CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF KARÁCSONYI v. HUNGARY

(Application no. 37494/02)

JUDGMENT

STRASBOURG

18 April 2006

FINAL

18/07/2006

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 Karácsonyi 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. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 37494/02) 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, Mrs Erzsébet Karácsonyi ("the applicant"), on 16 September 2002.

2. The applicant was represented by Ms E. Karlosák, a lawyer practising in Tatabánya. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. On 29 June 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

4. The applicant was born in 1961 and lives in Tatabánya.

5. On 21 May 1992 the applicant brought an action against her husband for divorce, custody of their children, child maintenance and the division of matrimonial property.

6. On 17 May 1993 the Tatabánya District Court declared the parties' divorce and granted the applicant custody of the children. The court also ordered the defendant to pay maintenance, regulated his visiting rights and divided the use of their common flat, giving ⅔ of the space to the applicant and the children, and ⅓ to the defendant.

7. On 15 July 1993 the applicant appealed against this decision, seeking exclusive use of the flat and the reduction of the defendant's visiting rights.

8. On 22 September 1994 the Komárom-Esztergom County Regional Court quashed the appealed part of the first-instance judgment and remitted the case, in this respect, to the District Court.

9. In the resumed proceedings, the District Court held a hearing and appointed two valuation experts on 4 September 1995. Further hearings took place on 3 June 1996, 10 June 1997, 1 September 1998, 25 January 1999, 14 February, 6 September and 25 October 2000.

10. On 8 January 2001 the court ordered the completion of the experts' opinions. Further hearings were held on 31 August and 27 November 2001.

11. On 18 December 2001 the District Court granted the applicant ownership of the flat and ordered her to pay 927,282 Hungarian forints (HUF) in compensation to the defendant. It dismissed the remainder of her claims.

12. On 24 April 2002 the Regional Court confirmed the first-instance decision. This decision was served on 10 May 2002.

THE LAW

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

13. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. She also invoked Article 1 of Protocol No. 1, without providing any further details or arguments.

14. The Court considers that the essence of this complaint falls to be examined under Article 6 § 1 of the Convention (*Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23), 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..."

15. The Government contested the applicant's arguments.

16. The period to be taken into consideration began only 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 the time. The Court observes that the proceedings had already lasted over five months on that date.

17. The period in question ended on 10 May 2002. It thus lasted nine and a half years for two levels of jurisdiction.

A. Admissibility

18. 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

19. 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).

20. 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).

21. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed HUF 564,088[1] in respect of pecuniary damage and HUF 8 million[2] in respect of non-pecuniary damage.

24. The Government contested these claims.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

[1] EUR 2,200
[2] EUR 31,400

However, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards award her 7,000 euros (EUR) under that head.

B. Costs and expenses

26. The applicant also claimed HUF 150,000[1] for the costs and expenses incurred before the domestic courts and HUF 300,000[2] for those incurred before the Court.

27. The Government contested these claims.

28. 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 rejects the claim for costs and expenses in the domestic proceedings and considers that the sum claimed for the proceedings before the Court should be awarded in full (EUR 1,180 – the approximate equivalent of HUF 300,000).

C. Default interest

29. 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 application admissible;

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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 1,180 (one thousand one hundred eighty euros) in respect of 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;

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[1] EUR 590
[2] EUR 1,180

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President