



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

SECOND SECTION

CASE OF BELÉNYESI v. HUNGARY

(Application no. 9269/08)

JUDGMENT

STRASBOURG

30 March 2010

FINAL

30/06/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Belényesi 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 9 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 9269/08) 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 Irén Belényesi (“the applicant”), on 10 December 2002.

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

3. On 19 May 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 1949 and lives in Budapest.

5. On 1 March 1993 the applicant filed for divorce before the Pest Central District Court.

6. On 6 January 1995 the court dissolved the marriage and placed the couple's minor child with the respondent. It regulated the child maintenance

and the use of the family home. On 25 August 1995 the Budapest Regional Court upheld the first-instance decision.

7. In the ensuing proceedings concerning the matrimonial property, on 2 February 1999 the court gave the ownership of the commonly used flat and a weekend-house to the applicant while granting the possession of their shop to her ex-husband. It also ordered the applicant to pay the difference in value of the different properties.

8. On appeal, on 25 March 2000 the Budapest Regional Court reversed the first-instance decision. The applicant lodged a petition for review with the Supreme Court. On 23 April 2002 the Supreme Court, finding that the Regional Court's decision had been in compliance with the law, upheld it. This decision was served on the applicant on 19 June 2002.

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 Court observes that the period to be taken into consideration commenced on 1 March 1993 and ended on 19 June 2002 and thus lasted almost nine years and four months for three levels of jurisdiction. In view of such lengthy proceedings, this complaint must 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, 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 proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

12. The applicant also complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the decisions given by the courts. In so far as her complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the

right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

13. In the present case – which concerned a civil-law dispute between two individuals and was devoid of any indication of a deprivation of property by the State – the Court considers that the applicant's submissions do not disclose any elements of arbitrariness and, hence, no appearance of a violation of her rights under Article 6 of the Convention or Article 1 of Protocol No. 1 has been demonstrated. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

14. Relying on Article 41 of the Convention, the applicant claimed 21,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of 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 4,800 under that head.

15. The applicant also claimed EUR 5,894 for the costs and expenses incurred before the domestic courts and the Court. In respect of the latter item, this sum includes legal fees billable by her lawyer, namely 16 hours, as per time-sheet, charged at an hourly rate of EUR 100. The Government contested the claim. 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 considers it reasonable to award the sum of EUR 1,600 covering costs under all heads.

16. 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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,600 (one thousand six hundred 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;

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

Done in English, and notified in writing on 30 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President