



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

SECOND SECTION

CASE OF EARL v. HUNGARY

(Application no. 59562/00)

JUDGMENT

STRASBOURG

20 January 2004

FINAL

20/04/2004

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 Earl 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 16 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 59562/00) 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 Mrs Judith Earl ("the applicant"), a national of Hungary and Germany, on 17 December 1999.

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

3. On 9 July 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 1945 and lives in Munich.

5. On 8 November 1993 the applicant brought an action against her brother before the Buda Central District Court claiming her statutory share of the inheritance of her deceased mother's estate.

6. On 6 May 1994 the District Court held a hearing. On 20 September 1994 a further hearing took place, which lasted 30 minutes. The defendant failed to appear on both occasions. On the latter date, the defendant's counsel requested that the applicant's claim be rejected as it had been submitted outside the statutory time-limit.

7. On 18 November 1994 the District Court held a hearing, which lasted 30 minutes. It ordered the applicant to submit, within 30 days, any evidence

that might prove that the period of the statutory limitation had been interrupted. The applicant complied with the order on 10 January 1995.

8. Meanwhile, on 21 September 1994 the applicant instituted inheritance proceedings before a public notary. A notarial notice was issued on 18 January 1995, in accordance with the Hungarian law on inheritance, requiring the estate to be divided up equally between the applicant and her brother.

9. On 25 January 1995 the applicant informed the District Court that her representative had withdrawn from the case.

Hearings scheduled for 31 January and 4 April 1995 were adjourned by the District Court, as the applicant, having been hospitalised, was unable to attend. Meanwhile, on 24 March 1995 the applicant notified the court of the name of her new representative.

10. At the hearing of 20 June 1995 the applicant raised the amount of her claim and requested legal aid. The court ordered the applicant to submit within 30 days all necessary documents proving that she needed legal aid. The applicant complied with the order on 10 August 1995. At the same time, she extended her claim to include her deceased aunt's estate.

11. On 18 August 1995 the District Court rejected the applicant's request for legal aid and ordered her to pay court fees corresponding to the amount of the increased claim. On 2 November 1995 the Budapest Regional Court dismissed the applicant's appeal against this decision.

12. The applicant's renewed request for exemption from court fees was granted by the District Court on 16 January 1996. The court also took measures to obtain the case-file concerning the estate of the applicant's deceased aunt.

13. On 28 February 1996 the District Court held a hearing, which lasted for 35 minutes. On 13 March 1996 the applicant elaborated her claims.

At the hearing held on 25 June 1996 the court ordered the defendant, who had repeatedly failed to appear before the court, to submit observations on the merits of the applicant's claims before 5 September 1996. On 6 September 1996 the District Court imposed a fine on the defendant, who, despite a warning, failed to comply with the court's order. This decision was later quashed as the defendant's submissions were proved to have been posted on 5 September 1996.

14. On 19 November 1996 the District Court heard the defendant's witnesses and ordered the parties to submit their observations within 30 days. At the hearing the applicant asked that witnesses be heard in support of her evidence and extended the scope of her action by requesting that a real estate contract of sale be nullified. The applicant's observations were submitted on 22 January 1997.

15. On 12 March 1997 the District Court heard the defendant and a witness. On 7 April 1997 the applicant informed the court that she had given a power of attorney to a new lawyer.

At the hearing on 24 September 1997 the District Court heard the applicant's daughter as a witness and ordered the applicant to submit her observations within 15 days. The applicant requested that the time-limit be extended by 30 days as she had been in hospital. Her observations were submitted to the court on 25 February and 12 March 1998.

16. On 17 June 1998 the District Court held a hearing and requested the applicant to specify her claims in the event of the above-mentioned contract of sale being nullified.

17. In her submissions to the court of 19 November 1998, the applicant amended her action. She extended the scope of her action by claiming, from the defendant's wife, her share of the inheritance of her deceased father.

18. On 20 January 1999 the court suspended the case and requested the parties to institute proceedings before a notary. On 2 March 1999 the Budapest Regional Court dismissed the applicant's procedural appeal.

