



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

SECOND SECTION

CASE OF FONYÓDI v. HUNGARY

(Application no. 30799/04)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 7 April 2009*

STRASBOURG

7 October 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 Fonyódi 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,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

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

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 30799/04) 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 Gyuláné Fonyódi (“the applicant”), on 29 July 2004.

2. The applicant was represented by Ms D. Kiss, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Hóltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 18 December 2007 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1950 and lives in Budapest.

5. In the context of complications suffered from plastic surgery, on 13 February 1992 the applicant brought an action in compensation against a hospital.

6. After having held several hearings and obtained the opinion of an expert, on 11 October 1994 the Pest Central District Court gave an interim

judgment, accepting the applicant's entitlement to compensation. On appeal, on 7 November 1995 the Budapest Regional Court upheld this decision.

7. Subsequently the proceedings continued before the District Court. In January 1996 the applicant extended her claims. After having held several hearings and obtained an expert opinion, on 27 January 2000 the District Court partly found for the applicant. On 24 January 2001 the Regional Court amended this decision.

8. On 25 June 2003 the Supreme Court quashed these decisions and remitted the case to the first-instance court.

9. After several hearings in the resumed first-instance proceedings, on 31 October 2006 the District Court ordered the respondent to pay the applicant 1.9 million Hungarian forints (HUF) in compensation plus accrued interest, together with a monthly allowance in arrears and *pro futuro*.

10. On 19 February 2008 the Regional Court upheld this judgment.

11. On 6 May 2008 the first-instance judgment was rectified.

THE LAW

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

12. 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..."

13. The Government contested that argument.

14. The period to be taken into consideration only began 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 that point. The Court observes that the proceedings had already been pending for almost nine months by then.

15. The period in question ended on 6 May 2008. It thus lasted fifteen and a half years for three levels of jurisdiction.

A. Admissibility

16. 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

17. 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).

18. 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).

19. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed HUF 10,000,000¹ in respect of pecuniary damage and HUF 7,000,000² in respect of non-pecuniary damage.

23. The Government contested these claims.

24. 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 applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 14,400 under that head.

¹ 42,700 euros (EUR)

² EUR 29,900

B. Costs and expenses

25. The applicant also claimed HUF 3,200,000¹ for costs and expenses incurred before the domestic courts and HUF 300,000² for those incurred before the Court.

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

27. 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

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. *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 14,400 (fourteen thousand four hundred 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;

¹ EUR 13,666

² EUR 1,281

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President