



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

SECOND SECTION

CASE OF KERÉKGYÁRTÓ v. HUNGARY

(Application no. 47355/99)

JUDGMENT

STRASBOURG

16 December 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 Kerékgártó 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 K. JUNGWIERT,

Mr M. UGREKHELIDZE, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 13 May and 25 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 47355/99) 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 a Hungarian national, Mr Miklós Kerékgártó (“the applicant”), on 2 December 1998.

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

3. The applicant alleged, in particular, that the civil proceedings in which he was involved lasted an unreasonably long time, in breach of Article 6 § 1 of the Convention.

4. 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 13 May 2003 the Court declared the application partly admissible.

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

THE FACTS

8. The applicant was born in 1948 and lives in Budapest.

A. The first proceedings

9. On 7 July 1993 Mr and Mrs N. brought an action against the applicant before the Pest Central District Court. The litigation concerned a contract of loan which had been concluded between the parties. The plaintiffs sought annulment of the acquisition by the applicant of their flat, which had been used as security in the event of their non-payment of the loan. On 15 July 1993 the applicant filed his counterclaims.

10. On 9 February, 21 March, 5 October 1994 and 8 March 1995 the District Court held hearings.

11. On 13 March 1995 the District Court adopted a judgment in which it annulled the applicant's acquisition of the flat. As to the loan contract, the court decided to reduce the amount owed by the plaintiffs' to the applicant.

12. On 22 March 1995 the plaintiffs appealed and, simultaneously, requested that the contract of loan should itself be annulled and that the judgment of 13 March 1995 should be supplemented to that effect. On 27 March 1995 the applicant filed his appeal.

13. On 29 March 1995 the applicant filed a motion for bias which was dismissed on 26 May 1995.

14. On 29 March 1995 the applicant filed a motion for bias which was dismissed on 26 May 1995. The Budapest Regional Court held hearings on 29 June and 14 November 1995. On the latter date the court suspended the appeal proceedings pending the first-instance completion of the judgment of 13 March 1995.

15. The hearings scheduled by the District Court for 7 February and 12 April 1996 were adjourned on account of unsuccessful attempts to summon one of the defendants.

16. By a supplementary decision of 9 October 1996, the District Court allowed the plaintiffs' claim for completion of the initial judgment and accordingly ruled that the contract of loan should be annulled.

17. On 21 November 1996 the applicant appealed. Subsequently, he challenged the second-instance court for bias.

18. On 17 February 1997 the Regional Court dismissed the applicant's motion for bias. It resumed the suspended proceedings and held a hearing on 8 July 1997. At that hearing the applicant reiterated his allegations of bias.

19. On 4 September 1997 the judges declared bias and withdrew from the case.

20. A hearing scheduled for 22 January 1998 was cancelled on account of the illness of a judge on the newly appointed bench. A hearing took place on 2 June 1998.

21. On 9 June 1998 the Regional Court adopted a second-instance judgment upholding in essence the decisions taken at first instance.

22. On 3 September 1998 the applicant submitted a petition for review.

23. On 23 February 1999 the Supreme Court ordered the completion of the petition and attempted to notify the plaintiffs thereof. Subsequently a guardian *ad litem* had to be appointed for the plaintiffs. The guardian submitted the plaintiffs' claims in reply on 22 December 1999.

24. On 4 April 2000 the Supreme Court dismissed the applicant's petition for review. This decision was served on him on 17 July 2000.

B. The second proceedings

25. On 11 October 1994 the applicant brought an action before the Pest Central District Court against Mr and Mrs S., guarantors of the above-mentioned contract of loan. On 26 October 1994 the court ordered the applicant to complete his action. He did so on 5 December 1994.

26. On 18 July 1995 the District Court held a hearing at which it allowed the applicant's claims and ordered the defendants to pay him 610,000 Hungarian forints.

27. On 21 August 1995 the defendants appealed. They were subsequently ordered to complete their appeal. On their request, the Regional Court gave them leave until 20 November 1995 to do so.

28. On 20 May 1996 the Regional Court held a hearing and dismissed the defendants' appeal.

29. On 16 December 1997 the Supreme Court, in review proceedings, quashed the second-instance decision holding that the validity of the loan contract had to be dealt with as a preliminary issue.

30. In the resumed proceedings, on 20 May 1998 the Regional Court suspended the proceedings pending the outcome of the appeal concerning the aforementioned action brought by Mr and Mrs N. against the applicant.

31. Following the Supreme Court's review decision of 4 April 2000 in the first proceedings, the Regional Court recommenced the examination of the second case and, on 31 January 2001, it dismissed the defendants' appeal. No petition for review was filed against this decision.

THE LAW

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

32. The applicant complained that the length of the proceedings in his cases 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...”

33. The Government contested this view.

A. Period to be taken into consideration

34. The Court notes at the outset that the two sets of proceedings at issue began on 7 July 1993 and 11 October 1994, respectively. They ended, respectively, on 17 July 2000, with the service of the Supreme Court's decision, and on 31 January 2001, with the Regional Court's decision.

35. The first proceedings therefore lasted some seven years for three court instances, and the second proceedings lasted somewhat less than six years and four months for two levels of jurisdiction.

B. Reasonableness of the length of the proceedings

36. 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

37. The parties agreed that the cases were not particularly complex. The Court finds no reason to hold otherwise.

2. Conduct of the applicant

38. The Government argued that the applicant contributed to the length of the first set of proceedings by filing ill-founded motions for bias. The applicant contested this.

39. The Court observes that, in the first set of proceedings, the applicant filed a motion for bias on 29 March 1995, which was dismissed on 26 May 1995. His renewed motion was filed after 21 November 1996 and dismissed on 17 February 1997. These procedural motions thus caused a delay of altogether five months at the most. For the Court, these delays could not be considered significant, having regard to the overall length of the proceedings.

In the second set of proceedings, the Court finds that there was no period of inactivity which could be imputed to the applicant.

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

40. The Government submitted that no substantial delays were imputable to the authorities in either case. As to the second case, they asserted that its length could not be considered excessive, given that its subject matter did not warrant special diligence and that its suspension was justified pending a decision on a preliminary issue.

41. The applicant contested this. In particular, he maintained that the first case did not progress between 4 October 1994 and 8 March 1995, 13 March 1995 and 9 October 1996, and between 4 December 1996 and 4 September 1997. Moreover, the second set of proceedings was suspended unnecessarily for nearly two years.

42. The Court observes that a delay of one year and seven months occurred in the first set of proceedings between 13 March 1995, when the District Court delivered a judgment, and 9 October 1996, when it allowed the plaintiffs' claim for completion of the judgment of 13 March 1995 by ruling that the contract of loan should be annulled. This delay is imputable to the national authorities.

Moreover, the second set of proceedings was suspended for some two years pending the outcome of the first case. Although such a measure could in principle be regarded as justified for the proper administration of justice, the Court considers that the undue delay which had occurred in the first case had inevitable repercussions on the second dispute. In these circumstances, the resultant delay is likewise imputable to the authorities.

43. Having regard to the foregoing considerations, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in either set of proceedings. 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 280,000,000 Hungarian forints (HUF) in respect of pecuniary and non-pecuniary damage.

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

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicant's claim under this head. On the other hand, it awards the applicant 5,500 euros (EUR) in respect of non-pecuniary damage, having regard to the fact that he can reasonably be considered to have suffered frustration on account of the length of time taken to conclude the cases.

B. Costs and expenses

48. The applicant also claimed HUF 10,000,000 in respect of costs and expenses.

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 200 under this head.

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. *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 applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 200 (two hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President