



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

SECOND SECTION

CASE OF TEMESVÁRI v. HUNGARY

(Application no. 12935/05)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Temesvári 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. 12935/05) 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 a Hungarian national, Mrs Zoltánné Temesvári (“the applicant”), on 25 March 2005.

2. The applicant was represented by Mr T. Gaudi-Nagy, 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 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 Budaörs.

5. On 8 May 1998 the applicants’ neighbours brought an action against her and other respondents, claiming adverse possession of a right of way on their land.

6. Between 1 May 1999 and 5 February 2001 the proceedings were interrupted because of the death of a plaintiff.

7. Between 18 May 2001 and 16 March 2005 the Budaörs District Court held several hearings and obtained the opinion of an expert.

8. Since 21 April 2005 the proceedings have been interrupted because one of the respondents died, his successor did not join the proceedings voluntarily and the plaintiffs failed to apply for the successor to be made a party to the proceedings.

9. According to the information in the case file, the case is still pending before the first-instance court.

THE LAW

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

10. 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...”

11. The Government contested that argument.

12. The period to be taken into consideration began on 8 May 1998 and apparently has not yet ended, according to the information in the case file as of the day of adoption of the present judgment. It has thus lasted over ten years and four months to date. However, in the Court’s view, the periods from 1 May 1999 until 5 February 2001 and from 21 April 2005 onwards (altogether over five years and two months), during which the case had to be interrupted because of the deaths of certain parties, should be deducted from the overall length, given the other parties’ passivity concerning this measure. The relevant period is therefore five years and two months for one level of jurisdiction.

A. Admissibility

13. 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

14. 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).

15. 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).

16. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

17. The applicant also complained that the proceedings were unfair. She relied on Articles 8, 13 and 17 of the Convention, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7.

18. The Court observes that the proceedings are still pending and considers that this complaint must be rejected as premature, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 11,000 euros (EUR) in respect of non-pecuniary damage.

21. The Government contested the claim.

22. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 4,000 under that head.

B. Costs and expenses

23. The applicant also claimed EUR 2,640 for the costs and expenses incurred before the Court. This sum corresponds to the fee of her lawyer, whose work amounted to 25.4 hours and was charged at an hourly rate of EUR 100, and to the costs of translation amounting to EUR 100.

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

25. 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 considers it reasonable to award the sum of EUR 1,200, covering costs under all heads.

C. Default interest

26. 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 and EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, 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 amounts 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 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President