



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

SECOND SECTION

CASE OF ZICHY GALÉRIA v. HUNGARY

(Application no. 66019/01)

JUDGMENT

STRASBOURG

5 April 2005

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 Zichy Galéria 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 R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 66019/01) against the Republic of Hungary lodged on 24 October 2000 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Zichy Galéria (“the applicant”), a Hungarian art gallery, which was founded in 1984 and operates in Budapest.

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

3. On 17 December 2002 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. 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. In October 1984 eleven artists founded the “Zichy Mihály” Art Gallery. In December 1984 the Hungarian Art’s Fund, pursuant to Government Decree No. 83/1982, approved the gallery’s foundation as a “creative art community”.

5. In 1989 Parliament passed the Associations Act, requiring the registration of associations.

6. As of 1 October 1992, due to a modification in the Government Decree, the supervision of the applicant was to be exercised by the Ministry of Culture and Education.

7. On 29 April 1993 the Constitutional Court declared the relevant parts of the Government Decree unconstitutional and annulled them. Consequently, the registration rules of the Associations Act became applicable to the applicant as well.

8. On 29 June 1995 the applicant requested that its legal personality be acknowledged by the Budapest Regional Court. The applicant refused to submit a request for registration, reasoning that it was the Ministry's duty to do so.

9. On 23 April 1996 the Regional Court dismissed the applicant's request. The Regional Court held that the request of the applicant, whose legal personality had ceased pursuant to the Constitutional Court's decision, had not complied with the substantive and formal requirements set out in the Associations Act. On 14 October 1996 the Supreme Court, sitting as a second-instance court, upheld the Regional Court's decision.

10. On 14 October 1997 the Supreme Court, in review proceedings, quashed these decisions and remitted the case to the Regional Court. The Supreme Court held that the applicant's legal personality had not ceased because of the Constitutional Court's decision.

11. In the resumed proceedings, on 14 January 1998 the Budapest Public Prosecutor's Office proposed that the Regional Court require the applicant to adjust its statute to the requirements of the Associations Act. On 23 February 1999 the Budapest Regional Court ordered the applicant's registration.

12. On 8 March 2000 the Supreme Court, sitting as a second-instance court, quashed the first-instance decision and remitted the case to the Regional Court.

13. On 12 April 2000 the Regional Court ordered the applicant to submit supplementary documents. The applicant failed to comply with this order.

14. On 10 July 2000 the Regional Court dismissed the applicant's request. On 31 July 2000 the applicant appealed.

15. On 10 April 2001 the Supreme Court, sitting as a second-instance court, quashed the order and remitted the case to the Regional Court.

16. On 28 January 2002 the Budapest Regional Court registered the applicant association.

THE LAW

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

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement of 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 29 June 1995 and ended on 28 January 2002. It thus lasted six years and seven months for three levels of jurisdiction.

A. Admissibility

20. 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

21. 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 applicant and 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).

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

23. 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 VIOLATION OF ARTICLE 11 OF THE CONVENTION

24. The applicant submits that the national authorities violated its right to freedom of association, guaranteed by Article 11 of the Convention, which in its relevant part reads as follows:

“1. Everyone has the right to ... freedom of association with others, ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ...”

Admissibility

25. In so far as the applicant’s complaint may be understood to concern the delay in registration, the Court considers that it refers essentially to the same facts which underlie the issue under Article 6 § 1. Therefore, to avoid taking the same elements into consideration twice, the Court finds it appropriate to examine this aspect under Article 6 § 1 alone.

26. To the extent that this complaint is related to the very outcome of the proceedings, the Court observes that the applicant association was eventually registered on 28 January 2002. Therefore, it can no longer claim to be a victim of a violation of its rights under Article 11, as envisaged by Article 34 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 30,000,000 Hungarian forints¹ in respect of non-pecuniary damage.

29. The Government considered the applicant’s claim excessive.

¹ Approximately 120,000 euros

30. Ruling on an equitable basis, it awards the applicant EUR 1,850 under that head.

B. Costs and expenses

31. The applicant did not make any claim under this head.

C. Default interest

32. 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 excessive 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 1,850 (one thousand eight hundred and fifty 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 5 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President