointed another legal-aid lawyer to represent the applicant in the review proceedings.

12. The applicant's petition for review was renewed by the lawyer on 27 November 1998.

13. On 11 December 1998 the Supreme Court informed the parties that it intended to deliver its judgment without holding a hearing and requested the parties to submit their opinions on this matter within 8 days. On 15 January 1999 the applicant requested the Supreme Court to schedule a hearing.

14. On 23 June 1999 the Supreme Court quashed the final judgment on account of substantial procedural shortcomings, and remitted the case to the first-instance court.

15. In the resumed proceedings, on 22 December 1999 the Budapest XVIII/XIX District Court requested the applicant to extend her action to include Mr A.T. in the proceedings.

16. The applicant failed to comply with this order within the statutory time-limit. Consequently, the court decided to discontinue the case.

17. On 22 February 2000 the applicant's legal-aid lawyer appealed against the order to discontinue the case. Simultaneously, she complied with the order of 22 December 1999.

18. On 16 March 2000 the applicant renewed the motion to include Mr A.T. in the proceedings. On the same date, the defendant submitted his observations and counter-claims.

19. On 2 June 2000 the District Court accepted the applicant's procedural appeal and reinstated the proceedings.

20. Following the retirement of the applicant's lawyer, on 26 June 2000 the District Court appointed another legal-aid lawyer and scheduled a hearing for 19 September 2000.

21. The applicant failed to appear at the hearing held on 19 September 2000. She submitted that she was being treated in hospital. The District Court decided to enquire with the hospital about the applicant's health. On 24 October 2000 the hospital informed the court that the applicant was no longer a patient.

22. On 25 October 2000 the District Court dismissed the applicant's motion challenging the presiding judge for bias.

23. In her submissions of 22 December 2000, the applicant requested the court to hold a hearing urgently, notwithstanding her potential absence. At

the same time, she objected to being represented by a legal aid-lawyer, which was not obligatory before a first-instance court. Consequently, on 17 April 2001 the District Court relieved the lawyer of her duties. On the same date, the court adjourned a hearing scheduled for 4 May 2001 and requested the applicant to complete her claims.

24. In her submission of 1 May 2001, the applicant again requested the District Court to hold a hearing in her absence and to deliver a judgment.

25. On 3 June 2001 the District Court enquired with the applicant as to whether she objected to a hearing being conducted at her home. On 5 August 2001 the applicant replied that she preferred to answer the court's questions in writing.

26. On 28 October 2001 the applicant informed the court that she would not be present at the hearing scheduled for 7 November 2001. She requested the court to hold a hearing in her absence. The court held a hearing on the latter date.

27. On 10 December 2001 the applicant submitted observations on the defendant's preparatory document of 11 November 2001. She requested that the next hearing be held in her absence.

28. The District Court held a hearing on 13 December 2001 and scheduled a hearing for 13 February 2002.

29. On 17 December 2001 the applicant modified her claim. On 30 December 2001 she submitted additional material. She requested the court to order the Land Registry to register the fact that proceedings were pending challenging the validity of the sales contract. On 21 January 2002 the court granted this request.

30. On 30 January 2002 the applicant filed additional submissions.

31. At the hearing on 13 February 2002 the District Court heard the applicant's sister as a witness and scheduled a hearing at the home of the applicant for 22 March 2002. On the latter date, however, the applicant did not allow the visiting judge to enter her house claiming that her bad health prevented her from being heard.

32. On 26 March 2002 the applicant submitted additional observations concerning the hearing of 13 February 2002.

33. On 23 May 2002 the District Court requested information from the Mayor's Office concerning the name of the social worker taking care of the applicant in order to summon her as a witness.

34. At present, the proceedings are still pending before the District Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

35. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention. She submitted that, in the circumstances, the proceedings did not provide her with an “effective remedy” in respect of her civil claim. She relied on Article 13 of the Convention.

The Court observes that the applicant does not complain of the absence in Hungarian law of an effective remedy in respect of her complaint about the length of the civil proceedings. Her essential grievance is that those proceedings have lasted too long on account of the courts' inefficiency in dealing with her case. The Court will therefore examine her complaints under Article 6 § 1 alone, 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...”

36. The Government contested the applicant's argument.

37. The period to be taken into consideration began on 12 January 1995 and has not yet ended. It has thus lasted eight years and nine months so far.

A. Admissibility

38. The Court notes that the applicant's complaint concerning the length of the proceedings 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.

B. Merits

39. The Government argued that the applicant herself had contributed to the fact that the proceedings were still pending. They pointed out that the applicant had modified her claim several times, that she had often failed to appear at hearings in the resumed proceedings and that she had not arranged for her representation.

40. The applicant contested this view.

41. 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).

42. The Court considers that the nature of the proceedings and the issues raised cannot explain the length of time taken to reach a final judgment in the case. A period of eight years and nine months elapsed, and the proceedings are still pending.

43. As to the conduct of the applicant, the Court observes that from 19 September 2000, the applicant requested that hearings be held in her absence and refused the assistance of a legal-aid lawyer. It is true that, on these occasions, she submitted her observations in writing. However, the Court is convinced that had the applicant accepted to be represented, the proceedings could have been conducted more speedily by benefiting from the immediate exchange of observations by the parties at hearings. The applicant's refusal to accept an on-site hearing on 22 March 2002 further slowed down the proceedings. The Court therefore considers that the protraction of the proceedings subsequent to 19 September 2000 is largely imputable to the applicant.

44. As regards the conduct of the authorities, the Court points out that the domestic courts did not take any action in the periods between 12 January 1995 and 25 March 1996, as well as between 19 December 1997 and 1 September 1998. The Court notes that the Government did not supply any explanation for these periods of inactivity.

45. Assessing the circumstances of the case as a whole, the Court considers that an overall period of eight years and nine months, notwithstanding periods of delay imputable to the applicant, exceeds a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention as regards the length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE FAIRNESS OF THE PROCEEDINGS

46. The applicant also complained about the fairness of the proceedings under Article 6 § 1 of the Convention, which reads as relevant:

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

Admissibility

47. The Court recalls that the question of whether court proceedings have been fair, as required by Article 6 § 1, can only be answered by examining the proceedings as a whole, i.e. only once they have been concluded (see *H. v. France*, judgment of 24 October 1989, Series A no. 162 A, p. 23, § 61).

48. The Court finds that, as the applicant's case is still pending before the District Court, her complaints under Article 6 § 1 about the alleged unfairness are premature and must be rejected under 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 45,063,292 Hungarian forints (HUF) in respect of pecuniary damage and HUF 5,000,000 as non-pecuniary damage arising out of the length of proceedings.

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

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. However, the Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings. It notes in this connection that the applicant on more than one occasion asked for her case to be dealt with as a matter of urgency, and can reasonably be considered to have suffered frustration and anxiety as a result of the lack of progress in the case. However, it must also take account of the applicant's own responsibility for some delays in the proceedings after September 2000. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant made no claim under this head.

C. Default interest

54. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
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 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 25 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President