19. On 25 June 1999 the applicant's representative requested the public notary to undertake inheritance proceedings.

20. On 28 July 1999 the notary requested the applicant's representative to submit an authorisation certified by the consulate or a public notary practising in the applicant's country of residence.

21. At a hearing on 6 December 1999, the notary set a 30-day time-limit for the parties to submit their claims in respect of any movable property that may have been part of the estate.

22. On 20 January 2000 the notary discontinued the proceedings as the estate contained no movable property. His decision of 18 January 1995 was therefore declared final.

23. Subsequently, on 31 March 2000 the applicant requested the court to continue the case, to record in the Land Registry that proceedings concerning the inheritance of her mother's real estate were pending and to give priority to the next hearing. On 20 April 2000 the District Court ordered that the proceedings be noted in the Land Registry. Following the defendants' unsuccessful appeal, the Land Registry registered the proceedings on 14 August 2000.

24. On 27 September 2000 the District Court heard witnesses. It also ordered the defendant to submit his counter-claim within 15 days.

25. On 17 January 2001 the District Court stated that it lacked jurisdiction as the increased value of the applicant's amended claim required that the case be heard by the Budapest Regional Court at first instance. The case was therefore discontinued before the District Court and transferred to the Regional Court.

26. On 24 April 2001 the Budapest Regional Court dismissed the applicant's appeal against the order to transfer the case.

27. On 15 November 2001 and 28 February 2002 the Budapest Regional Court held hearings and ordered the applicant to submit the addresses of certain witnesses living in Germany.

On 24 May 2002 the Regional Court heard witnesses.

28. At the next hearing held on 17 October 2002, the Regional Court heard several witnesses. On 20 May and 7 October 2003 the court heard the parties.

29. On 5 November 2003 the court appointed an expert to inspect the real estate in question. The applicant appealed.

30. The case is still pending at first instance.

THE LAW

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

31. 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...”

32. The Government contested that argument.

33. The period to be taken into consideration began on 8 November 1993 and has not yet ended. It has thus lasted ten years and five weeks so far.

A. Admissibility

34. 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

35. The Government submitted in their observations that the case was rather complex in that the estates of three persons had to be established. Furthermore, they argued that the defendants and the applicant herself contributed to the protraction of the proceedings. In particular, the applicant extended her action, changed her representative, and requested the adjournment of hearings and the extension of time-limits on numerous occasions. The Government also argued that the judicial authorities proceeded with the case without undue delay.

36. The applicant contested these arguments.

37. 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).

38. The Court considers that the case was not particularly difficult as regards the legal issues involved. Although some difficulties might have arisen as a result of having to establish the estates of three persons, the Court nevertheless considers that the complexity of the case alone cannot explain the overall length of the proceedings.

39. As regards the applicant's decisions to extend the scope of her action, it does not appear to the Court that the applicant abused her procedural rights.

40. Although the Court is not convinced by the Government's suggestion that the applicant's decision to change her representative significantly prolonged the proceedings, it does find that the applicant herself caused delays by failing to comply with time-limits on certain occasions. It is true that the fact that the applicant had her domicile abroad may have hindered the filing of her observations on time. However, it cannot be overlooked that she was assisted by Hungarian lawyers throughout the proceedings and who were in a position at all times to act on her behalf speedily.

In view of the overall length of the proceedings, the Court is nevertheless hesitant to attribute decisive importance to any delays which may possibly have been caused by the applicant's conduct.

41. As regards the conduct of the judicial authorities, the Court observes that hearings were held at regular intervals. However, the courts have not utilised the time available to them to speed up the proceedings and bring the case to an end as soon as possible. Over ten years have elapsed without the courts being able to deliver a judgment.

42. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case has not been heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 15,000,000 Hungarian forints in respect of non-pecuniary damage.

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

46. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant 7,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant also claimed EUR 7,580 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

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

49. 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 are 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 under all heads.

C. Default interest

50. 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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement:
 - (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five 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 amounts 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 20 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President