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

FOURTH SECTION

DECISION

Application no. 48590/11
László SZILÁGYI
against Hungary

The European Court of Human Rights (Fourth Section), sitting on 3 May 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 August 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr László Szilágyi, is a Hungarian national, who was born in 1959 and lives in Székesfehérvár. He was represented before the Court by Mr A. Litresits, a lawyer practising in Budapest.

The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

The circumstances of the case

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

In a real estate dispute, in 2008 the Székesfehérvár Municipality filed an action against the applicant, requesting the Székesfehérvár District Court to order him to pay a large sum of money. The District Court found for the plaintiff.

On appeal, the case was assigned to Dr M.'s bench at the Fejér County Regional Court. The applicant learned about this assignment when receiving a summons on 17 September 2009.

On 12 November 2009 the Fejér County Regional Court upheld the first-instance decision. Dr M. did not declare during the proceedings that one of his sons was a member of the plaintiff municipality's general assembly and a member of two municipal committees and his other son was a member of the board of Sz. Rt. According to the applicant, this company had joined the proceedings on the plaintiff's side on 11 December 2008. The Government contested that Sz. Rt. had participated in the case in any capacity. In the case documents submitted to the Court, Sz. Rt. did not figure as party or intervener in the proceedings.

On 27 November 2009 the applicant complained about Dr M.'s perceived incompatibility to the President of the Fejér County Regional Court, but in vain. In his complaint, the applicant mentioned that – although he had been aware of the assignment of the file to Dr M. and of the positions held by the latter's sons – he had not filed a motion for bias prior to the delivery of the second-instance decision because he trusted the judicial system.

Upon the applicant's petition for review, on 28 October 2010 the Supreme Court upheld the Regional Court's judgment. It was satisfied that the parental link between the second-instance president and the officials of the plaintiff's side did not as such deprive the appeal bench of its impartiality. This decision was served on the applicant on 4 February 2011.

Under section 16(4) of the Code of Civil Procedure, a motion for bias may be filed by a party if the judge concerned does not recuse himself voluntarily.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that the hearing had not been fair in that the close parental relationship between the president of the second-instance bench and two individuals with links to the opposing party amounted to a breach of the requirement of objective impartiality.

THE LAW

The applicant complained that the link between the president of the appeal bench and the opposing party undermined the impartiality of the

tribunal hearing his case, in breach of Article 6 § 1 of the Convention which provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an ... impartial tribunal established by law."

The Government disagreed. They argued in particular that the applicant had not exhausted domestic remedies in that he had not filed a motion for bias under section 16(4) of the Code of Civil Procedure, although he had been aware of the situation well before the second-instance adjudication of the case. The applicant contested this view, arguing in essence that Dr M. should have recused herself voluntarily.

Article 35 § 1 Convention provides as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law .... "

The Court notes that the applicant took cognisance of the assignment of the case to Dr M. on 17 September 2009 at the latest, that is, well before the appeal hearing. It transpires from his subsequent complaint of 27 November 2009 that he had been aware of this circumstance as well as the positions held by Dr M.'s sons, yet he chose not to file a motion for bias before the appeal procedure, as was permitted by the Code of Civil Procedure. The Court is not convinced that the mere fact that Dr M. did not feel biased and did not recuse herself exempted the applicant from pursuing the remedy normally available under the Code of Civil Procedure. It follows that the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 May 2016.

Fatoş Aracı	Nona Tsotsoria
Deputy Registrar	President