



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

SECOND SECTION

CASE OF SESZTAKOV v. HUNGARY

(Application no. 59094/00)

JUDGMENT

STRASBOURG

16 December 2003

FINAL

16/03/2004

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

Having deliberated in private on 25 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 59094/00) 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 Rezső Sesztakov ("the applicant"), on 21 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 matrimonial 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 1959 and lives in Somlóvásárhely, Hungary.

5. On 6 May 1993 the applicant's wife requested the Ajka District Court to hold a preliminary hearing with a view to instituting divorce proceedings. In turn, on 7 July 1993 the applicant brought an action before the District Court claiming maintenance for the couple's son, who was at the time in the applicant's care. The District Court held hearings on the maintenance claim on 13 September and 3 November 1993. On the latter date the applicant's wife formally filed for divorce. The divorce proceedings were subsequently joined to the claim for maintenance.

6. In the joined proceedings, hearings took place on 27 April, 17 June, 16 September and 31 October 1994, 3 February and 5 April 1995.

7. On the latter date the District Court pronounced, in a partial decision, the couple's divorce. In line with the parties' agreement, it granted the mother custody of their son. The court ordered the applicant to pay maintenance, regulated his right of access to the boy and ordered the parties to share the use of their flat which was in common ownership. The court relied on the testimonies of numerous witnesses, including a social worker, the applicant's two step-children born out of the mother's previous marriage, and the couple's son.

8. On the applicant's appeal of 12 May 1995, the Veszprém County Regional Court held a hearing on 26 September 1995. At a hearing on 10 October 1995 the Regional Court allowed the applicant's appeal and amended the District Court's decision in the part concerning the amount of maintenance and the details of his access rights.

9. On 13 December 1995 the proceedings were resumed before the District Court in respect of the division of the matrimonial property. A hearing was held on 13 December 1995.

A further hearing took place on 21 February 1996. On the latter date the District Court decided to obtain various expert opinions.

10. On 31 May and 23 July 1996, respectively, property and valuation experts submitted their opinions.

11. At a hearing on 18 October 1996 the District Court appointed a motor-vehicle expert to prepare an opinion. On 12 December 1996 the expert was urged to submit his opinion. On 31 December 1996 the expert informed the court that the applicant could not be located at the address notified to him. On 17 February 1997 the expert was requested to submit an opinion as soon as possible. On 27 February 1997 the expert submitted his opinion.

12. Further hearings were held on 28 April, 12 May and 17 November 1997. Meanwhile, on 6 June 1997 the applicant requested further expert evidence to be taken. Although it experienced difficulties in finding an expert jeweller, the District Court finally appointed one on 27 February 1998 and requested the parties to contact him. On 30 July 1998 the expert submitted his opinion.

13. On 28 September 1998 an expert psychologist submitted his opinion. A hearing scheduled for 28 October 1998 was adjourned at the applicant's request.

14. The next hearing took place on 20 January 1999. The District Court ordered the property expert to complete his opinion of 31 May 1996, taking into account any possible changes which might have occurred in the meantime. On 19 March 1999 the District Court requested the expert to proceed as a matter of urgency. On 24 March 1999 the expert submitted his opinion, which was based on an on-site inspection of the property.

15. Further hearings took place on 27 September and 25 October 1999. On the latter date both the applicant and his representative failed to appear before the court. Meanwhile, the District Court made enquiries with the parties' bank as regards the mortgage situation of their flat. On 29 October 1999 the court requested the parties to waive their rights to secrecy in respect of their bank details. The waivers were sent to the bank on 17 November 1999. On 28 December 1999 the District Court made a further enquiry with the bank as regards payments transferred from the parties' bank account to cover housing expenses. On 24 January 2000 the District Court ordered the applicant to submit his waiver in the form required by the bank. The bank submitted the requested banking details on 27 March 2000.

16. At the hearings of April and 22 May 2000 several witnesses were heard on the use of the parties' flat. On the latter date the District Court carried out an inspection of the flat.

