



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

SECOND SECTION

CASE OF LOVÁSZ v. HUNGARY

(Application no. 62730/00)

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 Lovász 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 L. LOUCAIDES,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 13 May and 16 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 62730/00) 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 István Lovász (“the applicant”), on 1 May 2000.

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 proceedings concerning divorce, custody and the division of matrimonial property 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). This 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 1951 and lives in Balassagyarmat.

9. In 1974 the applicant married in former Czechoslovakia. Subsequently, the couple moved to Hungary. Their daughter was born in January 1980.

10. On 17 September 1996 the applicant's wife, then a Slovak national, filed for divorce before the Balassagyarmat District Court. She also sought custody of their child and the division of the matrimonial property.

11. Shortly afterwards, the applicant challenged his paternity of their daughter before the District Court. On 24 January 1997 the District Court rejected this action as being incomplete.

12. Meanwhile, on 25 November 1996 and 11 February 1997 the District Court held hearings in the principal proceedings.

13. On 11 March 1997 the applicant filed a new paternity action.

14. At the hearing on 13 June 1997 the District Court suspended the proceedings in the divorce case pending a decision on the paternity dispute.

15. On 27 August 1997 the District Court again rejected the applicant's paternity action as being incomplete.

16. On 9 September 1997 the applicant filed a new paternity action. On 25 March 1998 the District Court dismissed his claims. On 10 September 1998 the Nógrád County Regional Court dismissed his appeal.

17. Meanwhile, on 16 February 1998 the applicant's wife requested that the principal proceedings be continued. She argued that their daughter had reached the age of 18 and for that reason it was no longer necessary to decide the question of custody; consequently, the outcome of the paternity proceedings was irrelevant to the determination of the divorce action. The proceedings were resumed soon afterwards.

18. Subsequently, the applicant brought a counter-action seeking the invalidation of the marriage. At the hearing on 23 April 1998 the District Court ordered that the relevant provisions of the Czechoslovakian Civil Code be obtained *via* the Ministry of Justice.

19. On 4 November 1998 the applicant's daughter filed a rebuttal of the presumption of the applicant's paternity. On 19 January 1999 the District Court appointed a medical expert to carry out a blood group examination of the parties. On 14 April 1999 the expert verified the applicant's paternity. Subsequently, the plaintiff withdrew her claims and these proceedings were discontinued.

20. In the principal proceedings, the translation of the Czechoslovakian law reached the District Court on 19 October 1999.

21. On 26 October 1999 the District Court requested, *via* the Ministry of Justice, a copy of the parties' marriage certificate from the archives of the Slovakian Nagykürtös District Registry.

22. On 9 December 1999 another hearing was held. On the same day, the District Court dismissed, in a partial decision, the applicant's counter-claim for invalidation of the marriage. The District Court relied on documentary evidence received from Slovakia. On 16 May 2000 the Regional Court dismissed the applicant's appeal.

23. On 28 August 2000 the District Court held a further hearing and ordered a bank to submit information about the parties' assets.

24. On 2 October 2000 the District Court pronounced the parties' divorce and disjoined the remainder of the claims. In this latter respect, it ordered that the Land Registry be notified of the dispute concerning the division of the matrimonial property.

25. On 14 November 2000 the applicant appealed against the first-instance decision and challenged the Regional Court for bias. On 8 February 2001 the Supreme Court dismissed his motion. On 10 May 2001 the Regional Court dismissed his appeal.

26. On 18 December 2000 the District Court appointed experts to assess the value of the parties' assets.

27. On 21 January 2001 the applicant challenged all of the judges of Nógrád County for bias. On 22 January 2001 the Regional Court transferred the case file to the Supreme Court.

28. On 20 March 2001 an inspection of the parties' property holdings properties was carried out.

29. On 28 March 2001 the Supreme Court dismissed the applicant's motion for bias and sent the case file back to the Regional Court. Subsequently, on 22 May 2001 the Regional Court appointed the Salgótarján District Court to hear the case.

30. The case – in so far as it concerns the division of the matrimonial property – is still pending before the Salgótarján District Court.

THE LAW

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

31. The applicant complained that the length of the proceedings in his case 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...”

32. The Government contested this view.

A. Period to be taken into consideration

33. The Court observes that the proceedings commenced on 17 September 1996 and that the issue of the division of the matrimonial property is still pending before the first-instance court. The total length of the applicant's case amounts to seven years and three months so far. The proceedings involved two levels of jurisdiction.

B. Reasonableness of the length of the proceedings

34. 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

35. The Government submitted that the subject matter of the case was relatively complicated and required the appointment of experts. Moreover, the proceedings involved the determination of multiple claims.

36. The applicant contested this.

37. The Court notes that the case concerned divorce, child custody and the division of matrimonial property. Notwithstanding the need to obtain expert opinions on various matters, the Court is not convinced that the complexity of the case alone can explain the length of the proceedings.

2. Conduct of the applicant

38. The Government argued that the applicant's conduct contributed to the length of the proceedings. In particular, he delayed the procedure by challenging his paternity, seeking the invalidation of the marriage and repeatedly filing motions for bias.

39. The applicant contested this.

40. The Court observes that on 14 November 2000 and 21 January 2001 the applicant filed two motions for bias, which were rejected on 8 February 2001 and 28 March 2001, respectively. These motions caused a delay of altogether five months.

Furthermore, the applicant filed, in 1996 and 1997, two actions challenging his paternity, which had to be rejected as incomplete. On account of a third identical action introduced on 9 September 1997, the principal proceedings had to be suspended for some nine months before the action was finally dismissed on 10 September 1998. For the Court, these

futile procedures resulted in a delay of at least one year, which must be imputable to the applicant.

As regards the applicant's counter-claim seeking the invalidation of the marriage, it does not appear to the Court that the applicant abused his procedural rights in this respect. The delay arising out of these proceedings cannot therefore be attributed to the applicant.

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

41. The Government submitted that no substantial period of delay could be imputed to the authorities.

42. The applicant contested this.

43. The Court observes that, in the principal proceedings, it took eighteen months to obtain the relevant provisions of the Czechoslovakian Civil Code, between 23 April 1998 and 26 October 1999. The resulting delay of one and a half years cannot be justified by the fact that, simultaneously, a claim brought by the applicant's daughter in separate proceedings was being examined. In the view of the Court, the subject matter of the principal proceedings could continue to have been examined in parallel to the proceedings on the claim brought by the applicant's daughter. It is to be noted that no formal decision was ever in fact taken to suspend the principal proceedings pending the outcome of the applicant's daughter's claim.

Having regard to what was at stake for the applicant and to the overall length of the proceedings, and to the fact that the issue of the division of the matrimonial property has not yet been finally determined, without any convincing explanation, 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 15,000,000 Hungarian forints (HUF) in respect of non-pecuniary damage.

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

47. Having regard to the overall length of the proceedings and to the delays imputable to the applicant, and making its assessment on an equitable basis, the Court awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant made no claim under this head.

C. Default interest

49. 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, EUR 2,000 (two 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 the 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;
3. *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