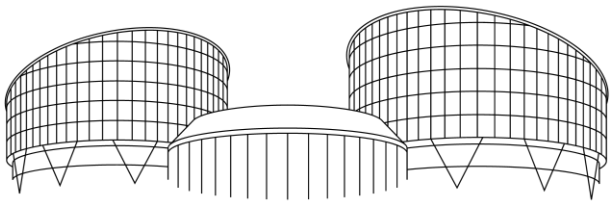

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF DEÉS v. HUNGARY

(Application no. 2345/06)

JUDGMENT

STRASBOURG

9 November 2010

FINAL

09/02/2011

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

In the case of Deés v. Hungary**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the partial decision of 14 April 2009,

Having deliberated in private on 5 and 20 October 2010,

Delivers the following judgment, which was adopted on the last–mentioned date:

PROCEDURE

1. The case originated in an application (no. 2345/06) 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 a Hungarian national, Mr György Deés ("the applicant"), on 6 January 2006.

2. The applicant was represented by Mr F.G. Lelik, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged, in particular, that because of the noise, pollution and smell caused by the heavy traffic in his street, his home had become almost uninhabitable, in breach of Article 8 of the Convention. Moreover, he complained under Article 6 about the length of the related court proceedings.

4. On 14 April 2009 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged interference with the applicant's right to respect for his home and the complaint concerning the length of the proceedings to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Alsónémedi.

6. It appears that from early 1997 the volume of cross-town traffic in Alsónémedi increased, since a toll had been introduced on the neighbouring, privately owned motorway M5. In order to avoid the rather high toll charge, many trucks chose alternative routes including the street (a section of national road no. 5201) in which the applicant's house is situated.

7. To counter this situation, from 1998 onwards three bypass roads were built; and several measures, including a 40 km/h speed limit at night, were implemented in order to discourage traffic in the neighbourhood. Two nearby intersections were provided with traffic lights. In 2001 road signs prohibiting the access of vehicles of over 6 tons and re-orientating traffic were put up along an Alsónémedi thoroughfare, an arrangement which also affected the applicant's street. The Government submitted that compliance with these measures had been enforced by the increased presence of the police in general in Alsónémedi and in particular in the applicant's street; in the applicant's view, however, no effective enforcement was in place.

8. In or about 1997 the applicant observed damage to the walls of his house. He obtained the opinion of a private expert, who stated that the damage was due to vibrations caused by the heavy traffic. The applicant also alleges that, because of the increased noise and pollution due to exhaust fumes, his home has become almost uninhabitable.

9. On 23 February 1999 the applicant brought an action in compensation against the Pest County State Public Road Maintenance Company before the Buda Central District Court. He claimed that, due to increased freight traffic in his street, the walls of his house had cracked. The case was transmitted to the Budapest Regional Court for reasons of competence on 11 March 1999. On 11 November, 16 December 1999 and 30 March 2000, the court held hearings. On 6 April 2000 it dismissed the claims.

10. On appeal, the Supreme Court, acting as a second-instance court, held a hearing on 30 January 2002, quashed the first-instance judgment and remitted the case.

11. In the resumed proceedings, on 2 June 2002 the Regional Court appointed as expert the Department of Road Construction at Budapest Technical University. The latter presented an opinion on 20 January 2004 which was discussed at the hearing of 29 April 2004. The expert stated that the level of noise outside the applicant's house had been measured as 69.0 dB(A) on 5 May and 67.1 dB(A) on 6 May 2003, daytime on both occasions, as opposed to the applicable statutory limit of 60 dB(A).

On 10 June 2004 the court held another hearing and ordered the supplementation of the opinion, which was done on 15 September 2004.

12. On 17 February 2005 the Regional Court dismissed the applicant's claims. It relied on the opinion of the expert, documentary evidence and the testimony of the parties. It refused the applicant's motion to obtain the opinion of another expert since it was of the view that the original opinion was thorough and precise.

13. The court noted the expert's opinion that the vibration, as measured on the scene, was not strong enough to cause damage to the applicant's house, nor could the traffic noise entail cracks in its walls although it was higher than the statutory level. The court therefore concluded that no causal link could be established between the measures adopted by the respondent authority and the damage to the house. The court observed that the respondent had spent more than one billion Hungarian forints on developing the road system in the area, constructed four roundabouts and put up several road signs and traffic lights in order to divert traffic from Alsónémedi. In sum, it had carried out every measure with a view to sparing Alsónémedi from heavy traffic and limiting the speed of cross-town traffic that could reasonably be expected in the circumstances to protect the applicant's interest. The respondent had to balance competing interests, since the barring of heavy vehicles from a public road might have been advantageous to the inhabitants of Alsónémedi but could have caused disproportionate prejudice to the other users or providers of public and private transportation.

14. On 15 November 2005 the Budapest Court of Appeal dismissed the applicant's appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

15. The applicant complained that the nuisance caused by the heavy traffic in his street amounted to a violation of his right to respect for his private life and home as guaranteed by Article 8 of the Convention, 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."

