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

FIRST SECTION

DECISION

Application no. 62040/16
Ilona GULYÁSNÉ SZENDREI
against Hungary

The European Court of Human Rights (First Section), sitting on 14 September 2021 as a Committee composed of:

Alena Poláčková, *President,*
Péter Paczolay,
Gilberto Felici, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 October 2016,

Having regard to the observations submitted by the Government of Hungary ("the Government") and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ilona Gulyásné Szendrei, is a Hungarian national who was born in 1963 and lives in Gyál. She was represented before the Court by Mr A. Litresits, a lawyer practising in Budapest.

2. The Government were represented by their Agent at the Ministry of Justice, Mr Z. Tallódi.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 1998 the applicant, together with her husband at the time, bought a plot of land in Gyál, in the vicinity of a shooting range. The applicant's land was registered as agricultural land. It appears that the shooting range had been operating in its location since about 1985 and the plot of land was registered as a shooting range in the land registry. On 25 May 2011 the

applicant's plot of land was re-registered within the inner zone of the municipality and classified as land for commercial use and economic and service activities. On 11 January 2002 the applicant obtained a construction permit for an office building. On 9 October 2002 the construction permit was modified to contain both offices and a flat. According to the occupancy permit issued on 11 March 2004, the occupancy classification of the building was that of a residential house. Throughout that period the neighbouring plot of land was used as a shooting range.

5. By a decision of 24 August 2010 the Gyál Building Monitoring Authority issued a permit authorising a considerable extension of the shooting range. The operating permit for the shooting club was granted by the Dabas police department on 24 March 2011. The reconstruction of the shooting range resulted in an increased number of visitors (including members of the armed forces and the Olympic team), the use of other weapons and, as a consequence, increased noise levels.

6. This situation caused the applicant to develop mental health problems. In 2011 the applicant's husband requested the notary public of Gyál to adopt a measure for the protection of their property (*birtokvédelmi eljárás*). On 7 December 2011 the notary public carried out an on-site inspection and concluded that the noise from the shooting range was creating a nuisance. After hearing statements from both the applicant's husband and the representative of the shooting club, as well as from three witnesses, the notary public, in a decision of 8 December 2011, banned all shooting activities between 6 p.m. and 10 a.m. on weekdays, and at weekends and on public holidays.

7. The applicant instituted civil proceedings under Article 100 of the Civil Code for the protection of her possession, complaining that the shooting club had not implemented the decision of the notary public and seeking an injunction to restrain the respondent company that was running the shooting club from continuing to cause the nuisance. As evidence she submitted a petition signed by 157 local residents, requesting the closure of the shooting range.

8. The first-instance court commissioned an environmental expert opinion, which was submitted following two on-site visits by the expert in the presence of the applicant's husband and the representatives of the respondent company. Besides the psychiatric expert opinion submitted by the applicant, the court ordered a further expert assessment of the effects of the noise on the applicant's mental health. Given the contradictions between the two opinions, a further expert opinion was commissioned. The court examined several witnesses and held an on-site hearing in the presence of the parties. On 4 December 2014 the Dabas District Court dismissed the applicant's complaint. It found that the applicant's house had been constructed in an area designated for economic, commercial and service activities, where the acceptable noise level was higher (60 decibels – dB)

than in residential areas (50 dB). Moreover, the applicant had been aware of the fact that the neighbouring plot of land was being used as a shooting range before she had constructed her house. The court also considered that the shooting range was operating in compliance with local construction regulations, which prescribed a distance of 200 metres between any sports facility operating in an area designated for commercial activities and the residential area of the municipality. The court further found it relevant that the shooting range provided services in the "public interest", since members of the Olympic team and of various law-enforcement agencies used the facility to do practice shooting. Another relevant factor for the court's assessment was that the company running the business had invested a considerable amount of money in modernising the shooting range, which provided a livelihood for two employees. Although the court found it established – based on the psychiatric expert opinion – that the applicant's mental health had deteriorated owing to the noise from the shooting range, it found that the applicant had contributed to this situation by choosing to live next to a shooting range. Lastly, the court relied on the expert opinion commissioned in the proceedings, which had found that the noise was "serious" since it occurred abruptly and caused a disturbance to the local residents. The expert report pointed out that the applicant's house could neither be used as a residential building owing to the noise pollution nor was it possible to put an end to that nuisance without incurring unreasonable expenses. Having balanced the respondent company's economic interests and the perceived public interest in the operation of the shooting club against the applicant's interests, the court found no grounds to close the shooting range.

