



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

SECOND SECTION

CASE OF BARNA v. HUNGARY

(Application no. 40431/04)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

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 Barna 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 M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 40431/04) 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 two Hungarian nationals, Mr Péter Barna and Ms Zsuzsanna Barna ("the applicants"), on 28 September 2004.

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

3. On 23 November 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicants, father and daughter, were born in 1929 and 1957 respectively and live in Budapest.

5. On 11 May 1995 the applicants filed an action for the invalidation of a contract in the context of a real-estate dispute.

6. The Budapest II/III District Court held numerous hearings and obtained the opinions of four experts. The applicants' action was gradually extended to include altogether 28 respondents, three of whom died in the meantime. Pending the identification of their successors, the proceedings

had to be interrupted on three occasions, for respectively 7, 12 and 5 months.

7. On 25 January 2002 the District Court gave judgment and invalidated the disputed contract, but dismissed the remainder of the action.

8. After several hearings, on 19 October 2004 the Budapest Regional Court amended the first-instance decision in a final judgment.

9. The District Court rectified and completed the decision of 25 January 2002 on 12 September 2005.

10. Because one of the plaintiffs did not comply with the final decision, enforcement proceedings commenced before the Budaörs District Court in 2005. This procedure was interrupted on 6 September 2005, since the enforced relocation of a fence would have cut off the debtor from her source of water. The District Court informed the applicants that they should seek a court injunction obliging the debtor to remove her water pipe. The applicants did so on 19 February 2006.

11. After three hearings, on 19 April 2007 the Budaörs District Court found for the applicants. The debtor appealed to the Pest County Regional Court. According to the information provided by the parties and the elements available in the case file to date, the case has not yet ended.

THE LAW

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

12. The applicants 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 11 May 1995 and has not yet ended. It has thus lasted over 12 years and 4 months for two levels of jurisdiction at the date of adoption of the present judgment.

A. Admissibility

15. The Court notes that the application 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 applicants and the relevant authorities and what was at stake for the applicants 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 application (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 application. Having regard to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement, even if the periods necessary to identify the successors of the deceased respondents cannot be imputed to the State.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicants jointly claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

21. The Government contested the claim.

22. The Court considers, on an equitable basis, that it should award the full sum claimed.

B. Costs and expenses

23. The applicants made no claim under this head.

C. Default interest

24. 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;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty 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.

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President