



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

SECOND SECTION

CASE OF FERENC RÓZSA AND ISTVÁN RÓZSA v. HUNGARY

(Application no. 30789/05)

JUDGMENT

STRASBOURG

28 April 2009

FINAL

28/07/2009

This judgment may be subject to editorial revision.

In the case of Ferenc Rózsa and István Rózsa 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,
András Sajó,
Nona Tsotsoria,
İşıl Karakaş, *judges*,
and Sally Dollé, *Section Registrar*,
Having deliberated in private on 7 April 2009,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30789/05) 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 two Hungarian nationals, Mr Ferenc Rózsa and Mr István Rózsa (“the applicants”), on 8 August 2005.

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

3. The applicants alleged that the decision of the Court of Appeal and the Supreme Court to deny them *locus standi* had infringed their right of access to court implicitly ensured by Article 6 § 1 of the Convention.

4. On 20 September 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1951 and 1949, respectively, and live in Budapest.

7. The applicants are respectively 50% and 10% shareholders in D. Ltd. By decisions of the Budapest Regional Court and the Supreme Court, in 1998 the liquidation of D. Ltd was ordered and M. Ltd. appointed liquidator.

8. In 2001 the applicants brought an official liability action against the two courts involved, claiming damages for the liquidation, which in their view had been ordered unlawfully.

9. On 6 December 2002 the Pest County Regional Court dismissed the action, holding that, although the liquidation had indeed been ordered unlawfully, the two courts' culpability was not so extensive as to justify the establishment of their tort liability.

10. On appeal, on 11 December 2003 the Budapest Court of Appeal upheld the first-instance decision but changed its reasoning. It held that the applicants had no *locus standi* in the case, since their company was in liquidation and only the liquidator had the capacity to conduct legal proceedings in its name.

11. The applicants filed a petition for review with the Supreme Court. They pleaded that their claim did not concern any loss suffered by the company itself. Rather, they personally sought compensation for the loss in value of their own shares which they had suffered on account of the unlawfully ordered liquidation.

12. On 10 February 2005 the Supreme Court dismissed the applicants' petition, reiterating the position that they had no *locus standi* in the case. This decision was served after 11 March 2005.

THE LAW

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

13. The applicants complained under Articles 6 and 13 of the Convention that the decisions of the Court of Appeal and the Supreme Court denying them leave to take legal proceedings had amounted to a breach of their right of access to court.

14. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which provides as relevant:

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

A. Admissibility

15. The Court notes that the application 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 Government conceded that the ability to take legal proceedings in order to recover any damage the company itself had sustained lay with the liquidator only. However, in their view, the applicants' right of access to court was not impaired: had they considered that they had suffered damage due to the liquidator's omission to claim compensation from the courts which had wrongfully ordered the liquidation, they could have sued the liquidator instead.

17. The applicants maintained that they sought the establishment of tort liability on the part of the courts which had erroneously ordered the liquidation of their company, thereby causing their shares to lose value and reducing their fortune. Such an action could not be replaced by a claim in damages brought by the liquidator on behalf of the liquidated company itself. They had at their disposal no legal means to ensure that the liquidator would indeed institute such proceedings. Had the liquidator decided not to do so, it would have created no automatic compensation liability towards the applicants. In any event, it was absurd to expect the liquidator to sue those courts for damages from which its own appointment had stemmed.

18. The Court considers firstly that the restriction on the applicants' ability to take legal proceedings must be considered from the perspective of the right of access to a court. It reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, Series A no. 18, §§ 35-36). This right extends only to disputes (“*contestation*”) over “civil rights and obligations” which can be said, at least on arguable grounds, to be recognised under domestic law (see, *inter alia*, *James and Others v. the*

United Kingdom, 21 February 1986, Series A no. 98, § 81; *Powell and Rayner v. the United Kingdom*, 21 February 1990, Series A no. 172, § 36).

19. The Court notes that the restriction on the applicants' ability to take legal proceedings concerned a dispute over damages, that is, an issue of a pecuniary nature. The civil limb of Article 6 is therefore applicable.

20. Furthermore, the Court reiterates that the "right to a court" is not absolute. It is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Ashingdane v. the United Kingdom*, 28 May 1985, Series A no. 93, § 57). However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Levages Prestations Services v. France*, 23 October 1996, *Reports of Judgments and Decisions* 1996-V, § 40; *Luordo v. Italy*, no. 32190/96, § 85, ECHR 2003-IX).

