



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

SECOND SECTION

CASE OF SÁNDOR v. HUNGARY

(Application nos. 9077/05 and 10457/05 (joined))

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 Sándor 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 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 two applications (nos. 9077/05 and 10457/05) 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 two Hungarian nationals, Mr László Levente Sándor and Mrs Lászlóné Sándor (“the applicants”), on 4 February 2005 and 11 February 2005, respectively.

2. The applicants were represented by Mr A. Cech, 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 14 December 2007 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 applicants, husband and wife, were born in 1928 and 1936 respectively and live in Budapest.

5. On 1 March 1995 the liquidation of the South Pest General Consumer and Marketing Co-operative (“ÁFÉSZ”) was ordered by the Budapest

Regional Court. Each applicant was creditor in these proceedings, holding individual claims.

6. In May 1996 the liquidator prepared the interim balance sheet (*közbenső mérleg*) that was sent to the applicants. On 31 May 1996 the applicants raised an objection concerning the interim balance sheet. In January 1997 the Budapest Regional Court suspended the review of the balance sheet until a decision by the Supreme Court. In April 1997 the Regional Court again suspended its proceedings concerning the applicants' objection. The applicants allege that the Regional Court has never decided upon their objection.

7. In the resumed proceedings, on 28 July 1999 the Budapest Regional Court accepted the closing balance sheet prepared by the liquidator. The applicants appealed against this decision. On 12 July 2004 the Supreme Court quashed the Regional Court's decision and remitted the case to the first-instance.

8. In the resumed proceedings, the applicants raised an objection against an action of the liquidator, namely, the sale of real estate belonging to the debtor. In May 2005 the Budapest Regional Court dismissed the objection. On appeal, the Budapest Court of Appeal upheld the first-instance decision in September 2006. In May 2007 the review bench of the Supreme Court upheld the final decision.

9. In November 2007 the Regional Court ordered the bailiff to pay the applicants 3,835,643 Hungarian forints (approximately 15,577 euros) for their justified creditors' claim. The entire sum was paid to them.

10. According to the information in the case file, the liquidation procedure is still pending.

THE LAW

I. JOINDER OF APPLICATIONS

11. The Court notes that the subject matter of application nos. 9077/05 and 10457/05 is identical, since the applicants, husband and wife, are parties to the same domestic proceedings. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

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

12. The applicants complained that the length of the liquidation 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...”

13. The Government contested that argument.

14. The period to be taken into consideration began on 1 March 1995. According to the information provided by the parties and the elements available in the case file, it has not yet ended. It has thus lasted over thirteen years and four months for three levels of jurisdiction.

A. Admissibility

15. 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

16. 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).

17. 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).

18. 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 the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

20. The applicants further complained that the length of the proceedings had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, which provides as follow:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

21. The Court notes that this complaint is linked to that under Article 6 § 1 of the Convention which has already been examined above and must therefore, likewise, be declared admissible. However, having regard to its finding under Article 6 § 1 (see paragraph 19 above), the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 1 of Protocol No. 1 (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicants, jointly, claimed 82,781 euros (EUR) in respect of pecuniary and non-pecuniary damage.

24. The Government contested this claim.

25. The Court does not discern any casual 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 damages. Ruling on an equitable basis, it awards each applicant EUR 11,200.

B. Costs and expenses

26. The applicants also claimed EUR 1,200 for the costs and expenses incurred before the Court. They submitted that their claim is based on an agreement concluded with their lawyer. They filed an itemised statement of the hours billable by their lawyer, amounting to twelve hours of work at an hourly rate of EUR 100 (two hours of client consultations; four hours for studying the file; two hours for case-law research; four hours for drafting submissions).

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

28. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum claimed in its entirety under this head, jointly to the applicants.

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. *Decides* to join the applications;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:
 - (i) to each of the applicants EUR 11,200 (eleven thousand two hundred euros), plus any tax that may be chargeable to them, in respect of non-pecuniary damage;
 - (ii) to the applicants jointly EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses;
 - (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;
6. *Dismisses* the remainder of the applicants' 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