



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

SECOND SECTION

CASE OF TAMÁSI AND OTHERS v. HUNGARY

(Application no. 25848/06)

JUDGMENT

STRASBOURG

21 April 2009

FINAL

21/07/2009

This judgment may be subject to editorial revision.

In the case of Tamási and Others 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 Françoise Elens-Passos, *Deputy Section Registrar*,
Having deliberated in private on 31 March 2009,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25848/06) 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 four Hungarian nationals, Mr and Mrs Lajos Tamási and Mr and Mrs Vilmos Károlyi (“the applicants”), on 5 June 2006.

2. The applicants were represented by Mr M. Róth, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicants alleged that the Land Registry had maintained an uncertain legal situation in their case for an unduly long period of time. They also submitted that the ensuing court proceedings had not been fair.

4. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1935, 1936, 1949 and 1949 respectively and live in Budapest.

6. The applicants, two married couples, were parties to a 1996 sale and purchase agreement concerning a flat. One of the applicants on the sellers’ side was registered in the land register only as the holder of an annotation

rather than proprietor. Moreover, her predecessor (“the Predecessor”) was in the same situation, and it was the person who had sold the flat to the Predecessor in 1993 that was registered as the owner (“the Owner”). Because in 2000 the Predecessor had not been able to obtain from the Owner an authorisation to have himself registered as proprietor, neither his nor the applicants’ requests to have the ensuing transactions registered were granted by the District Land Registry.

7. The applicants lodged an appeal with the Budapest Land Registry. They complained that, had they been informed of the procedure concerning the Predecessor and the Owner, they would have been able to obtain the necessary authorisation themselves, thereby enabling the registration of the chain of transactions.

8. Although the missing authorisation had meanwhile been obtained and in fact submitted, the Land Registry dismissed the appeal. On 9 December 2005 the Budapest Regional Court dismissed the applicants’ request for judicial review. It relied on leading judgments of the Supreme Court, whose text was available only to the respondent Land Registry (which had also been respondent in the earlier procedures) but not to the applicants. In sum, the applicants’ ownership was not registered at that stage.

9. In pursuit of the applicants’ petition for review, on 9 May 2006 the Supreme Court ordered that review proceedings concerning the merits of the case be instituted.

10. On 15 November 2006 the Supreme Court’s review bench dismissed the applicants’ petition. This decision was served on their lawyer on 11 December 2006.

11. The applicants subsequently submitted a request, under sections 86-88 of Act no. 141 of 1997 (the chapter concerning properties with an unresolved status in the land register), to have the situation of the property in question regularised in the land register.

12. The applicants’ request was granted and the transaction eventually registered on 13 June 2008.

THE LAW

13. The applicants complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 that the Land Registry – by not having duly processed the pending annotations in the chain of transactions – had maintained an uncertain legal situation from 1993 to 2000. Consequently, their property rights had been breached in that their original request for registration had been dismissed and the regularisation of their 1996 transaction had only been accomplished in 2008.

14. The Government contested that argument.

15. Article 6 § 1 of the Convention provides as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

16. Article 1 of Protocol No. 1 provides as relevant:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law...”

17. The Court considers that it is appropriate to regard this complaint as one essentially based on the right to a “hearing within a reasonable time” for the purposes of Article 6 § 1 of the Convention, especially in view of the fact that the applicants’ transaction was eventually registered, although with considerable delay.

18. The period to be taken into consideration by the Court began in 1996 and ended in 2008. It therefore lasted approximately twelve years for two administrative and two judicial instances. This complaint must therefore be declared admissible.

19. 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.

20. In these circumstances, the Court considers that, while the complaint under Article 1 of Protocol No. 1 is likewise admissible, it is not necessary to examine separately whether, in this case, there has also been a violation of that provision (see *Zanghi v. Italy*, 19 February 1991, § 23, Series A no. 194-C).

21. The applicants also complained under Articles 6 § 1 and 13 of the Convention that the proceedings had been unfair. The Government contested this view.

22. The Court observes that – although the Supreme Court dismissed the applicants’ claims in the original administrative litigation – their request to have their transaction registered was eventually granted by the authorities. In these circumstances, it is satisfied that the applicants cannot claim to be a victim of a violation of their Convention rights in this connection. This complaint is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

23. Under Article 41 of the Convention, each of the applicants claimed one million Hungarian forints¹ in respect of non-pecuniary damage.

24. The Government accepted this claim.

25. The Court therefore awards the equivalent in euros of the full sum claimed, i.e. EUR 3,850, payable to each of the applicants.

26. For the costs and expenses incurred before the Court, the applicants claimed, jointly, EUR 1,600 plus VAT at 20% in respect of their lawyer's fee, corresponding to 16 hours of legal work charged at an hourly rate of EUR 100, plus VAT, as well as EUR 300 in respect of miscellaneous clerical costs.

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. In the present case, regard being had to the documents in its possession and the above criteria, the Court concludes that the sum claimed should be awarded in full.

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 complaints concerning the length of the proceedings and the alleged interference with the applicants' property rights 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* that it is not necessary to examine separately the merits of the complaint under Article 1 of Protocol No. 1;
4. *Holds*
 - (a) that the respondent State is to pay, 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 3,850 (three thousand eight hundred and fifty euros), plus any tax that may be chargeable, to each of the applicants, in respect of non-pecuniary damage;

¹ 3,850 euros (EUR)

- (ii) EUR 1,900 (one thousand nine hundred euros) to the applicants, jointly, plus any tax that may be chargeable to them, 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;

Done in English, and notified in writing on 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President