



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

1959 · 50 · 2009

SECOND SECTION

CASE OF SCHWARTZ AND OTHERS v. HUNGARY

(Application no. 5766/05)

JUDGMENT

STRASBOURG

3 November 2009

FINAL

03/02/2010

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 Schwartz and Others 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 13 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 5766/05) 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 three Hungarian nationals, Mrs Lászlóné Schwartz, Mr Márton Schöffner and Mr László Schöffner (“the applicants”), on 8 February 2005.

2. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Justice and Law Enforcement.

3. On 4 February 2009 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 applicants were born in 1944, 1952 and 1956, and live in Pilisvörösvár and Pilisszentiván, respectively.

5. The first applicant, Mrs Schwartz, became a party to a real estate dispute, originating in 1994 and pending before the Buda Surroundings District Court, on 17 May 1995. A first-instance judgment was quashed by the Pest County Regional Court in 1999.

6. Apart from certain short periods during which the case was suspended, expert opinions were obtained by the court and numerous hearings took place at regular intervals until 11 December 2003.

7. On 19 March 2004 the case was stayed because one of the plaintiffs died. On 27 September 2004 the second and third applicants joined the proceedings as successors of the deceased party. According to the information available in the case file, the case is still pending before the first instance court.

THE LAW

8. The applicants 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 observes that the period to be taken into consideration in respect of the first applicant has so far lasted over fourteen years and five months. Of this time, six months corresponding to the stay of the proceedings in 2004, not imputable to the State, must be deducted. However, the remaining period still exceeds thirteen years and eleven months for two levels of jurisdiction. Moreover, the period to be taken into consideration in respect of the second and third applicants has so far lasted over five years and one month for one level 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 *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 proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

11. Relying on Article 41 of the Convention, the applicants claimed non-pecuniary damage of an unspecified amount. (They made no claim for costs and expenses.) The Government contested the damages claim. The Court considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards the first applicant 12,800 euros (EUR), and the second and third applicants EUR 4,000 each. Furthermore, having regard to the fact that the proceedings in question are still pending before the domestic courts, the Court considers that the most appropriate form of redress would be to bring them to a conclusion as soon

as possible, by conducting them in accordance with the requirements of Article 6 § 1 of the Convention (see, *Uğuz v. Turkey*, no. 31932/03, § 30, 13 December 2007).

12. 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, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
 - (i) EUR 12,800 (twelve thousand eight hundred euros) to the first applicant and
 - (ii) EUR 4,000 (four thousand euros) to each of the second and third applicants,
 - 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 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 3 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President