



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

SECOND SECTION

CASE OF ÁRON KISS v. HUNGARY

(Application no. 15670/04)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Áron Kiss 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,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 15670/04) 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, Mr Áron Kiss (“the applicant”), on 10 March 2004.

2. The Hungarian Government (“the Government”) were represented by Mr L. Hóltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 12 October 2006 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 1942 and lives in Budapest.

5. In 1989 the applicant bought a flat from a real estate investment bank. On 14 July 1993 he brought various warranty claims against the successor of the seller.

6. After having held several hearings and obtained the opinion of an expert, the Pest Central District Court found in part for the applicant on 19 September 2002.

7. On appeal, the Budapest Regional Court held a hearing on 28 March 2003. It upheld the first-instance decision on 11 July 2003.

8. On 18 March 2004 the Supreme Court rejected the applicant's petition for review, since it held that the motion was incompatible *ratione materiae* with the relevant provisions of the Code of Civil Procedure.

THE LAW

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

9. 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..."

10. The Government contested that argument.

11. The period to be taken into consideration began on 14 July 1993 and ended on 18 March 2004. It thus lasted over ten years and eight months for three levels of jurisdiction.

A. Admissibility

12. 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

13. 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).

14. 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).

15. 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

16. The applicant also complained under Article 6 § 1 of the Convention that the proceedings had been unfair.

17. The Court finds no evidence in the case file which might disclose any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary. It follows that this part of the application is 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

18. 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

19. The applicant claimed, in respect of non-pecuniary damage, 370,000 Hungarian forints (HUF), valorised with the inflation between 1989 and 2008, plus accrued interest for the same period, altogether HUF 1,480,000¹.

20. The Government contested the claim.

21. The Court finds it reasonable to award the full sum claimed.

B. Costs and expenses

22. The applicant made no costs claim.

C. Default interest

23. 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.

¹ Approximately 6,270 euros (EUR)

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 6,270 (six thousand two hundred and seventy 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.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President