



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

SECOND SECTION

CASE OF KELLNER v. HUNGARY

(Application no. 73413/01)

JUDGMENT

STRASBOURG

28 September 2004

FINAL

28/12/2004

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 Kellner 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 C. BÎRSAN,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 7 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 73413/01) 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 two Hungarian nationals, Mr László Kellner and Mrs Lászlóné Kellner ("the applicants"), on 24 November 2000.

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

3. On 14 January 2003 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicants were born in 1955 and 1959, respectively, and live in Székesfehérvár, Hungary. They represent their minor daughter, Sz.K. before the Court. Sz.K. was born in 1985.

5. In 1986 Sz.K. suffered paralysis as a consequence of a compulsory polio inoculation. In 1987 the applicants, as her representatives, brought an action against the Hungarian State claiming compensation and a monthly allowance. The parties reached a friendly settlement. On the applicants' request, in 1991 the compensation and the allowance were raised. In 1993 the Supreme Court partly accepted their claim for the value of a special car.

6. On 26 November 1993 the applicants brought an action before the Fejér County Regional Court, sitting as a first instance court, claiming a

raise in the monthly allowance as a result of inflation and the high cost of schooling.

7. Following the court's order, on 27 June 1994 an expert submitted an opinion on the matter.

8. On 7 January 1995 the applicants modified their action.

9. On 10 February 1995 the Regional Court partly granted the applicants' claims.

10. Upon the applicants' appeal, on 25 January 1996 the Supreme Court quashed the first-instance judgment and remitted the case to the Regional Court.

11. In the resumed proceedings, on 12 June 1997 the expert submitted another opinion. On 8 August 1997 the applicants clarified their claims about inflation.

12. On 19 September 1997 the Regional Court partly accepted the applicants' claims.

13. On 12 October 1997 the applicants appealed to the Supreme Court for the full claim.

14. On 22 July 1998 the applicants requested the court to deliver a judgment, and modified their claims in view of the lapse of time since their appeal had been lodged.

15. On 9 January 2000 the applicants again requested the court to deliver a judgment and modified their claims, given the time lag.

16. On 3 February and 30 March 2000 the Supreme Court held hearings. In a judgment of 6 April 2000, the Supreme Court partly modified the first-instance decision.

17. On the applicants' petition for review, on 14 May 2001 the Supreme Court's review bench increased the award.

THE LAW

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

18. The applicants 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 ... hearing within a reasonable time by [a] ... tribunal...”

19. The Government contested that argument.

20. The period to be taken into consideration began on 26 November 1993 and ended on 14 May 2001. It thus lasted more than seven years and five months before three court instances.

A. Admissibility

21. 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

22. 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 following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

24. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATIONS OF ARTICLES 2, 3, 6 § 1 (FAIRNESS), 8, 9, 13 AND 14 OF THE CONVENTION AND ARTICLES 1 AND 2 OF PROTOCOL NO. 1

The applicants' further complaints essentially concern the outcome of the case. They invoke Articles 2, 3, 6 § 1, 8, 9, 13 and 14 of the Convention, as well as Articles 1 and 2 of Protocol No. 1.

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 applicants are 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, in the materials before it, of any violation of the applicants' further rights under the Convention or its Protocols.

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

25. 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

26. The applicants claimed 73,255 euros (EUR) in respect of pecuniary and non-pecuniary damage.

27. The Government contested these claims.

28. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this aspect of the claim. However, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, and having regard to the special circumstances of the case, it awards them, jointly, EUR 8,000 under that head.

B. Costs and expenses

29. The applicants did not make any claim under this head.

C. Default interest

30. 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

1. *Declares* by 6 votes to 1 the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* by 6 votes to 1 that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by 6 votes to 1
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President