



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

SECOND SECTION

CASE OF SOMOGYI v. HUNGARY

(Application no. 5770/05)

JUDGMENT

STRASBOURG

11 January 2011

FINAL

11/04/2011

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

In the case of Somogyi 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 deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 5770/05) 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 Tamás Pál Somogyi (“the applicant”), on 11 January 2005.

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

3. The applicant alleged that the execution of his Italian prison sentence by the Hungarian authorities had been unlawful and that he had not been compensated for this; moreover, he complained about the alleged unfairness and length of other criminal proceedings conducted against him in Hungary.

4. On 3 March 2009 the President of the Second Section decided to give notice of the application 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 1951 and lives in Tököl.

A. The execution of the applicant's Italian prison sentence in Hungary

6. In 1999 the applicant was sentenced to eight years' imprisonment for armed robbery by the Rimini Court in Italy. (The European Court of Human Rights subsequently held that the unfairness of the underlying proceedings gave rise to a violation of Article 6 § 1 of the Convention by the Italian authorities and awarded the applicant just satisfaction: *Somogyi v. Italy*, no. 67972/01, ECHR 2004-IV). The end date of this sentence was 28 December 2007.

7. On 19 May 2003 the applicant was transferred to Hungary. On 20 October 2003 the Budapest Regional Court in Hungary held that he was to serve the remainder of his sentence under a strict regime in a Hungarian prison (*fegyház*) and that he could be released on parole after serving four-fifths of the term, i.e. on 23 May 2006.

8. The applicant appealed. On 16 February 2006 the Attorney General's Office intervened in the case, filing a motion for remedy in support of the applicant. The Office argued that the service of the applicant's sentence under a strict regime constituted an undue aggravation of his penal situation, in breach of Article 11 of the Transfer Convention, which entailed that he could be released on probation only belatedly.

9. On 14 March 2006 the Supreme Court quashed the Regional Court's decisions concerning the regime of the applicant's transferred sentence and his conditional release, holding that they were unlawful. It held that the best approximation of the Italian sentence in Hungarian law was to have imposed a medium regime (*börtön*) on the applicant for the remainder of his prison term, release on parole then being possible after having served three-quarters of the sentence.

10. On 17 March 2006 the applicant was released.

11. Subsequently, the applicant brought an official liability action against the Regional Court. He claimed compensation for the fact that, because of that court's wrong reconciliation of the Italian and Hungarian penitentiary rules, he had been released on parole only on 17 March 2006, whereas under the medium regime he could have already been released in November 2005. He also sought damages for having erroneously spent two years and five months in a strict-regime prison.

12. After divergent decisions, on 15 May 2008 the Supreme Court finally dismissed the action. Concerning the belated release, it held that, although the Regional Court's interpretation of the law had been overruled, there was no indication that it had carried out the complex task of reconciling the inconsistent Italian and Hungarian rules with gross negligence giving rise to tort liability. As to the period wrongly spent in a strict-regime prison, it noted that the applicant had not substantiated that he had sustained any actual damage.

B. Criminal proceedings against the applicant in Hungary

13. From 1994 onwards, criminal proceedings were conducted against the applicant in Hungary for the abuse of firearms. On 6 February 2004 the Buda Central District Court sentenced him to four months' suspended imprisonment. The court observed that unlicensed firearms had been found in the applicant's car and, in so doing, it relied on the testimony of several witnesses. It took into account the extreme protraction of the case since 1994 as a crucial mitigating circumstance entailing a suspended sentence.

14. On 12 May 2005 the Budapest Regional Court upheld this judgment. On 15 November 2005 the Supreme Court dismissed the applicant's petition for review.

II. RELEVANT INTERNATIONAL LAW

15. The Convention on the Transfer of Sentenced Persons (European Treaty Series no. 112) provides as follows:

Article 9(3)

“The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions. ...”

Article 10

“1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.”

Article 11(1)

“In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority: ...

d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (a) OF THE CONVENTION

16. Without relying on any particular provision of the Convention, the applicant complained that, because of a mistake made by the Hungarian courts, he had unduly spent two years and five months in a strict-regime prison and had been released four months later than could have been expected.

17. The Government contested these views.

18. The Court considers that this complaint falls to be examined under Article 5 § 1 (a) of the Convention which provides as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court; ...”

