



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

SECOND SECTION

CASE OF HILTI v. HUNGARY

(Application no. 25709/04)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

09/01/2008

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 Hilti 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 R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs F. ELENS-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. 25709/04) 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 Mr Fabio Hilti, a Liechtenstein national (“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 J. Gregorits, a lawyer practising in Budapest.

3. On 15 September 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.

4. On 4 December 2006 the Government of the Principality of Liechtenstein declared that they would not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1938 and lives in Schaan, Liechtenstein.

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

7. On 24 August 1996 the company Hilti and Hilti Handles AG, owned by the applicant, initiated the liquidation of the Hungarian company S., since the latter had been reluctant to pay its outstanding debts amounting to 1,250,000 German Marks (approximately 639,114.85 euros).

8. On 17 September 1996 the Budapest Regional Court dismissed the applicant's claim and terminated the liquidation proceedings, since the debtor had contested both the existence and the amount of its debts and the applicant had not been able to prove that company S. was insolvent.

9. On appeal, on 7 November 1997 the Supreme Court, acting as a second-instance court, quashed the first-instance decision and remitted the case to the Regional Court.

10. On 10 March 1998 the Budapest Regional Court held a hearing and invited the applicant to submit all relevant documents proving the insolvency of company S. Upon the applicant's request, the Regional Court extended the time-limit. On 6 May 1998 the applicant submitted the information requested.

11. On 2 November 1998 the Regional Court ordered the liquidation of the company S. On 7 January 1999 the latter merged with company C.

12. On 8 January 2001, under the same file-number, the Supreme Court, acting as a second-instance court, quashed the first-instance decision. It observed that the debtor had merged with company C. and held that, without the examination of the latter's solvency, its liquidation should not have been ordered.

13. On 13 March 2001 the Regional Court invited the applicant to declare whether his company wished to maintain its claim. The suit was maintained.

14. In the resumed proceedings, on 18 April 2001 the Budapest Regional Court found that it had no jurisdiction to deal with the case and transferred it to the Zala County Regional Court.

15. On 8 October 2001 the Regional Court ordered the liquidation of company C. Subsequently, the Regional Court withdrew this decision because of procedural shortcomings.

16. On 30 May 2002 the Regional Court again ordered the liquidation of company C. and appointed a liquidator. The company appealed.

17. On 1 April 2003 the Supreme Court, acting as a second-instance court, dismissed the appeal. On 9 September 2003 the Regional Court accepted the liquidator's closing balance sheet.

18. On 29 April 2005 the Regional Court ordered, in simplified proceedings (*egyszerűsített felszámolási eljárás*), the liquidation of company C. It established that the debtor's assets were insufficient to cover the expenses of the liquidation proceedings and the applicant's claim.

19. On 28 May 2005 the Regional Court dissolved company C., which was consequently deleted from the company register on 18 July 2005.

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

21. The Government contested that argument. They argued that the liquidation proceedings in fact consisted of two separate proceedings, against company S. and company C., both of which lasted some three years and, since no inactive period imputable to the courts could be observed, neither had exceeded a reasonable time.

22. The Court notes in this connection that company C. became the legal successor of company S., resulting in the obligation to meet the debts of the latter. Moreover, it is to be observed that the domestic courts treated the liquidation proceedings as one procedure, and the Court sees no reason to depart from this view.

23. Therefore, the period to be taken into consideration began on 24 August 1996 and ended on 28 May 2005. It thus lasted eight years and nine months before two levels of jurisdiction.

A. Admissibility

24. 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

25. 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).

26. 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).

27. 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 jurisprudence 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

28. The applicant claimed that the length of the proceedings in question deprived him of the enjoyment of his property. He 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."

29. 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 (see paragraph 27 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 *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

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 639,114 euros (EUR) in respect of pecuniary and 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, on an equitable basis, it awards the applicant EUR 6,000 for non-pecuniary damages.

B. Costs and expenses

34. The applicant also claimed 4,300 Swiss Francs¹ for the costs and expenses incurred before the domestic courts and EUR 6,400 for those incurred before the Court.

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

36. According to the Court's case-law, an applicant is entitled to the 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. The Court notes that the applicant's costs claim has not been substantiated by any relevant documents and must therefore be rejected.

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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

¹ Approximately EUR 2,600

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 6,000 (six thousand euros) in respect of non-pecuniary damage, 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 amount 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. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President