



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

SECOND SECTION

CASE OF LAJOS NÉMETH v. HUNGARY

(Application no. 3840/05)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Németh v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

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

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 3840/05) 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 Lajos Németh (“the applicant”), on 21 January 2005.

2. The applicant was represented by Mr I. Barbalics, 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 5 December 2007 the President of the Second Section decided to give notice of the application to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Győr.

5. On 3 February 1995 company G. brought an action against the applicant, requesting the Győr District Court to hold, *inter alia*, that the termination of a lease contract was valid.

6. On 12 October 1995 the court adopted a partial decision holding that the termination was valid and requiring the applicant to vacate the real estate in question. On appeal, on 7 November 1996 the Győr-Moson-Sopron

County Regional Court reversed that partial decision and dismissed the plaintiff's claim concerning the validity of the termination.

7. In the resumed first-instance proceedings, on 3 July 1997 the District Court ordered the applicant to pay 1.1 million Hungarian forints (HUF) in compensation and rejected his counterclaims. On appeal, on 21 January 1998 the Regional Court upheld the decision about the payment of HUF 1.1 million but quashed the remainder of the first-instance decision.

8. In the resumed first-instance proceedings, the District Court held several hearings, obtained the opinion of an expert, and rejected the applicant's counterclaims on 22 May 2001. On appeal, on 28 November 2001 the Regional Court quashed that decision.

9. In the resumed proceedings, the case was transferred to the bench of the Regional Court competent to deal with it. That court held several hearings and obtained the opinion of an expert. On 6 April 2004 the applicant was awarded HUF 2.8 million plus accrued interest. On appeal, on 6 July 2004 the Budapest Court of Appeal reduced the award. This decision was served on 29 July 2004.

10. The applicant filed a petition for review, alleging that the final decision was unfounded and at variance with the relevant substantive law.

11. In a preliminary examination under section 273 of the Code of Civil Procedure, on 5 November 2004 the Supreme Court refused to deal with the merits of the petition. It applied section 270 § 2 of the Code of Civil Procedure, as in force in the relevant period, according to which a review of the substantive unlawfulness of final decisions was only admissible if a review was considered necessary from the perspective of harmonising or developing the application of the law.

THE LAW

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

12. The applicant complained that the length of the proceedings was 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 3 February 1995 and ended at the earliest on 29 July 2004. It thus lasted almost nine and a half years for three levels of jurisdiction.

A. Admissibility

15. 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

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 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).

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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant also complained that the Supreme Court’s refusal to deal with the merits of his petition for review amounted to a breach of Article 13 of the Convention. Lastly, he submitted that the Hungarian courts’ decisions constituted a violation of his rights under Article 1 of Protocol No. 1.

20. As regards the refusal to grant the applicant leave to appeal, the Court observes that the Supreme Court took the view that the applicant’s case did not raise a point of law of general public importance, which was the gateway requirement for leave to be granted. It further observes that where a supreme court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see *mutatis mutandis Nerva and Others v. the United Kingdom* (dec.), no. 42295/98, 11 July 2000). This principle extends to the Hungarian Supreme Court’s decisions on applications for leave to appeal (*Jaczkó v. Hungary*, no. 40109/03, § 29, 18 July 2006). In the absence of any appearance of

arbitrariness, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

21. Moreover, the Court considers that the applicant's complaint under Article 1 of Protocol No. 1 does not disclose any appearance of a violation of his Convention rights, his case – a dispute between private parties – having been adjudicated without any sign of arbitrariness. He cannot be regarded as having been deprived of property by the State. This complaint is therefore likewise manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

III. 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 applicant claimed 200,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

24. The Government contested these claims.

25. 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 him EUR 4,800 under that head.

B. Costs and expenses

26. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court, plus EUR 1,000 in respect of clerical and postal expenses.

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. 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

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. *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 4,800 (four thousand eight 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President