



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

SECOND SECTION

CASE OF ECOPREVENT KFT v. HUNGARY

(Application no. 5194/07)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Ecoprevent Kft 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. 5194/07) 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 limited liability company, Pepszolg Kft “V.A.” (an entity in winding-up, represented by an administrator), on 13 January 2007. While the proceedings were pending before the Court, another Hungarian limited liability company, Ecoprevent Kft (“the applicant company”) became its successor.

2. The applicant company was represented by Mr G. Havas, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 9 January 2008 the President of the Second Section decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant is a limited liability company, founded in 2006, with its seat in Budapest.

5. On 10 August 1992 its predecessor (see paragraph 1 above) requested the Budapest Regional Court to issue an order for payment against another company.

6. The court ordered the respondent to make a payment of 61,369 Hungarian forints (approximately 250 euros (EUR)). Since the latter contested the order, on 5 April 1993 the proceedings became litigation.

7. After having held three hearings, the Regional Court found for the plaintiff in April 1995. On appeal, the Supreme Court quashed this decision in October 1996 and remitted the case to the first-instance court.

8. Between 6 February 1998 and 13 July 2003 the proceedings were stayed, pending the plaintiff's identifying the respondent's legal successor. After the latter had finally entered the proceedings, a procedural dispute evolved, at the end of which, apparently in February 2006, the Regional Court noted that, since the original respondent had ceased to exist on 1 April 1993, the proceedings had been interrupted on that date. Thus, all the actions of the parties and all the decisions delivered by the courts after that date were invalid.

9. Eventually, in November 2006 the Regional Court ordered the resumption of the proceedings and transferred the case to the Pest Central District Court, which had acquired jurisdiction to hear the case due to an amendment to the Code of Civil Procedure.

10. On 20 February 2007 the District Court allowed the applicant company to replace the original plaintiff.

11. On 5 December 2007 the District Court found for the applicant company. None of the parties appealed and the decision became final on 22 January 2008.

THE LAW

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

12. The applicant company complained that the proceedings had lasted an unreasonably long time. It relied on Articles 6 § 1 and 13 of the Convention. The Court considers that this issue falls to be examined from the perspective of the "reasonable time" requirement of Article 6 § 1 of the Convention alone, 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 the applicant company's claim.

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 5 November 1992, account must be taken of the state of proceedings at that stage. The Court observes that the case had already been pending for nearly three months by then.

The period in question ended on 5 December 2007; it thus lasted altogether fifteen years and one month. However, the period between 6 February 1998 and 13 July 2003 (see paragraph 8 above) (over five years and five months) – during which time the identity of the respondent's successor was not being submitted by the predecessor of the applicant company – cannot be imputed to the State and must be deducted from the overall length. The relevant length is therefore nine years and eight months for two levels of jurisdiction.

A. Admissibility

15. The Government argued that Pepszolg Kft “V.A.”, a company in liquidation, was represented in the proceedings before the Court by its administrator. In their view, the latter cannot claim to be a victim of a violation of the Convention rights of Pepszolg Kft “V.A.”.

16. The applicant company pointed out that Ecoprevent Kft had become the successor of Pepszolg Kft “V.A.”; therefore, the legal position of the latter's administrator was irrelevant.

17. The Court notes that Pepszolg Kft “V.A.” was replaced by the applicant company in the domestic proceedings and it is this latter entity that has pursued its claims before the Court. Therefore, it is satisfied that the status of the administrator of Pepszolg Kft “V.A.” has no bearing on the present applicant's claims. It follows that the Government's objection must be dismissed. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or 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).

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 finds 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

21. The applicant company further complained that the length of the proceedings had infringed its right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

22. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

23. Having regard to its finding under Article 6 § 1 (see paragraph 20 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The Court observes that the applicant company also complained under Article 6 § 1 of the Convention about the outcome and of the unfairness of the proceedings. It notes however that the District Court eventually found for the applicant company, therefore it cannot claim to be a victim in this respect. Accordingly, this part of the application should be rejected as being incompatible *ratione personae* with the provisions of the Convention, pursuant to Article 35 §§ 3 and 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant company claimed EUR 19,200 in respect of pecuniary and non-pecuniary damage.

27. The Government contested these claims.

28. The Court does not discern any casual link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, on an equitable basis, it awards the applicant company EUR 3,200 for non-pecuniary damages.

B. Costs and expenses

29. The applicant company made no costs claim.

C. Default interest

30. 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 complaints concerning the excessive length of the proceedings and the violation of property rights 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* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,200 (three thousand two 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;

5. *Dismisses* the remainder of the applicant company'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.

31. Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President