



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

SECOND SECTION

CASE OF SÍRKÓ AND OTHERS v. HUNGARY

(Application no. 44822/04)

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 Sirkó and Others 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. 44822/04) 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 four Hungarian nationals, Mrs Mihályné Sirkó, Mrs Józsefné Huszár, Mrs Ferencné Andó and Mrs Róbertné Galamb (“the applicants”), on 8 November 2004

2. The applicants were represented by Mr L. Kovács, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice and Law Enforcement.

3. On 11 January 2007 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 1919, 1941, 1947 and 1955, and live in Etes, Bányaterenye, Salgótarján and Etes, respectively.

5. In a real estate dispute, on 23 June 1994 Mr S. and others brought an action for a servitude (*szolgáalom*) against the applicants.

6. After three hearings, the preparation of an expert opinion and the identification of a plaintiff's successor, on 18 June 1998 the Salgótarján District Court found for the plaintiffs. On appeal, on 12 November 1998 the Nógrád County Regional Court quashed this decision.

7. In the resumed proceedings, on 4 March 1999 the plaintiffs changed their action and claimed ownership. Subsequently, the proceedings were suspended pending the outcome of an underlying land register procedure. The latter ended on 8 January 2001. On 23 April 2001 the plaintiffs' representative requested the resumption of the principal case.

8. The proceedings resumed on 6 June 2001. After several hearings and the opinion of an expert, on 2 December 2003 the District Court dismissed the action.

9. On appeal, on 11 May 2004 the Regional Court changed this decision and granted the plaintiffs the servitude they sought.

10. On 20 September 2004 the applicants requested the re-opening of the case. On 27 April 2005 the Regional Court admitted their request.

11. In the reopened proceedings, on 8 December 2005 the District Court established that the plaintiffs' adverse possession of the servitude in question had not taken place. It ordered the servitude to be deleted from the land register.

12. On appeal, on 25 April 2006 the Regional Court changed this decision and upheld its decision of 11 May 2004.

THE LAW

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

13. 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...”

14. The Government contested that argument.

15. The period to be taken into consideration began on 23 June 1994 and ended on 25 April 2006. It thus lasted eleven years and ten months for two levels of jurisdiction.

A. Admissibility

16. 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

17. 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).

18. 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).

19. 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 in the instant case 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

20. The applicants also complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the outcome of the proceedings.

21. In so far as the applicants' 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 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, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

22. In the present case, the Court does not discern any indication in the case file that the courts lacked impartiality or that the proceedings were otherwise unfair. Moreover, it notes that the domestic courts decided, in proceedings devoid of any sign of arbitrariness, a civil-law dispute between private parties. There is, therefore, no appearance of a violation of the applicants' rights under Article 1 of Protocol No. 1. 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

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 applicants, jointly, claimed 8,000 euros (EUR) in respect of pecuniary damage. Moreover, they each claimed EUR 8,000 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 applicants must have sustained some non-pecuniary damage and finds it appropriate to award each of them the full sum claimed under that head, i.e. EUR 8,000.

B. Costs and expenses

27. The applicants also claimed EUR 1,960 for the costs and expenses incurred before the domestic courts and EUR 960 in respect of those incurred before the Court. In connection to the latter item, they submitted an invoice prepared by their lawyer.

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

29. 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 that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicants, jointly, the entirety of the sum claimed in respect of the proceedings before the Court, i.e. EUR 960.

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 each applicant EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, and to pay them, jointly, EUR 960 (nine hundred and sixty 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
 - (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 applicants' claim for just satisfaction.

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