9. In a judgment of 21 May 2015 the Budapest Surroundings Regional Court, acting as a second-instance court, upheld the first-instance judgment, adding that although the profile of the shooting club had changed, this was a risk the applicant should have taken into account when she had decided to live next to the shooting range. The court further found that the shooting club did not carry out any activity that ought to have been terminated to prevent any further nuisance to the applicant. Relying on the expert opinion, the court noted that apart from closing down the shooting club altogether, there was no possibility – at least at reasonable cost – to reduce the noise from the shooting range.

10. The applicant lodged a constitutional complaint against the second-instance judgment, alleging a violation of her right to life and dignity, right to property, right to equal treatment, right to health and right to a fair trial. In a judgment of 12 April 2016 the Constitutional Court dismissed the applicant's constitutional complaint. It ruled that in civil proceedings resolving disputes between neighbours, the question was not whether the situation was in compliance with the rules of public law but whether the trial courts had struck a fair balance between the interests of the owners of

the neighbouring plots of land. It upheld the reasoning of the trial courts that by choosing to live next to a shooting range, the applicant had contributed to the situation. The Constitutional Court therefore concluded that the courts had not breached the applicant's right to health when they had taken that factor into account in their decisions. The Constitutional Court also dismissed the applicant's argument that the trial courts had erred in the establishment of the relevant facts and in their assessment of the evidence.

11. On an unspecified date the applicant initiated new civil proceedings for the protection of her property.

B. Relevant domestic law

12. Act no. IV of 1959 on the Civil Code, as in force at the material time, provided as follows:

Section 100

"An owner is obliged, while using an apparatus, to refrain from any conduct that would unnecessarily disturb others, especially his or her neighbours, or that would jeopardise the exercise of their rights."

COMPLAINT

13. The applicant complained that the authorities had not taken effective measures to bring an end to the nuisance from the shooting range. She relied on Article 8 of the Convention, the relevant parts of which provide:

"1. Everyone has the right to respect for his private ... life [and] his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. The parties' submissions

14. The applicant submitted that she had had to put up with serious nuisance from the neighbouring shooting range. She relied on the evidence submitted before the domestic courts to substantiate her assertion that the nuisance suffered by her was so serious that it disturbed her everyday life and caused her to experience depression. She pointed out that the shooting range had originally been for purely recreational purposes and, by virtue of

that fact, the weapons that had been used had also been different from those used for training purposes. She disputed that she had been in breach of the local construction regulations, since her house had been built with a valid construction permit.

15. According to the applicant, the economic interests of the company operating the shooting range could not prevail over her right to life and health and to a healthy environment. Consequently, the fact that the company operating the shooting club had invested in the shooting range was irrelevant in assessing the current situation.

16. The Government argued that the application was inadmissible. While acknowledging that noise could be considered a pollutant, they submitted that the applicant herself had decided to construct her house next to a shooting range and she should have foreseen the consequences of such an action. As the evidence put forward in the domestic proceedings had shown, the applicant had already been suffering from health problems prior to moving next to the shooting club and while her impairment had probably worsened owing to the noise, it had not been caused by noise emanating from the neighbouring land.

17. The Government acknowledged that the applicant's house was not suitable for use as a home, but in their view it would not be proportionate to close down the shooting club when the applicant herself had been in breach of the construction regulations applicable in the municipality. They noted that the company operating the shooting club had invested considerable sums in the modernisation of the shooting range, which now served as a training facility for sports teams and the armed forces.

B. The Court's assessment

18. The Court has already had occasion to rule on the State's obligation to protect an applicant from excessive levels of noise. Summaries of the relevant principles may be found in *Oluić v. Croatia* (no. 61260/08, §§ 44-47 and 50-51, 20 May 2010), and *Fadeyeva v. Russia* (no. 55723/00, §§ 66-70, ECHR 2005-IV).

19. The present case does not concern interference by the public authorities with the right to respect for the private life and home of the applicant, but their alleged failure to take action to put a stop to third-party breaches of the right relied on by the applicant.

20. The first question for consideration is whether the nuisance reached the minimum level of severity required for it to amount to interference with the applicant's right to respect for her home and her private and family life.

21. The Court observes that the applicant's house was subject to noise disturbances which – according to the evidence obtained through an expert report commissioned by the domestic courts (see paragraph 8 above) – made it unsuitable for use as a home. The Court also has regard to the

psychiatric expert opinion, which concluded that the noise pollution had contributed to the deterioration of the applicant's mental health (see paragraph 8 above). In these circumstances the Court accepts that the disturbance affecting the applicant's home and her private life reached the minimum level of severity required for it to amount to interference with her right to respect for her home and her private life.

22. The Court reiterates that in a case concerning environmental issues, there are two aspects to the inquiry which may be carried out by the Court. Firstly, the Court may assess the substantive merits of the decision of the domestic authorities, to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual, taking into account the positive obligations under Article 8 of the Convention (see *Udovičić v. Croatia*, no. 27310/09, § 150, 24 April 2014).

