



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

SECOND SECTION

CASE OF KÁROLYNÉ BALOGH v. HUNGARY

(Application no. 1107/04)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Károlyné Balogh v. Hungary,

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

Mrs F. TULKENS, *President*,

Mr R. TÜRMEŒ,

Mr A.B. BAKA,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI,

Mrs D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 1107/04) 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 national, Mrs Károlyné Balogh (“the applicant”), on 26 November 2003.

2. The applicant was represented by Mr V. Masenkó-Mavi, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 14 December 2005 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 applicant was born in 1915 and lives in Nyíregyháza.

5. On 12 January 1996 the applicant brought an action against her neighbours with a view to terminating their common ownership of a house.

6. After having held several hearings and obtained the opinion of an expert, on 25 November 1996 the Nyíregyháza District Court dismissed the action, holding that no physical division was possible, whereas a buyout or

the auctioning of the house would cause the respondents disproportionate damage.

7. On 17 September 1997 the Szabolcs-Szatmár-Bereg County Regional Court dismissed the applicant's appeal.

8. On 13 May 1998 the Supreme Court quashed this decision and remitted the case to the second-instance court.

9. In the resumed proceedings, on 29 August 2000 the Regional Court ordered the respondents to buy out the applicant's share of property.

10. On 26 February 2003 the Supreme Court upheld this decision. Its judgment was served on the applicant on 17 June 2003.

THE LAW

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

11. 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...”

12. The Government contested that argument.

13. The period to be taken into consideration began on 12 January 1996 and ended on 17 June 2003. It thus lasted over seven years and five months for three levels of jurisdiction.

A. Admissibility

14. 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

15. 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).

16. 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).

17. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

18. Relying on Article 6 § 1 of the Convention, the applicant also complained about the unfairness and outcome of the proceedings.

19. In so far as the applicant's 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 § 1 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. These are primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

20. In the present case, the Court considers that there is nothing in the case file disclosing any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair. It follows that this part of the application is 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

21. 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

22. The applicant claimed 4.5 million Hungarian forints (HUF)¹ in respect of non-pecuniary damage relating to the protraction of the case, as well as HUF 13.15 million² in respect of the alleged unfairness of the proceedings.

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

24. The Court considers that the applicant must have sustained some non-pecuniary damage on account of the protraction of the proceedings. Ruling on an equitable basis, it awards her EUR 2,400 under that head.

B. Costs and expenses

25. The applicant also claimed HUF 500,000³ for costs and expenses of an unclear nature.

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

27. 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

28. 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;

¹17,918 euros (EUR)

²EUR 52,379

³EUR 1,991

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 2,400 (two thousand four hundred 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President