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

SECOND SECTION

CASE OF KATONA v. HUNGARY

(Application no. 20075/05)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

24/06/2009

This judgment may be subject to editorial revision.

In the case of Katona 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 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 20075/05) 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, Ms Marianna Katona ("the applicant"), on 23 May 2005.

2. The applicant was represented by Mrs Mária Szűcsné Durgó, a lawyer practising in Zalaegerszeg. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 24 September 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 1965 and lives in Zalaegerszeg.

5. On 12 December 1996 the applicant filed for divorce.

6. After three remittals to the first instance court, the proceedings ended on 4 October 2005 when the Supreme Court rejected the parties' petition for review, after the lower instances had pronounced the parties' divorce, granted the custody of the couple's son to the applicant. The father's right of

access was also regulated and the matrimonial property divided, allowing the applicant and the son to stay in the couple's flat against compensation payable to the ex-husband for his share of the flat. The proceedings thus lasted almost eight years and ten months for three levels of jurisdiction.

7. The first-instance decision adopted after the last remittal allowed the customary 10% deduction from the value of the flat on account of the mother's statutory obligation to lodge her minor son in it, which would have reduced her debt to the ex-husband by 413,650 Hungarian forints[1] (HUF). However, the second-instance court annulled this advantage because it miscalculated the son's age, holding that he was no longer a minor. The Supreme Court rejected the applicant's objection to the latter ruling as the son in the meantime had become of age.

THE LAW

8. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. The Government contested that argument.

9. The Court reiterates that the period to be taken into consideration lasted almost eight years and ten months for three levels of jurisdiction. In view of such lengthy proceedings, this complaint must be declared admissible.

10. 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 e.g. *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). 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.

11. The applicant also complained under Article 6 § 1 of the Convention about the unfairness of the proceedings. Moreover, she relied on Articles 3 and 5 of Protocol No. 7, without developing this complaint any further. However, an examination of the case file does not disclose any evidence whatsoever of a violation of these provisions. In particular, there are no elements to suggest that the courts lacked impartiality or that the proceedings were otherwise unfair. It follows that this part of the application is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

[1] 1,560 euros (EUR)

12. Relying on Article 41 of the Convention, the applicant claimed HUF 10,431,163[1] in respect of pecuniary damage and HUF 2.5 million[2] in respect of non-pecuniary damage. The Government contested these claims.

13. The Court accepts the causal link between the violation found and the pecuniary damage alleged in the amount of HUF 413,650, being the sum which the Supreme Court did not deduct from the applicant's debt due to the lapse of time (see paragraph 7 above). It therefore awards the applicant the equivalent of this sum in euros – EUR 1,560 – but rejects the remainder of her claim for pecuniary damage. Moreover, it considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 3,200 under that head.

14. The applicant also claimed HUF 570,000[3] for the costs and expenses incurred before the Court. This figure, which includes VAT at 20%, corresponds to her lawyer's fees (HUF 300,000[4] as stipulated in a contract submitted), the costs of translations (HUF 120,000[5] as per invoice) and an expert fee (HUF 150,000[6] as per invoice). The Government did not express an opinion on the matter.

15. 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 documents in its possession and the above criteria, the Court finds it reasonable to award the applicant the sum of EUR 1,000 under this head.

16. 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;

[1] EUR 39,400
[2] EUR 9,440
[3] EUR 2,150
[4] EUR 1,130
[5] EUR 450
[6] EUR 565

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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

   (i) EUR 1,560 (one thousand five hundred and sixty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

   (ii) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

   (iii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

   (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 24 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President