



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

SECOND SECTION

CASE OF MEZEY v. HUNGARY

(Application no. 7909/05)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Mezey v. Hungary,

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

Françoise Tulkens, *President*,

Antonella Mularoni,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 7909/05) 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, Mr Tamás Mezey (“the applicant”), on 27 January 2005.

2. The applicant was represented by Mr T. Szemes, 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 16 January 2008 the Court decided to give notice of the application to the Government. Under the provision of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Budapest.

5. The facts of the case, as submitted by the parties, may be submitted as follows.

6. The applicant lived in conjugal community with S.S. During their relationship, S.S. gave birth to a boy on 24 June 1998. The child was registered under his mother’s family name. For the first five months the

couple raised the child together. Subsequently, the relationship deteriorated and the applicant left their common home.

7. Since the applicant's parental status had not been resolved legally, he repeatedly initiated proceedings for an official declaration of paternity (*teljes hatályú apai elismerő nyilatkozat*). However, the mother refused to give her consent to the statement, which is required by law for such a statement to be valid. Moreover, the mother has not allowed the applicant to see the child at all.

8. In January 2000 the applicant brought an action against the child and the mother before the Pest Central District Court asking the court to establish paternity.

9. Between April 2000 and July 2001 the District Court held five unsuccessful hearings, which the mother did not attend despite a fine being imposed on her. The District Court sought assistance from the police in order to secure her presence at the hearings but to no avail.

10. In November 2001 a medical expert examined the applicant and the child. The expert could not establish with complete certainty whether the applicant was the father of the child or not, but she "believed it probable".

11. In the meantime, a third individual, G.N., made a formal declaration of paternity which was accepted by the mother. Since the paternal status had been resolved, the District Court terminated the proceedings in January 2002.

12. On appeal, the Budapest Regional Court quashed the first-instance decision and remitted the case to the District Court in April 2002.

13. In the resumed proceedings, the District Court suspended the procedure and initiated a constitutional review of the applicable legal provisions to be applied in December 2002.

14. According to the information submitted by the parties, the case is still pending before the Constitutional Court and consequently before the District Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began in January 2000 and has not yet ended, according to the information available in the case file on the date of adoption of the present judgment. It has thus lasted some eight years and eight months, for two levels of jurisdiction.

A. Admissibility

18. 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

19. 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). On the latter point, cases relating to civil status require special diligence in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

20. 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).

21. 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. The Court finds especially regrettable in this connection that the Constitutional Court, a State body required to determine a preliminary legal question in the case, delayed the proceedings by failing to deliver its decision for over five years.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant further complained that the length of the proceedings had infringed his right to respect for his family life, as guaranteed by Article 8 of the Convention, which provides 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 the rights and freedoms of others.”

24. 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 22 above), the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 8 (see *Paulsen-Medalen and Svensson v. Sweden*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 145, § 50).

III. 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 claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government contested this claim.

28. The Court awards the applicant, on an equitable basis, EUR 7,000 for non-pecuniary damages, account also being taken of what was at stake in the dispute.

B. Costs and expenses

29. The applicant did not put forward any claim under this head.

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 application admissible;
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 8 of the Convention;
4. *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 7,000 (seven thousand 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's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President