



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

SECOND SECTION

**CASE OF BÖRCsök BODOR v. HUNGARY**

*(Application no. 14962/03)*

JUDGMENT

STRASBOURG

3 October 2006

**FINAL**

*12/02/2007*

*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 Börcsök Bodor 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. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 September 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 14962/03) 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, Ms Sarolta Börcsök Bodor (“the applicant”), on 7 March 2003.

2. The Hungarian Government (“the Government”) were represented by Mr L. Hóltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 15 September 2005 the Court decided to give notice of the application 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 applicant was born in 1941 and lives in Budapest.

5. The applicant owns a flat in a two-flat house. In 1992 Mr F. and Ms K., a married couple, bought the other flat and thus became co-owners of the house.

**A. First proceedings**

6. On 24 February 1993 the Szeged District Land Registry registered the couple’s ownership of the flat they had bought. The applicant appealed, claiming to have a right of pre-emption. On 4 November 1993 the Csongrád

County Land Registry dismissed her administrative appeal. She sought judicial review.

7. On 15 July 1994 the Szeged District Court dismissed the applicant's action. On 21 February 1995 the Csongrád County Regional Court dismissed her appeal.

8. On 11 March 1996 the Supreme Court reversed these judgments, quashed the decision of 4 November 1993 and remitted the case to the District Land Registry.

9. In the resumed administrative proceedings, on 16 September 1996 the District Land Registry restored the original situation (as it had been prior to 24 February 1993).

## **B. Second proceedings**

10. In 1995 civil proceedings were instituted against the applicant by the couple. They sought the termination of the common ownership of the house as well as damages. In her counterclaim, the applicant requested the Szeged District Court to award her damages, stating that the plaintiffs had broken into her flat and had carried out works therein, causing major damage. She claimed that these actions amounted to trespass.

11. In a partial judgment of 20 March 1996, the District Court ordered the plaintiffs to restore the applicant's flat to its original state and to pay damages. The court suspended the examination of the issue of termination of common ownership pending the registration of the plaintiffs' ownership rights by the Land Registry.

12. On 10 December 1996 the Csongrád County Regional Court quashed the first-instance judgment and remitted the case to the District Court, ordering that an expert opinion be obtained.

13. In the resumed proceedings, on 3 December 1997 the District Court found, relying on the opinion of an expert, that the plaintiffs had been trespassing when they had made alterations in the applicant's flat and ordered them to restore it to its original state and to pay damages. The issue of termination of common ownership remained suspended.

14. On 5 May 1998 the Regional Court partly amended the first-instance judgment by annulling the plaintiffs' obligation to restore the flat and lowering the amount of damages to be paid to the applicant.

15. On 11 November 1998 the Supreme Court quashed the first- and second-instance judgments and remitted the case to the District Court.

16. On 10 September 1999 the District Court dismissed the plaintiffs' action and ordered them to restore the flat to its original state, and to pay the applicant damages, plus accrued interest and unrealised rent.

17. On 27 April 2000 the Regional Court partly amended the first-instance decision by raising the amount of damages to be paid to the applicant.

18. On 5 June 2002 the Supreme Court dismissed the parties' petitions for review. This decision was served on the applicant on 14 September 2002.

### **C. Third proceedings**

19. On 10 July 1997 the couple again requested the registration of their ownership, claiming that more than a year had passed since the final decision in the case under (A) above, during which time the applicant had not exercised her right of pre-emption. The couple's request was dismissed by the first- and second-instance Land Registries.

20. On 8 December 1997 the applicant informed the Csongrád County Land Registry of her intention to exercise her right of pre-emption and buy the flat in issue.

21. The applicant's subsequent request to have her ownership registered was dismissed by the County Land Registry in 1998. In 1999 she brought an action in the Csongrád County Regional Court, challenging this decision.

22. On 31 August 2000 the Regional Court dismissed the applicant's action, observing that, despite warning, she had failed to submit any documents proving that her purchase of the flat had been concluded.

23. On 3 October 2002 the Supreme Court dismissed the applicant's petition for review, holding that the second-instance decision had been delivered according to the law. This decision was served on the applicant on 20 November 2002.

### **D. Fourth proceedings**

24. In a prosecution for the offences of causing criminal damage and trespass, conducted against one of the plaintiffs in the case under (B) above, the applicant, acting as a civil-law party (*magánfél*), claimed damages from the defendant. On 13 November 1997 the Szeged District Court found the latter guilty as charged and ordered him to pay damages to the applicant.

25. On appeal, on 27 October 1999 the Bács-Kiskun County Regional Court acquitted the defendant and dismissed the applicant's claims, holding that they had already been determined in the proceedings under (B) above. On 4 July 2000 the Supreme Court quashed this judgment and remitted the case to the second-instance court.

26. In the resumed proceedings, on 26 October 2000 the County Regional Court amended the District Court's judgment of 13 November 1997. It convicted the defendant, but dismissed the applicant's claim for damages, confirming that this issue had already been determined in the proceedings under (B) above.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE SECOND PROCEEDINGS

27. The applicant complained that the length of the second 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...”

28. The Government contested that argument.

29. The period to be taken into consideration began in 1995 and ended on 14 September 2002. It thus lasted some seven years for three levels of jurisdiction, which each examined the matter two or three times.

#### A. Admissibility

30. 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

31. 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).

32. 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).

33. 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

34. The applicant also complained about the length of the other proceedings and about the outcome of all the cases. She relied on Articles 6, 10, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

35. Concerning the first and the fourth proceedings, the Court observes that they ended on 16 September 1996 and 26 October 2000, respectively. However, the application was only introduced on 7 March 2003, i.e. more than six months after these dates. It follows that all complaints relating to these cases must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

36. As regards the outcome of the second and the third proceedings, in so far as the applicant's complaints may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, 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 § 1 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 (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present cases, there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair. Moreover, in the absence of any elements of arbitrariness, the Court is satisfied that the applicant's rights under Article 1 of Protocol No. 1 or any other provision of the Convention were not impaired. These complaints are therefore manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

37. Lastly, as to the length of the third case, the Court observes that it started with the applicant's action in 1999, challenging the Land Registry's decision, and ended in November 2002. It therefore lasted some three years before two court instances. For the Court, this period did not exceed "a reasonable time" for the purposes of Article 6 § 1. This complaint is therefore 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

38. 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**

39. The applicant claimed 47,148,500 Hungarian forints (HUF)<sup>1</sup> in respect of pecuniary and non-pecuniary damage.

40. The Government contested the claim.

41. 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 her 2,500 euros (EUR) under this head.

### **B. Costs and expenses**

42. The applicant also claimed HUF 4,024,380<sup>2</sup> for the costs and expenses incurred before the domestic courts and the Court.

43. The Government contested the claim.

44. According to the Court’s case-law, an applicant is entitled to reimbursement of 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 it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 for the proceedings before the Court.

### **C. Default interest**

45. 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.

---

<sup>1</sup> Approximately 175,000 euros

<sup>2</sup> Approximately 14,900 euros

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the second 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (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 3 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President