



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

SECOND SECTION

CASE OF KÁRPÁTI v. HUNGARY

(Application no. 13318/02)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Kárpáti 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. TÜRMEŃ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 13318/02) 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 a Hungarian national, Ms Judit Kárpáti (“the applicant”), on 19 October 2001.

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

3. On 17 January 2005 the Court decided to communicate the application. 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1955 and lives in Budaörs.

5. In 1976 the applicant married Mr J.V. Their daughters were born in 1978 and 1981.

A. Proceedings for divorce, custody and the regulation of the use of the couple's flat

6. In March 1993 the applicant filed for divorce before the Budaörs District Court. She also sought custody of the couple's children and the regulation of related matters.

7. On 8 August 1994 an expert submitted her opinion on the children's relationship with the parents.

8. On 27 September 1994 the District Court pronounced the couple's divorce, granted custody of the children to the mother, ordered the respondent to pay maintenance, regulated his access rights and ordered that the couple should share the use of the flat, which was jointly owned. It considered that the respondent's alcoholism and its negative effect on the children did not justify the grant of the exclusive use of the flat to the mother and the children.

Both parties appealed. The applicant claimed exclusive use of the flat.

9. On 7 February 1995 the Pest County Regional Court dismissed the parties' appeal, holding that the first-instance decision had been given in accordance with the law.

B. Proceedings for the division of the matrimonial property

10. On 23 February 1995 the applicant brought an action before the Budaörs District Court for the division of the matrimonial property.

11. The court held hearings on 19 May and 11 July 1995. On 20 July 1995 it appointed an expert architect. Further hearings took place 1 November and 4 December 1995, 1 February and 11 March 1996.

12. On 12 March 1996 the applicant unsuccessfully requested the court to grant priority to her case.

13. The District Court held hearings on 13 June, 1 October and 12 December 1996. On 16 January 1997 another expert was appointed.

14. A further hearing took place on 25 June 1997. A third expert was appointed on 5 September 1997.

15. On 1 October, 25 November and 9 December 1997, 13 February and 31 March 1998, the court held additional hearings. On that date it appointed an expert committee to reconcile the existing expert opinions. After having been urged to do so on 3 May 1999, the latter submitted its opinion on 1 June 2000.

16. Meanwhile, on 23 September 1998 and 18 February 2000, the applicant again unsuccessfully requested that priority be granted to her case.

17. On 30 June and 12 July 2000 the applicant's motion for bias and her complaint against the committee's opinion were rejected.

18. On 27 October 2000 the District Court delivered its judgment and divided the matrimonial property between the parties, ordering the applicant

to pay 2,179,500 Hungarian forints to the respondent as compensation for his share of the flat which he had to leave.

19. On 15 May 2001 the Pest County Regional Court dismissed the parties' appeals.

THE LAW

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

20. The applicant complained that the length of the proceedings for the division of the matrimonial property 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..."

21. The Government contested that argument.

22. The period to be taken into consideration began on 23 February 1995 and ended on 15 May 2001. It thus lasted nearly six years and three months for two levels of jurisdiction.

A. Admissibility

23. 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

24. 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).

25. 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).

26. 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

27. Relying on Articles 6 and 13 of the Convention and Article 5 of Protocol No. 7, the applicant complained of the outcome of both proceedings.

28. The Court observes that the applicant did not file a petition for a review by the Supreme Court in either case. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed eight million Hungarian forints in respect of non-pecuniary damage.

31. The Government contested the claim.

32. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,500 under this head.

B. Costs and expenses

33. The applicant made no claim for costs and expenses.

C. Default interest

34. 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 in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand and five hundred 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 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 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President