



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SZÉKELY v. HUNGARY

(Application no. 38904/05)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Székely v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 38904/05) 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 Ilona Székely (“the applicant”), on 20 October 2005.

2. The applicant was represented by Mr I. Németh, a lawyer practising in Győr. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 17 November 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 1953 and lives in Győrszentiván.

5. In July 1998 the applicant filed for divorce. After several hearings, on 1 October 1999 the case was suspended pending a paternity dispute. On completion of the latter, the proceedings were resumed on 24 January 2001. On 21 March 2001 the divorce was pronounced in a partial decision. After a three-month stay agreed to by the parties, on 4 July 2001 the case continued in its part concerning the matrimonial property. After holding numerous

hearings and obtaining the opinions of experts, on 4 February 2005 the Győr District Court gave judgment. On 1 September 2005 the Győr-Moson-Sopron County Regional Court upheld this decision. On 21 March 2006 the Supreme Court dismissed the applicant's petition for review.

6. In the context of a real-estate dispute relating to the divorce, in which the applicant appears to have lost her flat, she brought an action in compensation against her former lawyer. A final decision on that matter was given by the Supreme Court on 18 December 2003.

7. Also in the context of the real-estate dispute in question, on 16 November 2005 the Győr District Court ordered the applicant to vacate a flat, in respect of which her rental contract had expired on 31 December 2004. On 19 May 2006 forcible eviction was ordered.

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 considers that, of the three separate procedures mentioned by the applicant, only the first may be considered to raise an issue of excessive delay under Article 6 § 1 (from July 1998 to March 2006, paragraph 5 above). Thus the period to be taken into consideration lasted some seven years and eight months. Of this time, three months corresponding to the stay of the proceedings agreed to by the parties as well as one year and four months corresponding to the – apparently necessary – suspension of the case must be deducted. However, the remaining period still exceeds six years 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, among many other authorities, *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 considers that the length of the first set of proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

11. Relying on Articles 1, 6 and 13 of the Convention, the applicant also complained about the outcome of all three procedures. Concerning that of the dispute about the matrimonial property (paragraph 5 above), the Court observes that 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 or arbitrary.

Moreover, the Court notes that the complaint concerning the proceedings outlined in paragraph 6 above has been submitted outside the six-month time-limit prescribed by Article 35 § 1, since the final domestic decision had been given on 18 December 2003, whereas the application was introduced only on 20 October 2005.

Lastly, as to the complaint about the case outlined in paragraph 7 above, the Court considers – in so far as this complaint may be understood to concern the applicant's right to respect for her home and assuming that she has exhausted domestic remedies in this respect – that the applicant was subjected to a measure whose lawfulness is not in dispute and which can be considered justified under Article 8 § 2 as necessary in order to pursue the legitimate aim of the protection of the rights of others, i.e. those of the owner of the flat in question.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

12. Relying on Article 41 of the Convention, the applicant claimed altogether 39,600 euros (EUR) in respect of pecuniary and non-pecuniary damage. The Government contested these claims. 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. Ruling on an equitable basis, it awards her EUR 1,200 under that head.

The applicant made no separate costs claim.

13. 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;
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 1,200 (one thousand two hundred

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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President