A. Admissibility

19. 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

20. The Government submitted that the domestic courts had applied the Transfer Convention and availed themselves of the margin of appreciation inherent in that convention; they had not aggravated the applicant's criminal situation either in respect of the prison regime applied or his conditional release. Therefore, the imprisonment actually served had not been disproportionate to the original sentence imposed or exceeded it.

21. The applicant contested these views in general terms.

22. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the

Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (*Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III). Moreover, any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see, among many other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 118, *Reports of Judgments and Decisions* 1996-V).

23. In the present case, the Court observes that on 14 March 2006 the Supreme Court quashed the Budapest Regional Court's ruling on the regime of the applicant's transferred sentence and his conditional release, establishing that it had been unlawful (see paragraph 9 above). Although the applicant was released soon afterwards in application of the medium regime ordered by the Supreme Court (see paragraph 10 above), the Court notes that the national law was thus not complied with in respect of the preceding period of his detention. It follows that the applicant's deprivation of liberty, in its part up to 14 March 2006, was not "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 (a) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

24. The applicant also complained that he was not compensated for his unlawful detention. The Court considers that this complaint falls to be examined under Article 5 § 5 of the Convention, which reads as follows:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

25. The Government submitted that since the applicant's detention constituted no breach of Article 5 § 1, he had no valid claim for the purposes of Article 5 § 5 of the Convention. The applicant contested this view.

A. Admissibility

26. 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

27. The Court recalls that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation under paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions.

28. In the present case, the Court has found that the applicant's detention constituted a breach of Article 5 § 1 of the Convention (see paragraph 23 above). However, his related official liability action was unsuccessful. The Court notes in particular that the Supreme Court held that the Regional Court's wrong application of the law to the detriment of the applicant did not give rise to tort liability, essentially for want of gravity (see paragraph 12 above). For the Court, however, the wrong interpretation of the law which resulted in the applicant's unlawful detention represents the core of the issue at hand, and the Supreme Court's ruling to require "gross negligence" on the part of the erring court effectively frustrated the applicant's right to compensation for the purposes of Article 5 § 5 of the Convention. It follows that there has been a violation of that provision.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant also complained, without relying on any particular provision of the Convention, that the Hungarian criminal proceedings conducted against him (see paragraphs 13-14 above) had led to a wrong outcome and lasted an unreasonably long time.

30. In so far as the applicant's complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court is satisfied that the applicant's submissions do not disclose any appearance that the courts lacked impartiality, or that the proceedings were otherwise unfair or arbitrary.

31. Concerning the length of the proceedings, the Government argued that the applicant could not claim to be a victim of a violation of Article 6 § 1 in this respect, since the District Court, in its judgment of 6 February 2004, had expressly acknowledged that the proceedings had been unusually long and had provided redress by imposing a suspended sentence (see paragraph 13 above). The applicant contested this view.

32. The Court observes that the District Court acknowledged the duration of the proceedings and held that the excessive protraction of the case was a crucial mitigating factor. Because of this, it imposed a relatively light prison sentence whose execution was suspended. Against this background, the Court finds that the applicant obtained adequate redress for the alleged violation of his right under Article 6 § 1 of the Convention to the determination within a reasonable time of the criminal charges against him. Accordingly, he can no longer claim to be a victim, for the purposes of Article 34 of the Convention, of a violation of Article 6 § 1 (see *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI; *Kalmár v. Hungary*, no. 32783/03, § 27, 3 October 2006; *Dányádi v. Hungary* (dec.), no. 10656/03, 6 July 2006; *Tamás Kovács v. Hungary*, no. 67660/01, § 26, 28 September 2004; *Lie and Berntsen v. Norway* (dec.), no. 25130/94, 16 December 1999).

33. These complaints are therefore manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

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 100,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

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. However, it considers that the applicant must have suffered some non-pecuniary damage. Accordingly, on the basis of equity, it awards him EUR 15,000 under this head.

B. Costs and expenses

38. The applicant claimed EUR 5,500 for the costs of his legal representation – which should correspond to 55 hours spent on the case by his lawyer, charged at an hourly fee of EUR 100 – as well as EUR 500 for miscellaneous expenses.

39. The Government contested these claims.

40. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 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 the lawfulness of the applicant's detention and the absence of compensation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (a) of the Convention;
3. *Holds* that there has been a violation of Article 5 § 5 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, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand 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 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President