



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

SECOND SECTION

CASE OF PÁTKOVÁ v. HUNGARY

(Application no. 41453/05)

JUDGMENT

STRASBOURG

24 March 2009

FINAL

24/06/2009

This judgment may be subject to editorial revision.

In the case of Pátková 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. 41453/05) 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 dual national of Hungary and the Czech Republic, Ms Eva Pátková (“the applicant”), on 11 November 2005.

2. The applicant was represented by Mr J. Pavlok, a lawyer practising in Prague. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice.

3. On 26 June 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).

4. On 30 July 2008 the Agent of the Czech Government informed the Registry that his Government did not intend to intervene in the case on the basis of Article 36 § 1 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Prague.

6. In the context of an inheritance dispute, in early 1992 the applicant brought an action before the Hungarian Buda Surroundings District Court.

On 20 July 1992 the case was transferred to the Hungarian Pest Central District Court.

7. On 26 January 2005 the procedure was interrupted after a few hearings because the applicant did not identify the successor of one of the respondents who had died.

II. RELEVANT DOMESTIC LAW

8. As of 1 April 2006, sections 114/A and 114/B of the Code of Civil Procedure provided a first instance remedy and appeal for complaints about the undue length of civil proceedings. The courts dealing with such complaints, if well-founded, are expected to order measures to facilitate the progress of the litigation at issue.

THE LAW

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. The Government contested that argument.

10. The period to be taken into consideration by the Court only began on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. However, the Court notes that, by that date, the proceedings had already been pending several months. It ended at the earliest with the interruption of the proceedings on 26 January 2005, some twelve years and three months later. This complaint must therefore be declared admissible.

11. 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 v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). It 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. It therefore 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.

12. The applicant further complained that the length of the proceedings had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1. The Government contested that argument.

13. The Court notes that this complaint is linked to the one examined above and must likewise be declared admissible. However, having regard to its finding under Article 6 § 1 (see paragraph 11 above), the Court considers that it is not necessary to examine whether, in this case, there has also been

a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

14. Lastly, the applicant complained that she had no remedy at her disposal to complain of the delay in the proceedings. The Government contested this claim, referring to sections 114/A and 114/B of the Code of Civil Procedure (paragraph 8 above).

15. The Court finds this complaint admissible (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI) and notes that, at the time of lodging the present application in November 2005, this remedy was not yet available to the applicant. Moreover, by the time the remedy was in force, the proceedings had already been interrupted, by which time they had been pending some twelve years and three months after the ratification before the first instance court. This in itself would constitute a breach of the reasonable time requirement of Article 6 § 1 of the Convention for which the applicant had had no redress either by way of an expedited procedure or by way of compensation. Accordingly, the Court considers that there has been a violation of Article 13 of the Convention.

16. Under Article 41 of the Convention, the applicant claimed 9,000 euros (EUR) in respect of pecuniary damage and EUR 17,000 in respect of non-pecuniary damage. The Government contested these claims.

17. 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 and awards her, on an equitable basis, EUR 12,000.

18. The applicant also claimed EUR 3,000 for costs and expenses incurred before the domestic courts and EUR 2,000 for those incurred before the Court, the latter representing her lawyer's fees. She submitted an invoice for 20,000 Czech korunas (approximately EUR 725) which she had already paid and stated that she would be liable to pay the balance on the termination of the case. The Government contested these claims.

19. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

20. 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 it is not necessary to examine the complaint under Article 1 of Protocol No. 1;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) 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;
6. *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