



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

SECOND SECTION

CASE OF KÁLNÁSI v. HUNGARY

(Application no. 4417/02)

JUDGMENT

STRASBOURG

27 September 2005

FINAL

15/02/2006

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 Kálnási 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,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 6 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 4417/02) 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 Gábor Kálnási and Mrs Gáborné Kálnási ("the applicants"), on 1 May 2001.

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

3. On 13 February 2004 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. The applicants were born in 1958 and 1953 respectively and live in Füzérkomlós, Hungary.

1. Action in trespass

5. On 20 October 1995 the applicants brought an action in trespass against their neighbours before the Miskolc District Court. The court held nine hearings between 14 February 1996 and 5 January 1998 and obtained an expert opinion. On 15 June 1998 the court partly accepted the applicants' claims.

6. On appeal, on 4 February 1999 the Borsod-Abaúj-Zemplén County Regional Court gave a partial decision. It upheld part of the first-instance decision, but quashed the remainder and remitted the case to the District Court. It appears that the applicants' repeated efforts to have the Regional Court's decision enforced were to no avail.

7. In the resumed proceedings before the District Court, hearings took place on 12 July, 6 September, 4 October, 14 December 1999, 19 January and 9 March 2000. On 3 May 2000 the District Court ordered that the proceedings be stayed under section 137 § 1 (b) of the Code on Civil Procedure because the applicants failed to appear at the hearing scheduled for that date.

8. On 8 September 2000 the applicants requested that the proceedings be continued.

9. Meanwhile, on 23 April 1999 the applicants filed a petition for the review by the Supreme Court of the partial decision of 4 February 1999.

The Supreme Court appointed a legal-aid lawyer, who subsequently had to be replaced twice at the applicants' request.

On 30 November 2000 the Supreme Court eventually rejected the petition as inadmissible, without examining it on the merits, since the applicants had, despite warning, failed to contact the legal-aid lawyer and were therefore not properly represented before the Supreme Court.

10. In the pending proceedings before the District Court, the applicants were repeatedly requested to clarify their claims at the hearings of 2 and 9 May 2001.

11. At the applicants' request, on 10 July 2001 the District Court appointed a legal-aid lawyer.

12. In its order of 30 November 2001 the District Court discontinued the proceedings in respect of the pending claims. On appeal, on 1 March 2002 the Borsod-Abaúj-Zemplén County Regional Court quashed the first-instance order and remitted the file to the District Court.

13. In the resumed proceedings, the applicants requested the District Court to hold a hearing in their absence because they felt that their presence at the previous hearings had been useless.

14. At the hearing on 24 September 2003 the District Court dismissed the applicants' claims. In the absence of an appeal, this decision became final on 25 November 2003.

2. Further proceedings

15. In 1999 the representative of the building, in which the applicants lived, brought an action against them claiming overdue charges.

On 9 June 1999 the Miskolc District Court partly accepted the plaintiff's claims. On 16 December 1999 the Regional Court dismissed the applicants' appeal. On 11 April 2001 the Supreme Court's review bench refused to grant leave to appeal.

In similar proceedings, on 10 December 2001 the Sátorajáújhely District Court partly accepted some further claims for overdue charges. On 4 April 2002 the Regional Court dismissed the applicants' appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 CONCERNING THE LENGTH OF THE PROCEEDINGS IN REGARD TO THE ACTION IN TRESPASS

16. The applicants complained that the length of the first 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...”

17. The Government contested that argument.

18. The period to be taken into consideration began on 20 October 1995 and ended on 25 November 2003. It thus lasted more than eight years for three levels of jurisdiction.

A. Admissibility

19. 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

20. 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).

21. 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).

22. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION IN RESPECT OF THE ACTION IN TRESPASS

23. The applicants further complained that the courts' decisions were inefficient in protecting them from – or providing compensation for – their neighbours' trespass. In this respect, they relied on Articles 2, 3, 6, 8 and 13 of the Convention and Articles 1 and 2 of Protocol No. 1.

Admissibility

24. The Court observes that the applicants failed to pursue a proper petition for review against the decision of the Regional Court of 4 February 1999. Moreover, they failed to appeal against the District Court's partial decision of 24 September 2003. In these circumstances, these complaints must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF THE CONVENTION CONCERNING THE APPLICANTS' FURTHER PROCEEDINGS

25. Lastly, the applicants complained that the decisions taken by the courts in the cases under (2) above were unjust in view of their low income.

Admissibility

26. The Court observes that this complaint concerns in essence the outcome as such of the litigations in question, which it is unable to examine. It reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national authority or court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among other authorities, *García Ruiz v. Spain* [GC], judgment

of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, pp. 98-99, § 28).

27. In the present case, even assuming compliance with the requirements of Article 35 § 1 of the Convention, the Court finds that an examination of the applicants' submissions does not disclose any appearance of a violation of the Convention; in particular, there is no indication that the courts lacked impartiality or that the proceedings were otherwise unfair.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed 135,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

30. The Government contested these claims.

31. 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 considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them jointly EUR 3,000 under that head, taking into account the fact that the applicants also contributed to the protraction of the proceedings.

B. Costs and expenses

32. The applicants also claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and the Court.

33. The Government contested the claim.

34. 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 were 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 applicants, who were not represented by a lawyer, the sum of EUR 500 under this head.

C. Default interest

35. 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 in regard to the action in trespass 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage as well as EUR 500 (five hundred euros) for costs and expenses, to be converted into the national currency of the respondent State 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President