



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

SECOND SECTION

CASE OF TARDI AND OTHERS v. HUNGARY

(Application no. 19478/03)

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 Tardi and Others 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. 19478/03) 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 five Hungarian nationals, Mr János Tardi, Mr and Mrs László Sebők, Mrs Mátyásné Fejes and Ms Katalin Tardi (“the applicants”), on 8 April 2003.

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

3. On 15 February 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 were born in 1952, 1949, 1926, 1950 and 1980 and live in Eger, Novaj and Budapest, respectively.

5. Under the rules of Act no. 2 of 1993, the shareholders of agricultural co-operatives became entitled to claim from the local “land distribution committees” – which consisted of lay members elected by the shareholders – the reallocation of plots of arable land to them, at a value corresponding to

that of the land which had been surrendered by the original owners to the co-operatives under the socialist legislation.

6. The applicants, all in this legal position, filed their respective claims with regard to the “Novaj 0124” plot, situated in the Eger historical wine region, within the statutory 60-day time-limit counted from the entry into force of the Act on 23 January 1993. The distribution committee had an obligation under the procedural law to proceed with such claims within a deadline of two months running from the expiry of that time-limit. However, it was not until 17 February 1995 that it organised a meeting of the claimants of plot no. 0124.

7. The decisions adopted at the meeting were susceptible to administrative remedies. On appeal, on 19 December 1995 the Heves County Agricultural Office, a State authority, quashed the decisions and instructed the committee to resume the proceedings. The complainants' procedural appeals against the remittal were dismissed by the Heves County Regional Court and the Supreme Court on 28 June 1996 and 7 September 1998, respectively.

8. However, at that point neither the distribution committee nor its legal successor – the Agricultural Office itself – resumed the administrative proceedings.

9. Meanwhile, in September 1996 the Heves County Public Prosecutor's Office challenged the legality of the decision of 19 December 1995. On 17 January 2000 the Supreme Court finally discontinued these proceedings, since the prosecution's motion was incompatible *ratione materiae* with the relevant provisions of the Code of Administrative Procedure.

10. Once the legality proceedings had been terminated, the Fejér County Agricultural Office was appointed, at some time in 2002, to process the Novaj land distribution. The applicants filed an administrative appeal against the decisions of this body, arguing that the individuals who had in the meantime been granted land belonging to plot no. 0124 had not been so entitled.

11. Although the applicants' administrative appeal was largely unsuccessful, the actual owners nevertheless sought judicial review.

12. On 30 August 2002 the Fejér County Regional Court quashed the administrative decisions adopted in the case hitherto and ordered the Heves County Agricultural Office to resume its proceedings. It held that the case had been unlawfully assigned to the Fejér County Office.

13. On 12 April 2005 the Heves County Agricultural Office adopted certain decisions in the case. The administrative appeals against these decisions were to no avail. According to the information provided by the parties and the elements available in the case file to date, the judicial review of these decisions before the Nógrád County Regional Court has not yet ended.

14. Criminal proceedings which the applicants had sought against various officials involved in the case were to no avail.

THE LAW

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

15. 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...”

16. The Government contested that argument, pointing out that the land distribution committees were not State authorities and that therefore their acts or omissions, prior to 1995, did not engage the State's liability.

17. The Court considers that the period to be taken into consideration began at the latest on 19 December 1995 when the Heves County Agricultural Office, a State authority, quashed the decisions of the land distribution committee. Moreover, it notes that the proceedings have apparently not yet ended (paragraph 13 above). The period has thus lasted over eleven years and nine months for two administrative instances and two levels of court jurisdiction, at the date of adoption of the present judgment.

A. Admissibility

18. 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

19. The Court reiterates that the reasonableness of the length of the 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).

20. 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).

21. 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 circumstances. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

22. The applicants further complained that the length of the impugned proceedings had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

23. The Government contended that this part of the application should be declared inadmissible since the applicants did not exhaust domestic remedies, not having filed an official liability claim under section 349 of the Civil Code. On the merits, they submitted that the applicants could not claim to be the fully fledged owners of the land which they sought to repossess, because – prior to a final court decision – they were no more than shareholders of the local co-operative, and did not dispose of the necessary elements of ownership. In particular, they could not use the fields in question. In these circumstances, their claims did not fall under the protection of Article 1 of Protocol No. 1. The applicants contested these arguments.

24. Having regard to its finding under Article 6 § 1 of the Convention (paragraph 21 above), the Court considers that, whilst this aspect of the case is admissible, it is not necessary to examine it separately on the merits (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. Lastly, the applicants complained that the criminal proceedings did not lead to any conviction. They relied on Article 6 § 1 of the Convention. However, the Court observes that neither the Convention nor its Protocols guarantee any right to press charges against third persons or to secure convictions. It follows that this part of the application is to be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. In respect of pecuniary damage, Mr Tardi claimed 143.3 million Hungarian forints (HUF)¹ and EUR 8,269.5, plus accrued interest; Mr Sebők claimed HUF 139.9 million² and EUR 6,359.3, plus accrued interest; Mrs Sebők claimed HUF 23.5 million³ and EUR 1,292.8, plus accrued interest; Mrs Fejes claimed HUF 40.4 million⁴ and EUR 2,224.6, plus accrued interest, and Ms Tardi claimed HUF 7.7 million⁵ and EUR 733.7, plus accrued interest.

28. In respect of non-pecuniary damage, Mr Tardi and Mr Sebők each claimed HUF 105 million⁶, Mrs Sebők claimed HUF 80 million⁷, and Mrs Fejes and Ms Tardi each claimed HUF 40 million⁸.

29. The Government contested these claims.

30. 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 applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards them each EUR 6,000 under that head.

B. Costs and expenses

31. Mr Tardi and Mr Sebők each claimed HUF 6 million⁹ for the costs and expenses incurred before the domestic courts and the Court, without substantiating or itemising these expenditures.

32. The Government contested these claims.

33. 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

¹ 557,773 euros (EUR)

² EUR 545,166

³ EUR 91,511

⁴ EUR 157,481

⁵ EUR 29,791

⁶ EUR 408,858

⁷ EUR 311,627

⁸ EUR 155,822

⁹ EUR 23,373

that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicants' costs claims have not been substantiated by any relevant documents and must therefore be rejected.

C. Default interest

34. 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;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay the each 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 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 applicants' claim for just satisfaction.

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