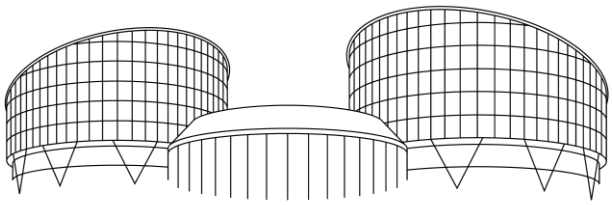

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF BOR v. HUNGARY

*(Application no. 50474/08)*

JUDGMENT

STRASBOURG

18 June 2013

*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 Bor v. Hungary,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 28 May 2013,

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

# PROCEDURE

1. The case originated in an application (no. 50474/08) 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, Mr László Bor ("the applicant"), on 15 October 2008.

2. The applicant was represented by Mr V. Szűcs, a lawyer practising in Zalaegerszeg. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant complained of the impossibility to enforcing, in an effectively and timely manner, the Hungarian Railway Company's obligation to keep the noise level under control near his home. He relied on Articles 8, 13 and 17 of the Convention, Article 1 of Protocol No. 1 and Article 1 of Protocol No. 12. Moreover, he complained under Article 6 § 1 of the Convention about the length of the related court proceedings.

4. On 14 March 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Zalaegerszeg.

6. The applicant's house is situated across the street from Zalaegerszeg Railway Station, in front of the starting position of trains. When about 1988 the Hungarian Railway Company ("MÁV") replaced its steam engines with diesel ones, the noise level increased significantly.

7. On 22 October 1991 the applicant and his neighbours filed an action in trespass against MÁV, seeking that it be obliged to keep its noise emission under control by constructing a noise barrier wall, modernising the railway station, preheating the engines in another place and avoiding the use of certain engines. This action was later extended to include a compensation claim.

8. Between 7 February 1992 and January 1993 the proceedings were stayed upon the parties' request. From 22 July 1994 to 27 November 1998 the proceedings were suspended upon the applicant's request, pending his similar complaint before the National Public Health and Medical Officer Service.

9. In 1995 the applicant also complained to the Regional Environment Protection Authority about the noise disturbance. In remitted proceedings, on 27 August 1997 the Environment Protection Authority established the noise limits applicable to preheating trains. On 18 May 1998 it imposed a fine on MÁV for non-compliance with those limits. The noise did not decrease, therefore the applicant and his neighbours turned to the Public Prosecutor. On 4 May 2008 the Public Prosecutor initiated civil proceedings against MÁV. These proceedings were consolidated with the ones initiated by the applicant and his neighbours.

10. Relying on acoustic and engineering expert opinions, on 24 September 2004 the Zalaegerszeg District Court established the existence of sound pollution and ordered MÁV to finance the installation of soundproof doors and windows on the plaintiffs' houses, but dismissed the remaining claims.

11. On appeal, the case was remitted to the first instance.

12. In the remitted proceedings, on 9 November 2005 the District Court delivered a partial judgment, maintaining that the noise level exceeded the limit value, prohibiting MÁV from making the excessive noise emission, and obliging it to construct a noise barrier wall.

13. On appeal, on 30 March 2006 the Zala County Regional Court dispensed with the obligation to build the protection wall, considering it unnecessary in addition to the prohibition on noise pollution. The Regional Court relied on section 101 (3) of the Act no. LIII of 1996 on the Protection of Nature ("Nature Protection Act").

14. The partial judgment having become final, the first-instance proceedings continued with regard to the compensation claims. On 7 March 2008 the District Court ordered MÁV to pay the applicant

4,150,000 Hungarian forints[1] (HUF) in compensation for the loss of value of his house and HUF 445,000[2] for the costs of replacing the doors and windows.

15. On appeal, on 5 June 2008 the Regional Court partly reversed the judgment, dispensing with the award for the loss of value. It relied on a real estate expert opinion, according to which if MÁV complied with the partial judgment, the remaining noise would not reduce the market value of the house.

