



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

SECOND SECTION

CASE OF IMMOBILIA BAU KFT. v. HUNGARY

(Application no. 13647/04)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

10/12/2007

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 Immobilia Bau 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. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 13647/04) 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 Immobilia Bau Kft. (“the applicant”).

2. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice and Law Enforcement. The applicant was represented by Mr G. Ormay, a lawyer practising in Miskolc.

3. On 30 August 2006 the Court decided to communicate the complaint concerning the length of the proceedings 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant is a limited liability company with its seat in Miskolc.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The liquidation proceedings

6. On 27 November 1990 the liquidation of the Diósgyőr Machine Factory Ltd. (“the Factory”) was ordered by the Borsod-Abaúj-Zemplén County Regional Court. However, during the liquidation procedure, the Factory remained partly active, in order to minimise losses.

7. Between April 1991 and January 1994, the predecessor of the applicant was a supplier of the Factory. As the Factory was unable to pay for the services already rendered – the outstanding fees amounted to 8,528,183 Hungarian Forints (approximately 32,421 euros) – the applicant became a creditor in the liquidation proceedings.

8. On 31 August 1994 the Factory's liquidator prepared the closing balance sheet. The liquidator was of the view that the satisfaction of all the creditors in cash was impossible. Instead of payment in cash, it therefore offered shares in the Factory, but the applicant declined the proposal.

9. On 21 February 1995 the applicant objected (*kifogás*) to the closing balance sheet and insisted on payment in cash.

10. On 4 July 1995 the Borsod-Abaúj-Zemplén County Regional Court accepted the closing balance sheet. On appeal on 29 May 1997, the Supreme Court, acting as a second-instance court, quashed this decision due to procedural shortcomings. It found, *inter alia*, that the Regional Court had not dealt with the applicant's objection. The Supreme Court held that the liquidator was under an obligation to attempt to sell the shares of the Factory first and then satisfy the creditors from the sums received. The Supreme Court's decision arrived at the Regional Court on 15 July 1997.

11. On 10 December 1997 the Regional Court ordered the liquidator to prepare a new closing balance sheet.

12. On 19 January 1998 the liquidator informed the Regional Court that the sale of the shares was only possible well below their nominal value. The liquidator also informed the Regional Court about the ongoing negotiations with possible investors and requested an extension of the time-limit for the preparation of the closing balance sheet. The Regional Court registered the liquidator's request.

13. On 17 September 1998 the liquidator announced that its attempt to sell the shares had been unsuccessful and requested the Regional Court to accept an amended closing balance sheet.

14. On 18 February 2000 the liquidator informed the Regional Court about an update to the closing balance sheet.

15. On 22 January 2001 the applicant initiated negotiations with the liquidator. At a meeting held on 20 February 2001, the liquidator acknowledged that it had satisfied some of the creditors more favourably than the applicant, but had only done so to keep the Factory at least partly active.

16. On 23 January 2001 the applicant lodged a complaint with the Regional Court about the lack of a final decision in the case.

17. On 29 March 2001 the applicant raised an objection before the Regional Court, asking the court to terminate the liquidation proceedings.

18. On 1 July 2004 the Regional Court dismissed the applicant's complaint without examining its merits.

19. Subsequently, on 2 April 2001 the applicant lodged another complaint with the Regional Court and requested the appointment of an expert auditor in order to establish whether the liquidator had breached its duties.

20. On 12 October 2004 the Regional Court dismissed the applicant's second complaint. The applicant appealed. On 15 September 2005 the Debrecen Court of Appeal upheld the first-instance decision.

21. Meanwhile, on 30 January 2002 the Regional Court ordered the liquidator, under pain of a fine and deletion from the register of liquidators, to produce the closing balance sheet within 30 days or inform the court about any obstacles.

22. On 4 March 2002 the liquidator informed the Regional Court that the liquidation procedure was at an advanced stage, but requested the court to forbear from demanding the closing balance sheet "because of difficulties in obtaining, handling and classifying certain documents". The liquidator added that the unsuccessful attempt to reach a settlement with the applicant had also delayed the proceedings.

23. On 8 June 2004 the Regional Court again requested information from the liquidator about the obstacles to finishing the procedure.

24. On 1 July 2004 the liquidator informed the Regional Court that it was still facing the same difficulties and, therefore, was not able to produce the closing balance sheet.

25. On 4 February 2005 the liquidator prepared an additional closing balance sheet. The Borsod-Abaúj-Zemplén County Tax Authority audited that document, which was then lodged with the Regional Court on 19 October 2006.