16. The Government contested that argument.

A. Admissibility

17. 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

18. The applicant submitted that the noise, vibration, pollution and odour caused by the heavy traffic nearby rendered his home virtually uninhabitable and that the Hungarian authorities' measures to remedy the situation had been insufficient and/or inadequate.

19. The Government argued that the environmental problems suffered by the applicant had arisen essentially due to a toll introduced by a private motorway company and the State had responded with various measures to protect the inhabitants of Alsónémedi from the level of environmental harm proscribed by the Court's case-law under Article 8, thus complying with its positive obligations in this field.

20. They submitted in particular that the operator of the motorway in question had collected toll charges as of 1 January 1997. Initially, the charges had been so high that they had deterred traffic from using the motorway and given rise to increased traffic through the neighbouring villages. Upon protests from the local inhabitants, the toll charges had been slightly lowered. Frequent user and fleet discounts had been granted which, however, had not been attractive enough to reduce toll evasion and the resultant noise and environmental pollution suffered by the neighbouring villages. Following a partial governmental buyout of the motorway in 2002, a sticker system had been introduced entailing a substantial reduction of the toll charges. A State-owned company had then been commissioned to enhance safety on the impugned road sections and reduce the environmental burden on the inhabitants. The measures taken by this agency are outlined in paragraph 7 above.

21. The Court recalls that Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area within reasonable limits. Breaches of the right to respect of the home are not confined to concrete breaches, such as unauthorised entry into a person's home, but may also include those that are diffuse, such as noise, emissions, smells or other

similar forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (cf. *Moreno Gómez v. Spain*, no. 4143/02, § 53, ECHR 2004-X).

Moreover, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life and home even in the sphere of the relations of individuals between themselves (see *Moreno Gómez*, cited above, § 55).

22. In the instant case, the Court notes the applicant's submission that, from 1997 onwards, the noise, vibration, pollution and odour caused by the heavy traffic nearby had made his property almost uninhabitable. It also observes that the Government did not dispute in essence that the situation had indeed been problematic after the introduction of the toll on the motorway outside Alsónémedi – although they argued that the measures implemented had alleviated the burden on the applicant to such an extent that the adverse environmental effects had been reduced and did not attain the minimum level of harm proscribed by Article 8 in this field. The Court finds noteworthy that, from 1998 onwards, the authorities constructed three bypass roads, introduced a night speed limit of 40 km/h and provided two adjacent intersections with traffic lights. In 2001 further measures were implemented, namely road signs prohibiting the access of heavy vehicles and re-orientating traffic were installed (see paragraph 7 above).

23. The Court considers that the State enjoys a certain 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. This consideration also holds true in situations, which do not concern direct interference by public authorities with the right to respect for the home but involve those authorities' failure to take action to put a stop to third-party breaches of the right relied on by the applicant (cf. *Moreno Gómez*, cited above, § 57). In the present case the State was called on to balance between the interests of road-users and those of the inhabitants of the surrounding areas. The Court recognises the complexity of the State's tasks in handling infrastructural issues, such as the present one, where measures requiring considerable time and resources may be necessary. It observes nevertheless that the measures which were taken by the authorities consistently proved to be insufficient, as a result of which the applicant was exposed to excessive noise disturbance over a substantial period of time. The Court finds that this situation created a disproportionate individual burden for the applicant. In that respect, the Court observes that, on the basis of the expert opinion of Budapest Technical University, the domestic courts concluded that the vibration or the noise caused by the traffic was not substantial enough to cause damage to the applicant's house, but the noise exceeded the statutory level

(see paragraph 13 above). The Court has already held that noise pressure significantly above statutory levels, unresponded to by appropriate State 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*, cited above, §§ 57 to 63). In the present case, it notes that, despite the State's efforts to slow down and reorganise traffic in the neighbourhood, a situation involving substantial traffic noise in the applicant's street prevailed at least until and including May 2003 when two measuring sessions established noise values respectively 15% and 12% above the statutory ones (see paragraph 11 above) (see, *a contrario*, *Fägerskiöld v. Sweden* (dec.), no. 37664/04, ECHR 2008–... (extracts)).

24. In these circumstances, the Court considers that there existed a direct and serious nuisance which affected the street in which the applicant lives and prevented him from enjoying his home in the material period. It finds that the respondent State has failed to discharge its positive obligation to guarantee the applicant's right to respect for his home and private life. Accordingly, there has been a violation of Article 8 of the Convention.

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

25. 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 contested that argument.

26. The period to be taken into consideration began on 23 February 1999 and ended on 15 November 2005. It thus lasted almost six years and nine months for two levels of jurisdiction. In view of such lengthy proceedings, this complaint must be declared admissible.

27. 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 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. In respect of non-pecuniary damage, the applicant claimed 20,000 euros (EUR) for the violation of Article 8 of the Convention and EUR 8,000 for the violation of Article 6.

30. The Government contested these claims.

31. Deciding on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage under all heads.

B. Costs and expenses

32. The applicant made no costs claim.

C. Default interest

33. 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 remainder of the application admissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 9 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President