



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

SECOND SECTION

CASE OF KLÁRA KISS v. HUNGARY

(Application no. 31754/04)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 Kiss v. Hungary,

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

Françoise Tulkens, *President*,

András Baka,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Antonella Mularoni,

Danutė Jočienė,

Dragoljub Popović, *judges*,

Sally Dollé, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 31754/04) 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, Ms Klára Kiss (“the applicant”), on 18 August 2004.

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

3. On 12 October 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

4. The applicant was born in 1939 and lives in Budapest.

5. On 4 December 1995 the applicant complained to the Budapest III District Municipality about the nuisance her neighbour was causing by using her flat as a hairdressing salon. On 5 March 1996 the Municipality dismissed the neighbour’s request for leave to use the flat in question as a hairdressing salon. The decision was upheld by the Budapest Administrative Office on 2 May 1996. The neighbour sought judicial review. The applicant, as a person whose lawful interest was at stake, was party to these and the ensuing administrative proceedings, under section 3(4) of the Code of Administrative Procedure as in force at the material time.

6. On 29 April 1997 the Pest Central District Court quashed the administrative decisions and remitted the case to the first instance administrative authority.

7. On 28 August 1998 the District Municipality issued the permit requested by the neighbour. On 3 February 1999 the Budapest Administrative Office quashed this decision and remitted the case to the first instance administrative authority.

8. The District Municipality again issued the permit in question on 31 May 1999. On 24 September 1999 the Budapest Administrative Office quashed this decision and remitted the case to the first instance administrative authority.

9. On 23 April 2001 the District Municipality discontinued the administrative proceedings. On 19 July 2001 this decision was quashed by the Budapest Administrative Office.

10. In the resumed administrative proceedings, on 29 October 2001 the District Municipality prohibited the neighbour from continuing to use the flat as a hairdressing salon. On 4 January 2002 this decision was upheld by the Budapest Administrative Office.

11. The neighbour sought judicial review. On 4 November 2003 the applicant's intervention in these proceedings was allowed.

12. On 26 February 2004 the Budapest Regional Court quashed the prohibition, observing that the administrative authorities had never actually completed the principal proceedings concerning the neighbour's request for leave to use the flat as a hairdressing salon.

13. In the resumed administrative proceedings, on 10 June 2005 the District Municipality issued the leave requested. On 28 June 2005 the applicant filed an appeal which was dismissed on 1 August 2005.

14. On 21 September 2005 the applicant sought judicial review under section 327(1) of the Code of Civil Procedure. According to the information currently in the case file, the proceedings are still pending; a hearing took place on 12 December 2006.

THE LAW

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

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 4 December 1995 and, according to the information in the case file, has apparently not yet ended. It has thus lasted over 12 years for two administrative instances and one level of court jurisdiction.

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 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).

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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The applicant also complained about the alleged unfairness and the outcome of the proceedings. The Court observes that the proceedings are still pending. Therefore, this complaint is premature and must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 621,914 Hungarian forints (HUF) (approximately 2,444 euros (EUR)) in respect of pecuniary damage and HUF 2.5 million (EUR 9,826) in respect of non-pecuniary damage.

25. The Government contested these claims.

26. 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 applicant must have sustained some non-pecuniary damage and considers that it should award the full sum claimed in this connection, i.e. EUR 9,826.

B. Costs and expenses

27. Submitting the relevant invoices, the applicant also claimed HUF 71,576 (EUR 282) for various clerical costs incurred before the Court.

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

29. The Court considers that the sum claimed should be awarded in full.

C. Default interest

30. 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;
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 9,826 (nine thousand eight

hundred and twenty-six euros) in respect of non-pecuniary damage and EUR 282 (two hundred and eighty-two 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President