



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

SECOND SECTION

CASE OF GOTTHÁRD-GÁZ KFT v. HUNGARY

(Application no. 28323/04)

JUDGMENT

STRASBOURG

5 June 2007

FINAL

05/09/2007

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 Gotthárd-Gáz Kft v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mrs A. MULARONI,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 28323/04) 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 limited liability company, Gotthárd-Gáz Kft (“the applicant”), on 24 June 2004.

2. The applicant was represented by its managing director, Mr G. Bor. The Hungarian Government (“the Government”) were represented by Mr L. Hőltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 8 March 2006 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 company was founded in 1991 with the aim of constructing a gas supply network for the town of Szentgotthárd.

5. On 27 January 1993 the Veszprém District Mining Authority issued a permit for another company, authorising it to construct principal gas pipe sections in two streets in Szentgotthárd. On 8 February 1993 the applicant filed an administrative appeal. On 12 March 1993 the National Mining Authority dismissed the appeal, holding that the applicant had no *locus standi*. The applicant sought judicial review on 5 April 1993.

6. After two hearings, on 20 September 1993 the Veszprém District Court quashed the administrative decisions.

7. On appeal, on 7 February 1994 the Veszprém County Regional Court quashed this decision and dismissed the applicant's action. It held that the plaintiff had no *locus standi* in the case, because it could not prove that – in accordance with section 327(1) of the Code of Civil Procedure – the subject matter concerned its rights or lawful interests. Nor could the applicant company (which itself had not been a party to the administrative proceedings) prove – as required by section 72(1) of the Code of Administrative Procedure – that it had suffered prejudice to its lawful interests.

8. On 28 March 1994 the applicant filed a petition for review. The Supreme Court held hearings on 20 and 27 November 1995. On the latter occasion, the applicant declared that another administrative litigation concerning its licence to supply gas was in progress. The Supreme Court suspended the proceedings pending the outcome of the other case.

9. After the second-instance court on 25 September 2003 had finally dismissed the applicant's action concerning the licence, the Supreme Court resumed the proceedings. On 8 January 2004 it upheld the Regional Court's decision. It endorsed the reasoning of the second-instance decision, and refuted the applicant's allegation that it had been deprived of its *locus standi* without an examination of the merits of the case. In the court's view, the fact that, after having deduced in a detailed analysis that the applicant company had no *locus standi* in the case, the Regional Court had not embarked on an examination of the underlying administrative dispute did not amount to a denial of justice.

THE LAW

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

10. 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...”

11. The Government contested that argument.

12. The period to be taken into consideration began on 5 April 1993 and ended on 8 January 2004. It thus lasted over ten years and nine months for three levels of jurisdiction.

A. Admissibility

13. 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

14. 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).

15. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Frydlender*, cited above).

16. 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 instant application. It notes that the protraction of the case occurred on account of two interlinked procedures; however, having regard to its case-law on the subject, it considers that the length of the proceedings was in any event 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

17. The applicant also complained under Article 13 of the Convention about the alleged unfairness of the proceedings and, under Article 1 of Protocol No. 1, about their outcome.

18. The Court considers that the applicant's complaint about the unfairness of the proceedings falls to be examined under Article 6 § 1 of the Convention, the latter being the *lex specialis* in this field. However, in so far as this 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 domestic law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

19. In the present case, the Court does not discern any indication that the courts lacked impartiality or that the proceedings were otherwise unfair. Moreover, the fact that the domestic courts found against the applicant, in litigation challenging an administrative decision conferring rights on another business entity, cannot be regarded as an interference with its right to the peaceful enjoyment of its possessions, for the purposes of Article 1 of Protocol No 1. It follows that these complaints are 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

20. 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

21. The applicant claimed 8,090,400 Hungarian forints (HUF)¹ plus accrued interest in respect of pecuniary damage and HUF 5 million² in respect of non-pecuniary damage.

22. The Government contested these claims.

23. 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 the applicant EUR 6,000 under that head.

B. Costs and expenses

24. The applicant also claimed HUF 2.5 million³ for the costs and expenses incurred before the domestic courts and the Court.

25. The Government contested the claim.

26. 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

¹ 32,640 euros (EUR)

² EUR 20,180

³ EUR 10,090

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 company, which was not represented by a lawyer, the sum of EUR 400 under this head.

C. Default interest

27. 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 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 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 400 (four 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 5 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President