

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

SECOND SECTION

# CASE OF GÁVRIS v. HUNGARY

*(Application no. 33723/06)*

JUDGMENT

STRASBOURG

15 March 2011

*This judgment is final but it may be subject to editorial revision.*



**In the case of Gávris v. Hungary,**

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

Ireneu Cabral Barreto, *President,*
Dragoljub Popović,
András Sajó, *judges,*

and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 22 February 2011,

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

# PROCEDURE

1. The case originated in an application (no. 33723/06) 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 two Hungarian nationals, Mr and Mrs János Gávris ("the applicants"), on 11 May 2006.

2. The applicants were represented by Mrs Gy. Scheszták, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. On 11 March 2008 the President of the Second Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the application was allocated to a Committee of three Judges.

# THE FACTS

## THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1935 and 1939 respectively and live in Szolnok.

5. In 1993 administrative proceedings started concerning the grant of a building permit to the applicants' neighbours. In pursuit of the applicants' administrative appeals and their ensuing request for judicial review dated 14 October 1993, on 14 November 1994 the Kaposvár District Court quashed the existing decisions and remitted the case to the second-instance administrative authority. It held that the building permit issued had approved some irregular plans. On 13 July 1995 the Somogy County Regional Court upheld this judgment.

6. In the resumed administrative proceedings, on 10 October 1995 the Somogy County Administrative Office remitted the case to the Balatonszárszó Notary. It appears that, by this time, the neighbours had already constructed the building in question. In March 1996 the Notary approved the continued existence of the building. On 13 June 1996 the County Administrative Office dismissed the applicants' appeal in which they had requested the removal of part of the building, constructed irregularly in their view.

7. On 2 April 1997 the Kaposvár District Court quashed these decisions and again remitted the case to the administrative instances. It held that the permit allowing the continued existence of the building had been adopted in defiance of the relevant administrative law because the interests of the other neighbours (including the applicants) had not been taken into account. On 28 August 1997 the Regional Court upheld the judgment. However, this decision was quashed in review proceedings by the Supreme Court on 20 March 2000. The Supreme Court remitted the case to the first-instance court.

8. Due to a change in the law, in the resumed judicial review proceedings the Regional Court heard the case as a first-instance court. On 27 February 2001 it ordered the administrative instances to resume the proceedings, because their previous decisions had approved some irregular plans. On 9 December 2002 the Supreme Court, sitting as a second-instance court, upheld this decision.

9. In the resumed administrative proceedings, on 17 December 2003 the Balatonföldvár Notary granted the neighbours a permit for the continued existence of the building in question. On 24 May 2004 the Fejér County Administrative Office dismissed the applicants' appeal in which they had alleged that the building had been constructed in defiance of the regulations and that its continued existence infringed their rights as neighbours.

10. In judicial review proceedings, on 30 November 2004 the Regional Court dismissed the applicants' action. The court pointed out that, under section 48 of Act no. 78 of 1997 on Construction, the authority in charge of construction may take measures in respect of an irregularly constructed building within one year from its taking cognisance of the irregularity but in any event not later than ten years from the certification of the building for use. In the court's view, the one-year time-limit had been triggered by the Regional Court's decision of 28 August 1997; therefore – the one-year time-limit having been elapsed – the neighbours could no longer be denied a permit for the continued existence of the building in question.

11. This decision was upheld by the Supreme Court's appeal bench on 23 November 2005. It stressed that – contrary to what was apparently argued by the applicants – the running of the one-year time-limit had not been interrupted by the review proceedings in which the decision of

28 August 1997 had been quashed, because its execution had not been suspended.

## THE LAW

12. 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.

13. The period to be taken into consideration began on 14 October 1993 and ended on 23 November 2005. It thus lasted over twelve years and one month for three levels of jurisdiction. In view of such lengthy proceedings, this complaint must be declared admissible.

14. 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).

15. 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.

16. The applicants also complained under Article 1 of Protocol No. 1 in conjunction with Article 13 of the Convention that the nuisance caused by the neighbours' irregular construction had been perpetuated, because the authorities in charge had missed, without any particular reason, the one-year time-limit in which they could have ordered the demolition of the building.

17. The Government submitted that the applicants should have availed themselves of an official liability action in damages under section 349 of the Civil Code ; section 349 (1) providing that liability for damage caused by the State administration shall be established if damage could not be prevented by means of ordinary legal remedies or if the person concerned has resorted to ordinary legal remedies appropriate for preventing damage. The applicants contested this view.

18. The Court considers that, by not bringing an action in compensation against the administrative authorities for the damages which they had allegedly sustained on account of those authorities' inaction, the applicants did not provide the Hungarian courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 of the Convention, namely the opportunity of preventing or, in the instant case, putting right the violations alleged against them (see *Cardot v. France*,

19 March 1991, § 36, Series A no. 200). This part of the application must therefore be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

19. Relying on Article 41, each of the applicants claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

20. The Government contested these claims.

21. 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 applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards them, jointly, EUR 9,600 under that head.

22. The applicants also claimed EUR 3,500 for the costs and expenses incurred before the domestic courts and the Court. The Government contested the claim.

23. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicants the sum of EUR 1,000 in respect of all costs and expenses incurred.

24. 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 applicants, jointly, within three months, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), 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 15 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Françoise Elens-Passos | Ireneu Cabral Barreto |
| Deputy Registrar | President |