17. On 13 December 2000 the District Court ruled on the division of the matrimonial property. On 20 and 27 December 2000, respectively, the applicant and the defendant appealed.

18. The Veszprém County Regional Court held hearings on 20 February, 1 and 20 March 2001. During this period the parties were involved in negotiations aimed at reaching an agreement on the sale of their flat. On the parties' joint request of 28 March 2001, the Regional Court discontinued the proceedings on 3 April 2001 and annulled the decision of 13 December 2000.

THE LAW

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

19. 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, which reads as follows:

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

20. The Government contested that argument.

21. The period to be taken into consideration began on 7 July 1993 and ended on 3 April 2001. It thus lasted almost seven years and nine months.

A. Admissibility

22. The Court notes that this complaint 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

23. The Government accepted that the legal issues raised by the case were not particularly complex. They stated that some delay in the proceedings was due to the difficulties experienced by the District Court in obtaining the opinion of a motor-vehicle expert opinion and in finding a competent expert jeweller. However, the court made all necessary efforts to obtain these opinions. Accordingly, no unreasonable delay could be imputed to the authorities. They further claimed that the parties' lack of co-operation during the proceedings also hindered the submission of the expert opinions.

24. The applicant contested these arguments.

25. 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).

26. The Court considers that the case was not particularly difficult as regards the facts and the law to be applied.

27. As regards the conduct of the applicant, the Court observes that there was a delay in the proceedings between 18 October 1996 and 27 February 1997 because the applicant was could not be located at the address notified to the expert. Moreover, he requested that the hearing scheduled for 28 October 1998 be postponed and failed to appear at the hearing on 25 October 1999. For the Court, however, the resultant delays were not significant, having regard to the overall length of the proceedings.

28. As regards the conduct of the judicial authorities, the Court observes that no hearings were scheduled in the case in the periods between 17 November 1997 and 28 October 1998 and 20 January and 27 September 1999. During the latter period, the only progress in the case would appear to have been the submission of an updated version of the property expert's opinion, which had apparently become obsolete.

29. The Court would also note that it took the District Court five years from the date of the partial decision on the issues of divorce, custody and maintenance to deliver a first-instance decision on the division of the matrimonial property.

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

31. Having regard particularly to the overall length involved and to what was at stake for the applicant, the Court concludes that his case was not determined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS

32. The applicant also complained that the decisions given by the domestic courts in the above proceedings were wrong. He invoked Articles 6 and 13 of the Convention.

Admissibility

33. The Court considers that there is nothing in the case-file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair. The applicant's submissions do not disclose any appearance of a violation of his Convention rights in this respect.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant also complained that the outcome of the proceedings concerning the custody of his son infringed his right to respect for his family life. He relied on Article 8 of the Convention.

Admissibility

35. The Court observes that the applicant and his former wife agreed that the latter would have custody of their child. Consequently, on 5 April 1995 the Ajka District Court approved this agreement and awarded custody to the mother.

36. It follows that the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention and that this complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

37. Lastly, the applicant complained that the outcome of the proceedings, in so far as the ownership and use of the flat were concerned, infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1, which provides as relevant:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

Admissibility

38. As to the division of the matrimonial property, the Court observes that the applicant and his ex-wife concluded an agreement on this matter. Therefore, the applicant cannot claim to be a victim in this respect within the meaning of Article 34 of the Convention.

Concerning the use of the flat, the Court notes that the court decisions provided a solution to a civil-law dispute between private parties. Those decisions cannot of themselves engage the responsibility of the respondent State under Article 1 of Protocol No. 1, the more so since there is no appearance of arbitrariness in the decisions reached or in the procedures followed.

39. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 5,000,000 Hungarian forints (HUF) in respect of pecuniary and non-pecuniary damage.

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

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On

the other hand, it awards the applicant EUR 4,500 in respect of non-pecuniary damage, having regard to the frustration which he can reasonably be considered to have suffered as a result of the protracted nature of the proceedings.

B. Costs and expenses

44. The applicant made no claim under this head.

C. Default interest

45. 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 4,500 (four thousand five hundred 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 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 16 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President