CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF JACZKÓ v. HUNGARY

(Application no. 40109/03)

JUDGMENT

STRASBOURG

18 July 2006

FINAL

18/10/2006

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 Jaczkó 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,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 27 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 40109/03) 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, Mr Dezső Jaczkó ("the applicant"), on 31 March 2003.

2. The applicant was represented by Mr G. Ruszthy, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 15 September 2005 the Court 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 applicant was born in 1948 and lives in Budapest.

5. On 28 December 1987 the applicant brought an action against his ex-wife, seeking the division of their matrimonial property.

6. In the period between 29 March 1988 and 19 May 1992, ten hearings took place and the opinions of valuation experts were obtained.

7. Further hearings took place on 19 September, 28 October and 16 December 1994, 2 February and 23 March 1995. Meanwhile, the expert was invited to submit a new opinion and to complete it subsequently.

8. On 20 June 1995 the Buda Central District Court ordered the applicant to pay 675,000 Hungarian forints (HUF) to his ex-wife.

9. On appeal, the Budapest Regional Court, on 8 March 1996, quashed parts of the appealed judgment and remitted those parts to the District Court. Furthermore, it fixed the parties' respective shares of the property.

10. On 27 May 1997, on the applicant's petition for review, the Supreme Court quashed the second-instance judgment concerning the establishment of the parties' property shares. Accordingly, this part of the case was also remitted to the District Court.

11. In the resumed proceedings, the District Court held hearings on 19 June, 1 September and 27 October 1998; it also appointed another expert. On 21 January 1999 the applicant's motion for bias was dismissed.

12. Further hearings took place on 19 October 1999, 24 January and 6 March 2000. An on-site inspection scheduled for 19 September 2000 had to be postponed, because the applicant did not agree to the defendant's personal attendance. A new opinion was submitted by the expert on 28 February 2001.

13. Another hearing was held on 19 June 2001. The next one scheduled for 10 July 2001 was postponed at the applicant's request to 23 August 2001.

14. On 5 September 2001 the District Court fixed the parties' respective shares in a real-estate of common ownership, granted ownership of it to the applicant and ordered him to pay compensation and unrealised rent to his ex-wife. The court relied on documentary evidence, the testimonies of the parties and the opinions of two expert architects. On 12 November 2001 the applicant appealed.

15. An appeal hearing took place on 1 March 2002. On 22 March 2002 the appellate court appointed an expert, who submitted his opinion on 25 June 2002.

16. On 6 November 2002 the Regional Court increased the amount of compensation to be paid by the applicant. It further quashed the part of the District Court judgment which concerned the unrealised rent and discontinued the proceedings in this regard. The judgment acquired legal force.

17. On 19 December 2002 the applicant filed a petition for review, alleging that the final decision was unfounded and at variance with the relevant substantive law.

18. In a preliminary examination under section 273 of the Code of Civil Procedure, on 13 May 2003 the Supreme Court refused to deal with the merits of the petition. It applied section 270 § 2 of the Code of Civil Procedure, as in force in the relevant period, according to which a review of substantive unlawfulness of final decisions was only admissible if a review was considered necessary from the perspective of harmonising or developing the application of the law.

19. On 24 September 2003 the Regional Court dismissed the applicant's request to have the final decision rectified. It held that, in essence, the request was aimed at challenging certain provisions of the final decision which constituted *res iudicata* and was thus incompatible *ratione materiae* with the procedural rules concerning the rectification of decisions.

THE LAW

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

20. 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 fair ... hearing within a reasonable time by [a] ... tribunal..."

21. The Government contested that argument.

22. 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 almost five years on that date.

The period in question ended on 13 May 2003. It thus lasted ten and a half years for three 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 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant complained under Article 6 § 1 that the proceedings were unfair because his request for rectification was dismissed. He also submitted that he had been denied a fair hearing before the Supreme Court.

28. In so far as the applicant's complaint concerns the assessment of the evidence and the result of the proceedings before the Regional Court when it refused to rectify the final decision, the Court 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 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 (*Schenk v. Switzerland,* judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46). In the present case, there is nothing in the case file indicating that the Regional Court lacked impartiality or that the proceedings were otherwise unfair.

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

29. As regards the refusal to grant the applicant leave to appeal, the Court observes the Supreme Court took the view that the applicant's case did not raise a point of law of general public importance, which is the gateway requirement for leave being granted. The Court further observes that where a supreme court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see mutatis mutandis *Nerva and Others v. the United Kingdom* (dec.), no. 42295/98, 11 July 2000). In its opinion, this principle extends to the Hungarian Supreme Court's decisions on applications for leave to appeal. In the

absence of any appearance of arbitrariness, the Court considers that this complaint is likewise manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed HUF 11.5 million[1] in respect of pecuniary and HUF 5 million[2] in respect of non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him 7,000 euros (EUR) under that head.

B. Costs and expenses

34. The applicant also claimed altogether HUF 3,010,320 for the costs and expenses incurred before the domestic courts and the Court.

35. The Government contested the claim.

36. 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 sum of EUR 1,500 covering costs under all heads.

C. Default interest

37. 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.

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[1] EUR 43,660

[2] EUR 18,980

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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred 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;
   (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 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinion is annexed to this judgment:
(a) separate opinion of Judge Mularoni.

J.-P.C.
S.D.

SEPARATE OPINION OF JUDGE MULARONI

I agree with the reasoning and the conclusion of the majority but for paragraph 29 of the judgment which concerns the Supreme Court's refusal to grant the applicant leave to appeal.

The reasoning followed by the Court, for instance, in the case of *Ilvesviita-Sallinen v. Finland* (no. 59578/00, decision of 22 June 2004) should be applied to this part of the present application as well.

When a Supreme Court determines, in a preliminary examination of a case, whether or not the conditions required for granting leave to appeal have been fulfilled, it is not making a decision relating to "civil rights and obligations". In my view, Article 6 § 1 of the Convention does not apply to the instant proceedings, in which the Hungarian Supreme Court, without dealing with the merits, refused to grant leave to appeal against a decision of the Regional Court.

I consider that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.