16. MÁV complied with its payment obligation without delay. In addition to that, between 2010 and 2012 several noise mitigating measures, investments and developments were implemented at Zalaegerszeg Railway Station, including reduction in the number of trains passing through the station, minimisation of the stay of freight trains on passenger-train tracks and the stationing of trains in the applicant's street, renovation of engines, electrification of shunting, reorganisation of pre-heating, limitation of the number of diesel engines and their operation only on branch tracks, and avoidance of unnecessary working of machines in the station area.

17. The applicant claims that due to the above measures the noise has decreased to a degree but still exceeds the statutory limit value by night and at dawn. However, no evidence has been produced to that effect.

## II. RELEVANT DOMESTIC LAW

18. Act no. LIII of 1996 on the Protection of Nature provides as follows:

### Section 101

"(1) Users of the environment shall – in the manner specified in this Act and in other laws – bear criminal, regulatory, civil and administrative liability for the effects exerted by their activities on the environment.

(2) Users of the environment shall

a) refrain from performing, and shall stop continuing to perform conduct endangering or damaging the environment; ...

(3) In case of lack of success or non-compliance with the provisions contained in subsection (2) items a) and e) the environment protection authority or – in case of an activity permitted by another authority, upon the request of the environment protection authority – the permitting authority or the court shall – depending on the degree of environment-endangering or environment-damaging – restrict, suspend or prohibit the environment-endangering or environment-damaging activity until the conditions determined by it are met.

(4) Where the carrying out of the prevention and restoration measures affects lands owned, possessed, (used) by others, the owner, possessor (user) of such lands shall

[1] Approximately EUR 15,660
[2] Approximately EUR 1,680

tolerate the carrying out of such prevention and restoration measures. The owner, possessor (user) of such lands shall be entitled to indemnification."

Section 109

"(1) Where the environmental components are damaged in ways prohibited under the Criminal Code, the public prosecutor shall act in compliance with the Code of Criminal Procedure.

(2) In case of endangerment of the environment the public prosecutor shall also be entitled to bring an action for prohibiting the activity or seeking compensation for damages caused by the environment-endangering activity."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant complained that the noise disturbance caused by the operation of the railway station made his home virtually uninhabitable, and he had not received effective and timely protection against that nuisance. He relied on Articles 8, 13 and 17 of the Convention and Article 1 of Protocol No. 1.

The Court considers that this complaint falls to be examined under Article 8, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

20. The Government contested that argument.

### A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

22. The applicant submitted that the extreme noise disturbance caused by the railway station had started in 1988, while the first measures aiming at

reducing the noise had only been implemented in 2010. The noise had exceeded the statutory levels for more than twenty years, and there still remained some unbearable noise by night and at dawn. In his view, due to the non-compliance with the statutory levels, the appropriateness of which was not questioned, the interference with his right to respect his private life and home could not be regarded as being 'in accordance with the law' or proportionate.

23. The Government argued that the Nature Protection Act provided for a clear sanction system, which the courts had duly applied by prohibiting MÁV from making the excessive noise emission and by obliging it to bear the costs of installing soundproof doors and windows. In full compliance with this ruling, MÁV had implemented measures which had significantly reduced the noise emission. The remaining noise should be tolerated by the applicant, as his house was situated by a railway station, the activity of which served both public and private interests. Therefore, the restriction on his rights should be regarded as lawful and proportionate.

24. The Court recalls that there is no explicit right in the Convention to a quiet environment, but where an individual is directly and seriously affected by noise, an issue may arise under Article 8 (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII). Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see *Hatton and Others v. the United Kingdom*, cited above, § 98).

The Court has already held that noise significantly above statutory levels, to which the State has not responded with appropriate measures, may as such amount to a violation of Article 8 of the Convention (cf. *Oluić v. Croatia*, no. 61260/08, §§ 48 to 66, 20 May 2010; *Moreno Gómez v. Spain*, no. 4143/02, §§ 57 to 63, ECHR 2004-X; *Deés v. Hungary*, no. 2345/06, § 23, 9 November 2010).

25. Turning to the present case, the Court notes that – even assuming that the status of MÁV, a State-controlled enterprise, is that of a legal entity distinct from the State – the State authorities had, upon the applicant's complaint about the company's noise emission, a positive obligation under Article 8 § 1 to strike a fair balance between the interest of the applicant in

having a quiet living environment and the conflicting interest of others and the community as a whole in having rail transport.

