



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

SECOND SECTION

CASE OF SZŐKE v. HUNGARY

(Application no. 22736/04)

JUDGMENT

STRASBOURG

5 February 2008

FINAL

05/05/2008

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 Szőke v. Hungary,

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

Françoise Tulkens, *President*,

András Baka,

Riza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 22736/04) 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 and Mrs Károly Szőke (“the applicants”), on 21 April 2004.

2. The applicants were represented by Mr Zs. Zétényi, 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 2 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 applicants were born in 1934 and 1937 respectively and live in Budapest.

5. In 1981 the applicants, as a courtesy, permitted their neighbour to connect his house to the pipeline supplying their house with water. However, in 1992 they wished to terminate the courtesy use of their water system.

6. In the resultant litigation, which started on 27 March 1992, the Vác District Court dismissed the applicants' action on 4 March 1993. This decision was quashed by the Pest County Regional Court on 11 November 1993.

7. In the resumed proceedings, the opinion of an expert was obtained on 26 January 1996. On 23 April 1996 the District Court invited the respondent to bring another action with a view to having a servitude registered in his favour. He did so on 8 May 1996. The cases were joined on 10 October 1997.

8. After several hearings, on 23 February 1999 the District Court dismissed both the applicants' claim to have the neighbour's water connection removed and the latter's claim to establish a servitude. It ordered the neighbour to pay a fee for the use of the applicants' land.

9. On appeal, on 5 October 2000 the Pest County Regional Court upheld this decision in essence, but modified the amount of the fee payable. On 29 October 2003 the Supreme Court dismissed the applicants' petition for review. This decision was served on 25 March 2004.

THE LAW

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

10. 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...”

11. The Government contested that argument.

12. The period to be taken into consideration began only on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings beforehand. The Court observes that the proceedings had already lasted over seven months on that date.

The period in question ended on 25 March 2004. It thus lasted over eleven years and four months for three levels of jurisdiction.

A. Admissibility

13. 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

14. 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).

15. 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).

16. 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 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicants also complained that the continuing presence of the neighbour's pipeline on their land, as sanctioned by the courts, amounted to an interference with their right to respect for their home, enshrined in Article 8 of the Convention.

18. Even assuming that there has been an interference with the applicants' Article 8 rights, the Court considers that the contested measure, undisputedly lawful, was justified for the purposes of Article 8 § 2 of the Convention as pursuing the legitimate aim of protecting the rights of others. 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

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 2 million Hungarian forints (approximately 7,917 euros (EUR)) in respect of non-pecuniary damage.

21. The Government accepted this claim.

22. The Court considers 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 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 applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,917 (seven thousand nine hundred and seventeen 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 5 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President