



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

SECOND SECTION

CASE OF SZAKÁLY v. HUNGARY

(Application no. 59056/00)

JUDGMENT

STRASBOURG

25 May 2004

FINAL

25/08/2004

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

Having deliberated in private on 4 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 59056/00) 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 Zoltán Szakály (“the applicant”), on 9 April 2000.

2. The applicant was represented by Mr M. Szakály, a lawyer practising in Pécs, Hungary. The Hungarian Government (“the Government”) were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. On 12 November 2002 the Court decided to communicate the complaint concerning the length of 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 1931 and lives in Pécs.

5. On 16 April 1986 the applicant filed for divorce. In the proceedings before the Nagyatád District Court he also claimed the division of the matrimonial property.

6. The District Court held hearings on 6 January, 3 March and 19 June 1987. It appointed an expert architect to evaluate the investments which the parties’ had made in their house.

7. On 22 September 1987 the District Court pronounced the parties’ divorce.

8. On 21 October 1987 the expert submitted his opinion.

9. On 23 June 1988 the District Court gave a decision on the division of the matrimonial property.

On appeal, on 1 December 1988 the Somogy County Regional Court held a hearing, quashed the first-instance decision and remitted the case to the first-instance court.

10. In the resumed proceedings before the District Court, on 17 January 1989 the applicant extended his action to involve his son and the mother of his ex-wife.

11. On 31 March, 17 April, 16 May, 26 July, 12 September 1989 and 29 August 1990 the District Court held hearings.

12. On 11 February 1991 the District Court appointed an agricultural expert to make an evaluation of the parties' orchard. The expert submitted his opinion on 16 April 1991.

13. On 7 September 1992 the District Court heard the expert architect as well as four witnesses. A further hearing took place on 29 January 1993.

14. On 2 November 1993 the District Court divided the matrimonial property.

15. On 2 December 1993 the applicant requested the rectification of the judgment. On 16 December 1993 the District Court dismissed his request. The Regional Court confirmed this decision on 29 April 1994.

16. On appeal, the Regional Court held hearings on 28 April and 2 June 1994. On 10 June 1994 it modified the first-instance judgment.

17. On 17 October 1994 the applicant filed a petition for review with the Supreme Court.

18. On 25 April 1995 the Supreme Court quashed the second-instance judgment and remitted the case to the Regional Court.

19. In the resumed proceedings, a hearing took place on 16 November 1995. On 23 December 1995 the Regional Court appointed an agricultural expert who submitted his opinion on 28 May 1996.

20. On 5 September and 14 November 1996 the Regional Court held further hearings. On the latter occasion the agricultural expert and a witness were heard.

21. On 29 November 1996 the Regional Court appointed a forestry expert. The expert presented his opinion on 23 April 1997 and finalised it on 2 June 1997.

22. On 5 June and 3 July 1997 the Regional Court heard a witness and the forestry expert.

23. On 10 July 1997 the mother of the applicant's ex-wife died. The Regional Court interrupted the proceedings on 18 July 1997. On 10 February 1998 the applicant requested the court to arrange for the deceased defendant's successor to enter the proceedings. On 4 May 1998 the local public notary informed the court that the applicant's son, being already a party to the case, was the successor.

24. On 28 August 1998 the Regional Court put further questions to the forestry expert. The expert submitted his replies on 9 November 1998.

25. On 4 February 1999 the parties requested that the proceedings be stayed.

26. On 7 October 1999, at the applicant's request, the Regional Court continued the proceedings and held a hearing.

27. On 14 October 1999 the Regional Court delivered the final judgment in the case. It was served on the applicant on 4 November 1999.

THE LAW

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

28. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement 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 ... hearing within a reasonable time by [a] ... tribunal..."

29. The Government contested that argument.

30. The Court observes that the period to be taken into consideration began on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at that time.

The period in question ended on 4 November 1999. It thus lasted seven years.

A. Admissibility

31. 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

32. The Government argued that the case was rather complex, especially since experts had to be involved. They claimed that the delay caused by the stay of the proceedings at the parties' request could not be attributed to the

State. Concerning the conduct of the judicial authorities, the Government maintained that the domestic courts had acted without any undue delay.

33. The applicant contested these arguments.

34. 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).

35. For the Court, the mere fact that several experts had to be involved in order to determine the value of certain assets cannot alone explain the overall length of the case which, from a legal point of view, cannot be considered complex.

36. As to the conduct of the applicant, the Court notes that on 4 February 1999 he requested, together with the other parties, that the proceedings be stayed. On 7 October 1999 the examination of the case was continued at his request. This delay of eight months is attributable to the applicant.

37. As to the conduct of the judicial authorities, the Court observes that hearings were held at regular intervals. However, it considers that the domestic courts did not make efficient use of these occasions in order to reach a final decision in the case. It took them seven years to bring the case to an end following the Convention's entry into force with respect to Hungary (see paragraph 31). It is to be noted that the proceedings had been pending since 1986 and should have reached an advanced stage by that date.

Having regard to what was at stake for the applicant, namely the termination of matrimonial proceedings by means of a final division of the parties' assets, the Court considers that more diligence should have been expected on the part of the domestic courts in their handling of the case.

38. In these circumstances, the Court concludes that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS AND OF ARTICLE 5 OF PROTOCOL NO. 7

Admissibility

39. The applicant also complained that the decisions given by the domestic courts in the above proceedings were wrong. He invoked Article 6 § 1 of the Convention and Article 5 of Protocol No. 7.

Even assuming exhaustion of domestic remedies, the Court considers that there is nothing in the case file which indicates that the courts hearing the case lacked impartiality or that the proceedings were otherwise unfair. The mere fact that the applicant is dissatisfied with the outcome of the litigation cannot of itself raise an arguable claim of a breach of Article 6.

Moreover, there is no appearance on the materials before it of any violation of the applicant's rights under Article 5 of Protocol No. 7 either.

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. 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 278,405,795 Hungarian forints in respect of pecuniary and non-pecuniary damage.

42. The Government found the applicant's claims 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 5,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant did not make any 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 concerning the length of the proceedings;
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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of Hungary 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 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President