26. The Court notes that the applicant did not contest the appropriateness of the applicable noise limit values. It further notes that the applicant has not submitted any evidence to show whether the noise produced by the activities at the railway station still exceeds those values. However, the Court attaches importance to the fact, not contested by the Government, that the statutory noise values were overstepped until at least the end of the related proceedings in 2008, when MÁV paid for the replacement of the applicant's doors and windows (see paragraph 16 above). The complaint about the noise disturbance was brought in the domestic courts in 1991. The Convention entered into force with regard to Hungary on 5 November 1992, and it took almost sixteen years from this date to carry out a proper balancing exercise and to reach an enforceable decision by the domestic courts. Therefore, the applicant remained unprotected against the excessive noise disturbance, which caused serious nuisance preventing him from enjoying his home, for an unacceptably long period.

27. The Court accepts that the State enjoys a margin of appreciation in determining the steps to be taken to ensure compliance with the Convention when it comes to the determination of regulatory and other measures intended to protect Article 8 rights (see *Deés v. Hungary*, cited above, § 23). However, it emphasises that the existence of a sanction system is not enough if it is not applied in a timely and effective manner. In this respect it draws attention once again to the fact that the domestic courts failed to determine any enforceable measures in order to assure that the applicant would not suffer any disproportionate individual burden for some sixteen years.

28. Therefore the Court concludes that the State has failed to discharge its positive obligation to guarantee the applicant's right to respect for his home. Accordingly, there has been a violation of Article 8 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant also complained that the length of the proceedings which he brought in this matter was incompatible with the "reasonable time" requirement of Article 6 § 1.

The Government did not contest that argument.

30. The period to be taken into consideration began on 5 November 1992, when the recognition by Hungary of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The Court notes that the proceedings had already been pending for over one year on that date. The period in question ended

on 8 June 2008. It thus lasted for fifteen years and seven months before two levels of jurisdiction. From this time, a period of one year between 7 February 1992 and January 1993 must be deducted, as the proceedings were stayed upon the parties' request. Another period of four years between 22 July 1994 and July 1998 must be further deducted, when the proceedings were suspended upon the applicant's request (see paragraph 8 above). The remaining duration is therefore ten years and seven months for two levels of jurisdiction. In view of such lengthy proceedings, this complaint must be declared admissible.

31. 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, it finds no reason to reach a different conclusion in the present circumstances. Having regard to its case-law on the subject, the Court finds 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.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant, lastly, invoked Article 1 of Protocol No. 12 to the Convention in respect of alleged discrimination in the above proceedings.

33. Since Hungary has not ratified Protocol No. 12, this complaint must be rejected as incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and rejected pursuant to Article 35 § 4.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

35. The applicant claimed 4,000,000 Hungarian forints (HUF)[1] in respect of pecuniary damage, as compensation for the alleged decrease in the market value of his house. As non-pecuniary damages, he claimed

[1] Approximately 13,500 euros (EUR)

HUF 18,000,000[1] for the violation of Article 8 and HUF 10,000,000[2] for the violation of Article 6 (length).

36. The Government contested these claims.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained some non-pecuniary damage and awards him, on the basis of equity, EUR 9,500 under this head.

### B. Costs and expenses

38. The applicant also claimed HUF 929,700[3] for the costs and expenses incurred before the domestic courts and HUF 73,943[4] (HUF 30,000 of lawyer's fee and HUF 43,943 of translation costs) plus VAT for those incurred before the Court.

39. The Government contested this claim.

40. 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 are 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 2,500 covering costs under all heads.

### C. Default interest

41. 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 complaints concerning Articles 6 § 1 and 8 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention (length of the proceedings);

3. *Holds* that there has been a violation of Article 8 of the Convention;

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[1] Approximately EUR 61,000
[2] Approximately EUR 33,800
[3] Approximately EUR 3,100
[4] Approximately EUR 250

4. *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 9,500 (nine thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five 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;

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

Done in English, and notified in writing on 18 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Stanley Naismith | Guido Raimondi |
| Registrar | President |