CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF JÁVOR AND OTHERS v. HUNGARY

(Application no. 11440/02)

JUDGMENT

STRASBOURG

23 May 2006

FINAL

23/10/2006

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 Jávor and Others 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 I. CABRAL BARRETO,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
Mr S. NAISMITH, *Deputy Section Registrar*

Having deliberated in private on 2 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 11440/02) 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 four Hungarian nationals, Mr István Jávor, Mrs Istvánné Jávor, Mr Csongor Jávor and Ms Diana Jávor ("the applicants"), on 23 October 2001.

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

3. On 25 August 2005 the Court declared the application partly inadmissible and 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 1954, 1955, 1986 and 1990, respectively, and live in Budapest.

5. The applicants are husband and wife and their son and daughter. In December 1987 the parents travelled to Cuba on a trip organised by a travel agency. On 13 December 1987 the tourist group had dinner at a restaurant where they were served poisonous sea food. As a consequence, the muscles and the nervous systems of the first and the second applicant were seriously damaged which caused 67% disability.

6. In 1988 the first applicant brought an action against the travel agency in the Budapest II/III District Court claiming damages. The case was then transferred to the competent Pest Central District Court.

7. In an interim judgment (*közbenső ítélet*), on 23 March 1990 the District Court established the travel agency's responsibility. After a hearing on 11 June 1993, in a partial judgment (*részítélet*) of 15 June 1993, it ordered the defendant to pay 600,000 Hungarian forints plus interest to the first applicant, but dismissed his claims for non-pecuniary damage.

8. In the continued proceedings, the District Court held hearings on 16 February, 11 May, 23 September and 9 December 1994, 7 July and 6 October 1995, 17 May 1996, and 9 May and 16 July 1997. The Government stated that further hearings took place on 16 January and 17 April 1998.

9. On 24 April 1998 the court delivered a decision ordering the defendant to pay damages and an allowance to the first applicant.

10. On appeal, on 10 December 1998 the Budapest Regional Court confirmed the first-instance decision. The applicant filed a petition for review on 27 January 1999.

11. On 30 March 2001 the Supreme Court dismissed the petition. This decision was served on 18 June 2001.

12. Meanwhile, on 14 January 1998 all four applicants brought an action in the Pest Central District Court against the travel agency claiming further damages. Subsequently, the case was transferred to the Budapest II/III District Court. On 15 November 1998 the applicants requested in vain that their case be retransferred to the Pest Central District Court in order to facilitate the proceedings.

13. The Budapest II/III District Court held hearings on 27 May 1999 and 19 May 2000. On 27 June 2000 it decided to transfer the case to the Buda Central District Court. However, the file was transferred to the Pest Central District Court by mistake. It therefore only reached the Buda Central District Court on 27 September 2000.

14. On 28 March 2001 the Buda Central District Court declared its lack of competence and transferred the case to the Budapest Regional Court.

15. On 29 June 2001 the Regional Court declared its lack of competence and transferred the file to the Supreme Court for the appropriate delegation.

16. On 17 February 2002 the Supreme Court appointed the Buda Central District Court to hear the case.

17. On 22 April 2002 the District Court established that the proceedings had been stayed since 28 March 2002 because the summonses could not be served on the plaintiffs.

18. On 18 October 2002 the court observed that the case had ceased to exist on 28 September 2002, *ipso iure,* after a stay of six months. This decision became final on 2 January 2003.

THE LAW

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

19. The applicants complained that the length of both 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..."

20. The Government contested that argument.

21. In the first case (see paragraphs 6 to 11 above), the period to be taken into consideration only began 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 case had already been pending for about four years on that date.

The period in question ended on 18 June 2001. It thus lasted more than eight years and seven months for three levels of jurisdiction.

22. In the second case (see paragraphs 12 to 18 above), the period to be taken into consideration began on 14 January 1998 and ended on 2 January 2003. It thus lasted almost five years for three levels of jurisdiction.

A. Admissibility

23. The Court notes that the complaint concerning the respective lengths of these proceedings 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 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).

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 convincing argument capable of persuading it to reach a different conclusion in the present case. In respect of the second case, the Court notes in particular that, although the overall length of the proceedings was not especially excessive, it took the domestic authorities more than four years to determine the court competent to hear the case. Furthermore, particular importance should be attached to the fact that the subject matter of the cases was compensation for a disabling illness.

Having regard to its case-law on the subject, the Court considers that in the instant case the length of both 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

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. Concerning the first case, the first applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. Concerning the second case, the first and the second applicant claimed EUR 5,000 each; moreover, the third and the fourth applicant each claimed altogether EUR 25,000 plus accrued interest, in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards EUR 7,000 to the first applicant and EUR 2,000 to each of the second, third and fourth applicants under that head.

B. Costs and expenses

31. The first applicant also claimed EUR 200 for the costs and expenses incurred before the Court.

32. The Government did not express an opinion on the matter.

33. The Court considers that the sum claimed is reasonable and should be awarded in full.

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 remainder of 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 within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
   (i) the first applicant, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 200 (two hundred euros) in respect of costs and expenses;
   (ii) the second, third and fourth applicants EUR 2,000 (two thousand euros) each in respect of non-pecuniary damage;
   (iii) plus any tax that may be chargeable on these sums; and
   (iv) which amounts are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (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 23 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President