



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

SECOND SECTION

CASE OF EMESZ v. HUNGARY

(Application no. 36343/03)

JUDGMENT

STRASBOURG

31 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 Emesz 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. TÜRMEŇ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĚ, *judges*

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 36343/03) 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 Ferenc Emesz (“the applicant”), on 2 September 2003.

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

3. On 13 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 1925 and lives in Szolnok.

5. In 1992 several individuals, including the applicant, signed a contract with a view to building an apartment house in common.

6. In the context of an ensuing dispute about the respective contributions, on 2 May 1995 five participants of the building project brought an action against the applicant. On 10 October 1995 they amended their claims.

7. On 17 October 1996 the Jász-Nagykun-Szolnok County Regional Court appointed the Jászberény District Court to hear the case. On 12 December 1997 the case was eventually transferred to the Kunszentmárton District Court. On 10 February 1998 it was given priority.

8. Between 10 March 1998 and 7 October 1999 the court held numerous hearings and obtained the opinion of an expert. On 17 December 1999 it dismissed the action and the applicant's counterclaims.

9. On appeal, on 31 May 2000 the Jász-Nagykun-Szolnok County Regional Court quashed part of this decision, remitting it to the first-instance court, and upheld the remainder. In the latter respect, on 12 December 2002 the Supreme Court dismissed the plaintiffs' petition for review.

10. In the resumed first-instance proceedings, several hearings took place and two expert opinions were obtained between 14 March 2001 and 27 August 2003. On 10 October 2003 the District Court accepted the plaintiffs' action in part, and dismissed the majority of the applicant's counterclaims.

11. On appeal, on 9 June 2004 the Regional Court amended the first-instance decision. On 16 December 2004 the Supreme Court dismissed the applicant's petition for review.

THE LAW

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

12. 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 ... hearing within a reasonable time by [a] ... tribunal...”

13. The Government contested that argument.

14. The period to be taken into consideration began on 2 May 1995 and ended on 16 December 2004. It thus lasted over nine years and seven months for three levels of jurisdiction.

A. Admissibility

15. 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

16. 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).

17. 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).

18. 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

19. The applicant also complained, relying on Article 6 § 1 of the Convention, about the outcome of the proceedings.

20. In so far as the applicant's complaint 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 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.).

21. In the present case, the Court is satisfied that there is nothing in the case file disclosing any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary. It follows that this complaint is 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

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 37,027,000 Hungarian forints¹ (HUF) in respect of pecuniary damage and HUF 8 million² in respect of non-pecuniary damage.

24. The Government contested the claims.

25. 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 6,500 euros (EUR) under that head.

B. Costs and expenses

26. The applicant also claimed HUF 607,000³ for the costs and expenses incurred before the domestic courts and the Court.

27. The Government contested the claim.

28. According to the Court's case-law, an applicant is entitled to the 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 applicant, who was not represented by a lawyer, the sum of EUR 500 under this head.

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.

¹ Approximately 136,600 euros.

² Approximately 29,500 euros.

³ Approximately 2,200 euros.

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 6,500 (six 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 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President