23. As to the decision-making process, the Court notes that the applicant's husband addressed his complaint first to the notary public of Gyál, seeking the protection of the couple's property (see paragraph 6 above). Subsequently the applicant lodged an action before the civil courts against the company operating the shooting club, alleging an infringement of her right to peaceful enjoyment of her possession (see paragraph 7 above); and lastly she lodged a constitutional complaint before the Constitutional Court in respect of the alleged violation of her fundamental rights.

24. The proceedings before the notary public resulted in a restriction of the operating hours of the shooting club following an on-site inspection and the taking of statements from the applicant's husband and the representative of the shooting club, as well as three witnesses.

25. In the course of the civil proceedings the first-instance court commissioned an environmental expert opinion to assess the noise level originating from different parts of the shooting range and the impact of the noise within the applicant's property. The applicant's husband and her legal representative, as well as the representatives of the respondent company, were present at the on-site inspection conducted by the environmental expert. The court also commissioned a medical expert opinion to evaluate the effect of the noise from the shooting range on the applicant's mental health. The court admitted the medical expert opinion submitted by the applicant as evidence and, on account of the contradictions between the two, it commissioned a third expert opinion. It further examined several witnesses and held an on-site hearing in the presence of the applicant's legal representative. In consequence, it cannot be said that the applicant did not have an opportunity to make her views heard. The fact that the outcome of the proceedings was not favourable to the applicant is not sufficient to establish that she was not involved in or given access to the decision-making process.

26. Based on the above, the Court finds that the decision-making process was such as to afford due respect to the interests protected by Article 8.

27. As to whether the domestic authorities struck a fair balance between the competing interests, namely the applicant's interests that were affected by the disturbance and the interests of the company operating the shooting club, the Court, reiterates that, according to its established case-law, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 86, ECHR 2005-VI).

28. In the instant case, the Court notes that according to the evidence adduced in the domestic proceedings the noise disturbance had actually led to the deterioration of the applicant's mental health. Moreover, it affected the applicant's property to the extent that, according to the environmental expert opinion, it was unsuitable for use as a home. The Court observes that this factor was not disregarded by the domestic courts either. On the other hand the Court considers it reasonable to assume – as did the domestic courts – that the shooting club served useful purposes, not only in the economic interests of the operating company but also in the interests of the wider community (see paragraph 8 above).

29. The Court finds it relevant that the local authorities were not oblivious to the nuisance inherent in the operation of the shooting range: the construction regulations in place prescribed a distance of 200 metres between the shooting range and the residential area. In the applicant's case the minimum distance between her home and the shooting club was not applicable as she lived in an area designated for economic, commercial and service activities. The Court also points out that the noise level applicable to the commercial zone (60 dB) was higher than that applicable in residential areas (50 dB). The Court accepts that it was justifiable for the local authorities to apply different rules depending on whether an area was residential or commercial. It also observes that the company abided by the construction regulations and that the fact that the safeguards as regards the acceptable noise level and the minimum distance were not in place in the applicant's case was due in practice to the fact that she – by her own choice – had decided to construct her home outside of the residential area.

30. Furthermore, both the extension of the shooting club and the altered nature of its operations – which implied its expansion – were subject to a permit. The Court notes in that connection that it was not established by the domestic courts that the respondent company had failed to comply with the terms of these permits. In assessing whether the right balance has been struck between the competing interests, the availability of a regulatory framework aiming to mitigate the effects of any nuisance emanating from a sports facility is a relevant factor carrying considerable weight (see *mutatis mutandis Zammit Maempel v. Malta*, no. 24202/10, § 69, 22 November 2011).

31. The Court further notes that when the applicant acquired her property, a shooting club had already been in operation next to her plot of land for many years. Even if the applicant was correct in stating that the circumstances had changed considerably after the new owners expanded the shooting range between 2010 and 2011, the Court cannot but note that this risk was inherent in the decision to construct a house next to a shooting range in an area where the applicable regulations did not restrict the operation of the latter. Notwithstanding this risk, the applicant and her husband proceeded to purchase the property and make it their home. The Court considers, as did the domestic courts, that this is a weighty factor in the relevant balancing exercise, irrespective of the fact that the applicant was lawfully entitled to live there (see *Zammit Maempel,* cited above, § 72).

32. The Court finds that the respondent State did not fail to approach the matter with due diligence and that there was no manifest error in the authorities' assessment when they attributed considerable weight to the applicant's own conduct in striking a fair balance between the competing interests of the various private actors in this sphere. Nor does the Court find that there were fundamental procedural flaws which impinged on the applicant's rights under Article 8 of the Convention (see paragraph 26 above).

33. It follows that the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Liv Tigerstedt Deputy Registrar	Alena Poláčková President