26. The liquidation procedure is apparently still pending.

B. Civil proceedings against the liquidator

27. On 20 April 2001 the applicant brought an action for compensation against the liquidator before the Borsod-Abaúj-Zemplén County Regional Court.

28. On 8 May 2001 the Regional Court stayed the proceedings. On appeal, on 6 September 2001 the Supreme Court, acting as a second-instance court, reversed the first-instance decision and ordered the continuation of the proceedings.

29. In the resumed proceedings, on 30 October 2001 the Regional Court found that it had no jurisdiction to deal with the case and transferred it to the competent Miskolc District Court. The Supreme Court, acting as a second-instance court, upheld this decision on 19 December 2002.

30. On 2 April 2003 the District Court dismissed the applicant's case, finding that the procedure followed by the liquidator had complied with the relevant domestic law. Moreover, it pointed out that the applicant had failed, despite warnings, to request the appointment of an auditor, whose opinion would have been the only acceptable proof for the establishment of the defendant's liability.

31. On appeal, on 21 November 2003 the Borsod-Abaúj-Zemplén County Regional Court upheld the first-instance decision. The applicant lodged a petition for review with the Supreme Court.

32. On 14 July 2004 the Supreme Court dismissed its petition, without an examination on the merits, as inadmissible, since it was incompatible *ratione materiae* with the relevant provisions of the Code of Civil Procedure.

C. Civil proceedings against the Borsod-Abaúj-Zemplén County Regional Court

33. In 2004 the applicant brought an official liability action against the Borsod-Abaúj-Zemplén County Regional Court before the Miskolc District Court.

34. As the District Court had no jurisdiction to hear the case, on 1 September 2004 the Budapest Court of Appeal had appointed the Szabolcs-Szatmár-Bereg County Regional Court to proceed.

35. On 24 January 2005 the County Regional Court dismissed the applicant's case. It pointed out that the domestic courts dealing with the matter had kept regular contact with the liquidator and repeatedly ordered it to produce the closing balance sheet. It also noted that the relevant domestic law did not contain a specific deadline to finish a liquidation procedure. The Regional Court acknowledged that there had been some delays imputable to the courts dealing with the case, but was of the view that these delays had not caused any damage to the applicant, given that the possibility of recovering the money owed by the debtor had in any event been very low.

36. On appeal, on 29 September 2005 the Debrecen Court of Appeal upheld the first-instance decision.

THE LAW

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

37. The applicant complained that the length of the liquidation 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...”

38. The Government contested that argument.

39. The period to be taken into consideration began in January 1994. According to the information available in the case file as of the date of adoption of the present judgment, it has not yet ended. It has thus already lasted more than thirteen years and eight months for two court instances.

A. Admissibility

40. 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

41. 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).

42. 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).

43. 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 finds that 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

44. The applicant claimed that the length of the proceedings in question deprived it of the enjoyment of its property. It relied on Article 1 of Protocol No. 1, which provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

45. The Court notes that this complaint is linked to that under Article 6 § 1 of the Convention which has already been examined above and must therefore, likewise, be declared admissible. However, having regard to its finding under Article 6 § 1 (paragraph 43 above), the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The Court observes that the applicant complained under Articles 6 and 13 of the Convention about the outcome and the unfairness of the proceedings. However, these submissions concerning the pending liquidation proceedings are premature. In respect of the proceedings instituted against the liquidator and the County Regional Court, the Court observes that these complaints are essentially of a fourth-instance nature: there is no indication in the case file that the domestic courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary.

47. It follows that these complaints must be rejected respectively for non-exhaustion of domestic remedies and as being manifestly ill-founded, pursuant to Article 35 §§1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 52,047,033 million Hungarian forints (HUF)¹ in respect of pecuniary and non-pecuniary damage.

50. The Government contested these claims.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, on an equitable basis, and having regard to the fact that the proceedings are apparently still pending after more than thirteen years, it awards the applicant EUR 13,000 for non-pecuniary damages.

B. Costs and expenses

52. The applicant also claimed HUF 15,612,500² for the costs and expenses incurred before the domestic courts and the Court.

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

54. 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 considers it reasonable to award the global sum of EUR 400 to cover the various costs.

C. Default interest

55. 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 complaints concerning the excessive length of the proceedings and the alleged infringement of property rights admissible and the remainder of the application inadmissible;

¹ Approximately 212,000 euros (EUR)

² EUR 63,500

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
4. *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 13,000 (thirteen 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELEN-PASSOS
Deputy Registrar

F. TULKENS
President