



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

SECOND SECTION

CASE OF MUIITY v. HUNGARY

(Application no. 31802/04)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

17/10/2008

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 Muity v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Mrs Sally Dollé, *Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 31802/04) 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 Antal Muity (“the applicant”), on 26 July 2004.

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

3. On 17 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 1966 and lives in Baja.

5. On 27 January 1997 the applicant’s wife filed for divorce.

6. After several hearings, on 5 October 1999 the Pest Central District Court pronounced the parties’ divorce, placed the couple’s daughter with the mother, ordered the applicant to pay maintenance and suspended his right of access to his child, as he suffered from paranoid psychosis and, in the court’s view, his conduct was unpredictable.

7. On 25 May 2000 the Budapest Regional Court upheld part of this decision but remitted certain questions, in particular those concerning maintenance and the applicant's visiting rights, to the District Court.

8. The first-instance proceedings were resumed on 23 April 2001. The applicant was subjected to an examination by an expert psychiatrist, in whose opinion his access to the child was feasible only under supervision, given his mental state.

9. On 17 October 2001 the court held a hearing and issued an order concerning the applicant's access rights. This decision was quashed on appeal on 16 May 2002.

10. After several hearings, on 27 June 2003 the District Court issued an order allowing the applicant to meet his daughter once a month for two hours on the premises of a specialised foundation. Relying on the opinion of the expert psychiatrist, it observed that the applicant's ailment prevented him from having greater access to his daughter, then eight years old. On 4 December 2003 the Budapest Regional Court upheld this decision.

11. On 25 February 2004 the Pest Central District Court determined the remainder of the action concerning maintenance. In application of section 92(1) of the Family Code, the court also recapitulated the applicant's access rights, in that he was entitled to meet his daughter every fourth Tuesday, on the premises of the foundation, supervised by a professional.

12. During these proceedings, the applicant modified his claims on many occasions and filed numerous submissions.

13. On 9 December 2004 the Regional Court dismissed the applicant's appeal.

THE LAW

I. 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 on 27 January 1997 and ended on 9 December 2004. It thus lasted over seven years and ten months for two 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 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). In cases relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on the enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

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 application (see *Frydlender*, cited above).

20. 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, even if the applicant contributed to the protraction of the proceedings (see paragraph 12 above).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. Without relying on any particular provision of the Convention, the applicant also complained about the manner in which his access rights were regulated.

22. The Court considers that this complaint falls to be examined under Article 8 of the Convention which provides, insofar as relevant, as follows.

“1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

23. The Court considers that the interference in question, undoubtedly lawful, pursued the legitimate aim of the protection of health and morals, as well as the rights of others. Given that the applicant, suffering from a serious mental ailment, was found to be fit to exercise his access rights only under controlled circumstances, in the Court’s view the measure applied by the Hungarian courts can reasonably be seen as necessary in a democratic society to achieve that legitimate aim, and was thus justified under Article 8 § 2 of the Convention. 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

24. 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

25. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested the claim.

27. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head, taking into account not only what was at stake for him in the dispute, but also the fact that he contributed to the protraction of the proceedings.

B. Costs and expenses

28. The applicant made no claim under this head.

C. Default interest

29. 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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which sum is to be converted into the national currency of the respondent State 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President