



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

SECOND SECTION

CASE OF BLOCK v. HUNGARY

(Application no. 56282/09)

JUDGMENT

STRASBOURG

25 January 2011

FINAL

25/04/2011

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

In the case of Block v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 4 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 56282/09) 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 German national, Mr Alexander Block (“the applicant”), on 19 October 2009.

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

3. The applicant alleged that the criminal proceedings conducted against him were not fair, in particular on account of the re-characterisation of the charges against him.

4. On 26 January 2010 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 German Government did not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Bad Brückenau, Germany.

6. The Budapest Public Prosecutor's Office indicted the applicant for preparation to counterfeit money (section 304 of the Criminal Code).

7. On 30 November 2006 the Budapest Regional Court found the applicant guilty as charged and sentenced him to a fine.

8. On appeal, the Budapest Court of Appeal held a public session and completed the findings of fact as established by the Regional Court. It observed that the defendant's act could be re-characterised as attempted aggravated fraud (section 318 of the Criminal Code) and enquired as to whether he wished to have an adjournment on that account. The applicant replied in the negative.

9. On 10 October 2007 the Budapest Court of Appeal reversed the first-instance judgment and re-characterised the applicant's offence as forgery of public documents (section 274 of the Criminal Code). The applicant submitted that there had been no taking of evidence in this regard before the Court of Appeal. His sentence remained unchanged; nevertheless, he filed a petition for review.

10. On 30 April 2009 the Supreme Court held a public session and upheld the applicant's conviction without taking evidence. In the reasoning of that decision, it was observed that the judgment of the Court of Appeal amounted to a violation of the substantive provisions of the Criminal Code in that although the applicant, a national of Germany, had committed the crime in question abroad, the lower courts had not explored whether his act was punishable under German law or obtained the Attorney General's requisite endorsement of the indictment. However, the Supreme Court held that the applicant's deed in fact constituted the offences of complicity in attempted aggravated fraud (section 318 of the Criminal Code) and in forgery of private documents (section 276 of the Criminal Code). It did not change the sanction imposed on the applicant. This decision was served on 18 June 2009.

II. RELEVANT DOMESTIC LAW

11. Section 274(1) of the Criminal Code provides that a person who prepares a forged official document or falsifies the contents of an official document, uses a fake or forged official document or an official document issued under the name of another person, or co-operates in the inclusion of untrue data, facts or declarations in an official document regarding the

existence, change or termination of a right or obligation, commits the felony of forgery of official documents.

12. According to section 276 of the Criminal Code, a person who uses a fake or forged private document or a private document with untrue contents for providing evidence for the existence, change or termination of a right or obligation, commits the offence of forgery of private documents.

13. Under section 304(1) of the Criminal Code, a person who copies or forges money with the purpose of distribution, obtains counterfeit or forged money with the purpose of distribution, exports or imports such money or transports it through the territory of the country, or distributes counterfeit or forged money commits the felony of counterfeiting money.

14. According to section 318(1) of the Criminal Code, a person who deceives someone, or maintains someone's deception, in order to make unlawful gains, commits the offence of fraud, provided that actual damage has occurred as a result of his conduct.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (a) and (b) OF THE CONVENTION

15. The applicant complained that the double re-characterisation of his offence amounted to a breach of his defence rights as provided in Article 6 §§ 1 and 3 of the Convention. Article 6 in its relevant parts provides:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence; ...”

16. The Government contested that argument.

A. Admissibility

17. The Court notes that the application 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 Government submitted that as regards the re-characterisation of the applicant's offence by the Court of Appeal, the applicant had been informed of this possibility and offered an adjournment, which he had not availed himself of. Concerning the review proceedings, the Supreme Court had not effectively re-characterised; rather, it had held that the applicant should have been found guilty of another, more serious offence. Therefore, it had established that although the characterisation of the offence by the Court of Appeal had been unlawful, the finding of guilt had not. Nevertheless, it had not established the defendant's guilt anew, nor had it imposed a new sentence.

