



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

SECOND SECTION

CASE OF BERGMANN v. HUNGARY

(Application no. 14276/04)

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 Bergmann 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 an application (no. 14276/04) 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 Andrea Bergmann (“the applicant”), on 15 May 2001.

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

3. On 9 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Pécs.

5. On 4 September 1998 the Nagyszokoly Municipality brought an action against the applicant before the Tamási District Court, seeking the annulment of a real estate sales contract. The District Court held several hearings and obtained the opinion of two experts.

6. On 29 May 2000 the court discontinued the proceedings and transferred the case to the Tolna County Regional Court, because the increased value of the applicant’s counterclaims brought the dispute within the jurisdiction of that court.

7. After two hearings, on 5 October 2000 the Regional Court found for the plaintiff. On 2 November 2000 the applicant appealed.

8. On 15 October 2002 the Supreme Court's appeal bench upheld the Regional Court's judgment. This decision was only served on the applicant on 18 July 2003. On 19 November 2003 she submitted a petition for review.

9. On 1 September 2004 the Supreme Court's review bench dismissed as inadmissible the applicant's petition for review as being incompatible *ratione materiae* with the relevant requirements of the Code of Civil Procedure. It applied section 270(2) of the Code of Civil Procedure, as in force at the material time, according to which a review of the substantive unlawfulness of final decisions was only admissible if it was considered necessary for the harmonisation or development of the application of the law.

THE LAW

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

10. 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..."

11. The Government contested that argument.

12. The period to be taken into consideration began on 4 September 1998 and ended on 1 September 2004. It thus lasted almost six years. However, in the Court's view, the period subsequent to 18 July 2003, the day on which the second-instance judgment was served on the applicant, corresponded to the futile review proceedings, devoid of any prospect of success, and cannot therefore be imputed to the State. The relevant period is therefore four years, ten months and two weeks for two 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 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).

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 – and in particular to the period of total inactivity of almost two years before the Supreme Court’s appeal bench, as well as the nine-month delay in the service of the second-instance decision – 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

17. The applicant also complained under Article 6 § 1 of the Convention about the unfairness of the proceedings. The Court considers that there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary. 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

18. 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

19. The applicant claimed 44,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government contested the claim.

21. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,000 under that head.

B. Costs and expenses

22. The applicant made no claim under in this respect.

C. Default interest

23. 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 3,000 (three thousand 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 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President