21. The Court recognises that the purpose of the restriction on the shareholders' capacity to take legal proceedings when a company is under liquidation is to assign to the liquidator the role of representing that company before the courts in respect of its pecuniary rights, the liquidator being responsible for the administration of the company's assets. Indeed, it is self-evident that disputes over such matters may have major repercussions on the assets and liabilities of the estate of the company in liquidation. This restriction is therefore intended to protect the rights and interests of others, namely those of creditors (see *Luordo*, cited above, § 86).

22. However, in the present case, the Court observes that the applicants' company had been liquidated arguably in a wrongful manner and that they sought damages from the responsible authorities for the loss in the value of their shares. The Court of Appeal and the Supreme Court held that only the liquidator could bring such an action on behalf of the company; the applicants, as mere shareholders, had no right to be party to such proceedings. The Court notes the Government's assertion that the applicants could have sued the liquidator if they deemed that its omission to start such litigation had caused them damage. However, it is not convinced by this argument, especially in view of the blanket denial of the applicants' *locus standi* as the company's owners. It reiterates that the Convention and its Protocols must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory. In the Court's view, it is unreasonable to expect the liquidator – who was responsible for securing the payment of creditors rather than protecting the interests of shareholders – to bring an official liability action in the name of the company against the very

courts which had ordered the liquidation and decided on its own appointment (see, by analogy, *Capital Bank AD v. Bulgaria* (dec.), no. 49429/99, 9 September 2004). Moreover, to require the shareholders, for their part, to claim damages from the liquidator for not doing so would have proved excessively cumbersome for the applicants and provided an illusory solution for the protection of their pecuniary interests.

23. The Court therefore considers that no fair balance was struck between the general interest in securing the payment of the creditors and the applicants' personal interests in having access to a court. The interference with the applicants' right was accordingly disproportionate to the aim pursued.

24. Having regard to the foregoing, the Court concludes that there has been an infringement of the right of access to a court as guaranteed by Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. In regard to the loss in the value of their shares, Mr Ferenc Rózsa claimed 4,993,000 euros (EUR) and Mr István Rózsa EUR 999,000 in respect of pecuniary damage. Moreover, Mr Ferenc Rózsa claimed EUR 850,000 and Mr István Rózsa EUR 200,000 in respect of non-pecuniary damage.

27. The Government contested these claims.

28. The Court finds no causal link between the violation found and the pecuniary damage alleged. It therefore rejects these claims. However, it considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards each of them EUR 2,000 under that head.

29. Moreover, the Court notes that where an individual, as in the instant case, has been denied access to a court in a manner irreconcilable with the Convention requirement of fairness, a reopening or a review of the case, if requested, represents in principle an appropriate way of redressing the violation (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 207-210, ECHR 2005-IV).

B. Costs and expenses

30. In regard to the legal costs and stamp duty incurred in the domestic proceedings, Mr Ferenc Rózsa claimed altogether EUR 31,754 and Mr István Rózsa EUR 20,208. Of the first amount, respectively EUR 15,216, EUR 6,538 and EUR 10,000 correspond to the costs incurred before the Regional Court, the Court of Appeal and the Supreme Court. Of the second amount, respectively EUR 5,977, EUR 4,231 and EUR 10,000 correspond to the same jurisdictions. In respect of the costs incurred before the Court, the applicants submitted their agreement with their lawyer, according to which his fee was stipulated as 10% of any award made by the Court.

31. The Government contested these claims.

32. 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, the Court accepts, in so far as the claims relate to the domestic proceedings, that the costs incurred before the Court of Appeal and the Supreme Court – but not those incurred before the Regional Court which, for its part, did not deny the applicants' *locus standi* before it – were necessary in the attempt to prevent the violation found. It therefore awards Mr Ferenc Rózsa EUR 16,538 and Mr István Rózsa EUR 14,231 under this head. As regards the costs incurred before the Court, given the documents in its possession and the above criteria, the Court finds it reasonable to award the applicants, jointly, the sum of EUR 1,000.

C. Default interest

33. 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*
 - (a) that the respondent State is to pay the applicants, 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 2,000 (two thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage,
- (ii) EUR 16,538 (sixteen thousand five hundred and thirty-eight euros) to Mr Ferenc Rózsa, EUR 14,231 (fourteen thousand two hundred and thirty-one euros) to Mr István Rózsa and EUR 1,000 (one thousand euros) to them jointly, plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President