19. The applicant argued that the Court of Appeal had informed him of the possibility of re-characterising his offence as fraud but convicted him of forgery of public documents. Subsequently, the Supreme Court held that he had in fact been guilty of attempted fraud and forgery of private documents, without previously warning him about this eventuality. This double re-characterisation of his guilt had prejudiced his defence rights.

20. The Court recalls at the outset that the fairness of proceedings is assessed with regard to the proceedings as a whole (cf. *Mialhe (no. 2) v. France*, 26 September 1996, § 43, *Reports of Judgments and Decisions* 1996-IV; *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275). The provisions of paragraph 3 (a) of Article 6 point to the need for special attention to be paid to the notification of the “accusation” to the defendant. Particulars of the offence play a crucial role in the criminal process, in that it is from the moment of their service that the suspect is formally put on written notice of the factual and legal basis of the charges against him (*Kamasinski v. Austria*, 19 December 1989, § 79, Series A no. 168). Article 6 § 3 (a) of the Convention affords the defendant the right to be informed not only of the “cause” of the accusation, that is to say the acts he is alleged to have committed and on which the accusation is based, but also the legal characterisation given to those acts. That information should be detailed (*Pélissier and Sassi v. France*, 25 March 1999, § 51, *Reports* 1999-II). The scope of the above provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention. In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair. In this respect it is to be observed that Article 6 § 3 (a) does not impose any special formal requirement as to the manner in which the accused is to be informed of the nature and cause of the accusation against him.

21. The Court further recalls that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the

cause of the accusation must be considered in the light of the accused's right to prepare his defence (*Pélissier and Sassi*, cited above, §§ 52-54).

22. The Court notes at the outset that the applicant was indicted for preparation to counterfeit money and that the Regional Court found him guilty as charged. Subsequently, the Court of Appeal warned him that his offence could be re-characterised as attempted aggravated fraud but then returned an alternative judgment of forgery of public documents. Finally, the Supreme Court concluded that he had been guilty of attempted fraud and forgery of private documents, and this without prior notice.

23. The Court cannot speculate as to the merits of the defence the applicant could have relied on had he had an opportunity to make targeted submissions on the charges which he was eventually found guilty of. However, given the evident differences between the definitions under Hungarian law of the offences involved (see paragraphs 11 to 14 above), the Court takes it for granted that the defence would have been different from the defence to the initial charges.

24. Since, in the light of the foregoing, fraud or forgery of documents, private or official, did not constitute an element intrinsic to the accusation, the Court considers that in using the right which they unquestionably had to re-characterise facts over which they properly had jurisdiction, the Court of Appeal and subsequently the Supreme Court should have afforded the applicant the possibility of adjusting his defence in a practical and effective manner and, in particular, in good time. It is noteworthy in this connection that although before the Court of Appeal the applicant was warned of the possibility of the re-characterisation his offence as fraud, he was then found guilty of forgery of public documents, and that the Supreme Court's confirmation of his conviction on account of attempted fraud and forgery of private documents occurred without prior notice.

25. In sum, the Court concludes that the applicant's right to be informed in detail of the nature and cause of the accusation against him and his right to have adequate time and facilities for the preparation of his defence were infringed. It follows that there has been a violation of paragraph 3 (a) and (b) of Article 6 of the Convention, taken together with paragraph 1 of that Article, which provides for a fair trial.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested this claim.

29. The Court awards the applicant the full sum claimed. It further notes that where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial, a reopening or a review of the case, if requested, represents in principle an appropriate way of redressing the violation (see, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 207-210, ECHR 2005-IV).

B. Costs and expenses

30. The applicant also claimed EUR 600 for the costs and expenses incurred before the Court which corresponds to the fee of his lawyer.

31. The Government did not comment on this claim.

32. 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 were 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 full sum claimed.

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 application admissible;

2. *Holds* that there has been a violation of paragraph 3 (a) and (b) of Article 6 of the Convention, taken together with paragraph 1 of that Article;
3. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 600 (six 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.

Done in English, and notified in writing on 25 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President