



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

SECOND SECTION

CASE OF GÖGÖS v. HUNGARY

(Applications nos. 20014/04 and 25348/04 (joined))

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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 Gőgös v. Hungary,

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

Françoise Tulkens, President,

Ireneu Cabral Barreto,

Rıza Türmen,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria, judges,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in two applications (nos. 20014/04 and 25348/04) 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, Mr István Gőgös (“the applicant”), on 16 April and 24 May 2004 respectively.

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

3. On 2 February and 6 October 2006, respectively, the Court decided to give notice of the applications to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the applications at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Slovenské Darmoty, Slovakia.

5. On 15 June 1992 some of his relatives brought an action against the applicant seeking termination of their common ownership of a house. The applicant brought counterclaims which he subsequently modified several times.

6. In the course of the first-instance proceedings, the applicant challenged, in vain, the Budapest II/III District Court for bias, arguing that

the President of the court – who was not sitting on the bench hearing the case – and the plaintiffs’ lawyer were sisters-in-law.

7. At the hearings on 20 October 1992 and 14 March 1996 Judge E., who was in charge of the case, instructed the plaintiffs to complete their action in a comprehensive form. Subsequently, the case was assigned to Judge H.

8. After having held several hearings and obtained the opinions of three experts, on 3 May 1999 the District Court ordered the auction of the property at issue and determined the parties’ respective shares of the sale price.

9. The applicant appealed to the Budapest Regional Court. In the course of the second-instance proceedings, his two further motions for bias – submitted against the Regional Court’s bench hearing the case – were unsuccessful.

10. After having obtained a further expert opinion, on 12 December 2000 the Regional Court upheld in essence the District Court’s judgment. It finally set the minimum price for the house in question at 27 million Hungarian forints (HUF).

11. On 25 February 2002 execution was ordered. The house in question was auctioned for HUF 41.8 million on 25 April 2002.

12. On 26 November 2003 the Supreme Court dismissed the applicant’s petition for review. The decision was served on the applicant in February 2004.

THE LAW

I. JOINDER OF APPLICATIONS

13. The Court notes that the subject matter of application nos. 20014/04 and 25348/04 is identical. It is therefore appropriate to join them, in application of Rule 42 of the Rules of Court.

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

14. 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 ... hearing within a reasonable time by [a] ... tribunal...”

15. The Government contested that argument.

16. 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 at the time. The Court notes that the proceedings had already been pending for over four months on that date.

The period in question ended on 26 November 2003. It thus lasted over eleven years for three levels of jurisdiction.

A. Admissibility

17. 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

18. 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).

19. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present applications (see *Frydlender*, cited above).

20. Having examined all the material submitted to it, the Court notes 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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant also complained of the unfairness of the proceedings. He submitted that the District Court was not impartial in that his first motion for bias was rejected despite the relation between the plaintiffs’ lawyer and the President of the court, the latter being responsible for the reassignment of his case to Judge H.

22. The Court notes the applicant has not shown that he complained about the failure of his first motion for bias in his appeal on the merits

submitted to the Budapest Regional Court, as allowed for by section 18(4) of the Code of Civil Procedure. It follows that this part of the application must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. 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 claimed 150 million Hungarian forints¹ in respect of pecuniary and non-pecuniary damage.

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

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. Ruling on an equitable basis, it awards him EUR 8,000 under that head.

B. Costs and expenses

27. The applicant made no costs claim.

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. *Decides* to join the applications;

¹ 580,623 euros (EUR)

2. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President