



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

SECOND SECTION

CASE OF SZILVÁSSY v. HUNGARY

(Application no. 17623/04)

JUDGMENT

STRASBOURG

1 April 2008

FINAL

01/07/2008

This judgment may be subject to editorial revision.

In the case of Szilvássy v. Hungary,

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

Françoise Tulkens, *President*,
Antonella Mularoni,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria, *judges*,
Sally Dollé, *Section Registrar*,

Having deliberated in private on 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 17623/04) 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 Béla Szilvássy.

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

3. On 10 September 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1944 and lives in Budapest.

5. In May 1989 a private individual brought an action against Mr M.M. before the Pest Central District Court, asking the court to establish that she was the owner of certain movable property and real estate.

6. Between May 1989 and November 1992, the District Court held eleven hearings, heard several witnesses and appointed a real-estate expert.

7. On 5 November 1992 the plaintiff requested the District Court to hold a hearing. Subsequently, the District Court appointed a forensic psychiatric expert, in order to examine the defendant’s mental state. The expert

submitted her opinion on 23 June 1993, establishing that the defendant's capacity to conduct legal acts was limited.

8. On 2 July the District Court ordered the competent authority to appoint an *ad hoc* guardian for the defendant.

9. On 9 December and 18 January 1994 the District Court held hearings. On 19 January 1994 the *ad hoc* guardian was discharged from his duties.

10. On 28 February 1994 the defendant died. On 7 March 1994 the District Court established that the proceedings were interrupted.

11. On 28 April 1995 the applicant entered the proceedings as the defendant's heir.

12. On 24 October 1995, 4 July 1996, 21 November 1996, 23 January 1997, 14 March 1997 and 14 May 1997, the District Court held hearings and heard witnesses.

13. On 16 June 1997 the plaintiff modified her action.

14. On 15 September 1997, 25 November 1997, 23 March 1998, 26 June 1998 and 3 November 1998, the District Court held further hearings and heard witnesses.

15. On 1 February 1999, upon the District Court request, the plaintiff submitted a preparatory paper which contained a question to be answered by the real-estate expert.

16. On 19 February 1999 and 22 February 1999, the District Court appointed real-estate and movable property experts. The real-estate expert attempted to carry out an on-site inspection. Since the applicant failed to appear, the inspection had to be repeated on 28 September 1999. The real-estate expert submitted her opinion on 4 October 1999.

17. Subsequently, the case was transferred to another judge of the District Court.

18. On 8 October and 11 November 1999 the parties filed observations.

19. On 22 March 2002 the District Court informed the parties that they could submit further written observations on the expert's opinion. On 30 May 2002 the District Court held a hearing. Both parties submitted preparatory documents to the District Court.

20. On 26 July 2002 the District Court ordered the real-estate expert to supplement her opinion. The expert complied with the order on 25 November 2002.

21. On 8 April and 24 June 2003 the District Court held a hearing. On 23 April 2003 the District Court requested the movable property expert to supplement his opinion. Since the expert failed to comply with the Court's request, it fined him. On 29 August 2003 the District Court, upon his request, released the expert from his mandate. On 9 September the plaintiff requested the District Court to appoint another movable property expert.

22. On 23 August 2003 the District Court appointed another expert who submitted his opinion on 24 January 2004.

23. On 16 September 2003 and 18 February, 30 March and 25 October 2004, 14 February, 11 April and 20 May 2005 the District Court held hearings.

24. On 30 May 2005 the District Court delivered its decision. The plaintiff appealed.

25. On 6 April 2006 the Budapest Regional Court partly modified the first-instance decision.

THE LAW

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

26. 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...”

27. The Government contested that argument.

28. 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 length of the proceedings after that date, account must be taken of the stage which they had reached beforehand. The Court notes that the proceedings had already been pending for three years and six months on that date.

29. The period in question ended on 6 April 2006. It thus lasted thirteen years and five months for two levels of jurisdiction.

A. Admissibility

30. The Court notes that the application 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

31. 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).

32. 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).

33. 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.

34. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 18,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

37. The Government contested these claims.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, on an equitable basis, it awards the applicant EUR 12,800 for non-pecuniary damages.

B. Costs and expenses

39. The applicant also claimed EUR 31,000 for the costs and expenses incurred before the national instances as well as those incurred before the Court.

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

41. According to the Court’s case-law, an applicant is entitled to the 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. The Court notes that the applicant’s costs claim has not been substantiated by any relevant documents and must therefore be rejected.

C. Default interest

42. 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 application admissible;
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 12,800 (twelve thousands eight hundreds euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, which sum is to be converted into the national currency of the respondent State at the rate applicable at the date of the 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President