



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

SECOND SECTION

CASE OF METALCO BT. v. HUNGARY

(Application no. 34976/05)

JUDGMENT¹

STRASBOURG

1 February 2011

FINAL

20/06/2011

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

1. A request under Rule 80 of the Rules of Court for revision of this judgment was refused in a judgment of 26 June 2012

In the case of Metalco Bt. 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 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 34976/05) 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 limited partnership, presently under liquidation, Metalco Bt. “f. a.” (“the applicant”), on 10 September 2005.

2. The applicant was represented by Mr J. Dobos, its owner and chief executive officer. The Hungarian Government (“the Government”) were represented by Mr L. Hölzl, Agent, Ministry of Public Administration and Justice.

3. The applicant complained that its litigation with the Tax Authority lasted an unreasonably long time, was unfair and resulted in the loss of the value of its share held in another company. It relied on Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

4. On 30 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 is a limited partnership under liquidation, with its seat in Pécs.

6. In 1996 the Tax Authority established that the applicant owed some 10 million Hungarian forints (HUF) in outstanding taxes. To secure this claim, on 10 April 1997 it attached a 100%-share the applicant had in another company, which was nominally worth over HUF 103 million. Aware of the applicant's own intention to sell the share by 30 June 1997, the Tax Authority forbade the transaction but did not proceed to auctioning it within the statutory two-month deadline or afterwards.

7. In the ensuing two-year-long administrative procedure, the applicant's tax debt was eventually cancelled and the asset unfrozen. However, by that time the company in which the share belonged had been liquidated – as of July 1997 – and the share had lost its value altogether.

8. Some time in 1999 the applicant sued the Tax Authority for damages. On 12 December 2000 the Baranya County Regional Court awarded it HUF 103 million. On 13 June 2002 the Supreme Court quashed this decision. On 3 June 2003 the Regional Court again found for the plaintiff.

9. On appeal, on 6 May 2004 the Pécs Court of Appeal reversed this judgment and rejected the applicant's action. It held in essence that there had been no causal link between the Tax Authority's unlawful omission to hold an auction to sell the attached asset within two months from its attachment, as required by section 116(1) of the Enforcement Act 1994, and the damage the plaintiff had sustained. In the court's view, the burden of proof to show that had there been a timely auction the share could have successfully been sold to a buyer with the requisite liquidity lay with the applicant. However, the applicant could not prove this assertion. The court observed that the buyer suggested by the applicant had never had, according to its books, the capital needed for the acquisition; that the company in which the share belonged had lost all its own capital by early 1997 and been in liquidation as of July 1997; and that its manager had been convicted of fraudulent bankruptcy.

10. On 16 March 2005 the Supreme Court dismissed the applicant's petition for review. This decision was served on 22 April 2005. The applicant's request for a re-opening was to no avail.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

11. The applicant complained under Article 1 of Protocol No. 1 that the procedure of the Hungarian authorities had resulted in the loss of the value of its share held in another company, originally worth over HUF 103 million.

Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

12. The Government contested that argument.

A. Admissibility

13. 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

14. The Government submitted that the interference with the applicant’s right to protection of property had been based on law and pursued the general interest of securing the collection of outstanding tax debts. It had moreover been necessary and proportionate in that the share held by the applicant had been attached for want of other seizable assets. In their view, the applicant had not been able to show that the attachment, in its value, had significantly exceeded the amount it had owed; therefore, the measure could not be regarded as excessive.

15. The applicant submitted that the attachment of an asset worth over HUF 103 million could not be justified by the assertion of a tax debt of HUF 10 million, especially since the latter was eventually cancelled by the Tax Authority. In any event, the claim could have been secured by seizing other assets or allowing the applicant payment in instalments. Moreover, had the sale of the frozen share been authorised or its auction executed by the Tax Authority as was required by the law, the applicant could have recovered its value which had however been entirely lost due to the Tax Authority’s unlawful omission. The measure was therefore unjustified and disproportionate.

16. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers

deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. However, the three rules are not “distinct” in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (*Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 55, Series A no. 306-B). Those forms of interference must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (*Bäck v. Finland*, no. 37598/97, § 52, ECHR 2004-VIII).

17. In the present case, the Court observes that the Tax Authority attached the share held by the applicant in order to secure a tax debt. It is satisfied that the measure thus aimed at securing the payment of taxes, for the purposes of the second paragraph of Article 1 (see *Gasus Dosier- und Fördertechnik*, cited above, § 66 *in fine*). However, such an interference will mean a violation of that Article unless it is lawful and reasonably proportionate to the aim sought. The Court does not consider it necessary to examine whether or not the measure was proportionate in quantitative terms, because in any event it constituted a violation of the principle of lawfulness for the following reasons. The Court observes the Court of Appeal’s position that the Tax Authority had been under a statutory obligation to hold an auction in order to sell the attached asset within two months from its attachment (see paragraph 9 above). For the Court, this obligation formed an integral part of the lawfulness of the interference in question, equally serving the interests of debtor and creditor. However, according to the findings of the domestic courts, the sale required under the law never took place, and this amounted to an unlawful omission on the part of the State, for which the latter’s tort liability was not established only because the damage sustained could not be proven (see also paragraph 24 below). It follows that the continued seizure after that period cannot be considered lawful.

18. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (FAIRNESS OF THE PROCEEDINGS)

19. The applicant also complained that the subsequent civil proceedings were unfair in that it had been required to prove an element impossible in the circumstances, namely that had an auction taken place, there would have

been a solvent buyer to purchase the business share in question. It relied on Article 6 § 1 of the Convention which provides as relevant:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time... by [a] ... tribunal ...”

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 Government submitted that, in civil proceedings generally, the onus to prove a certain fact lay with that party in whose interest it was that the court should accept it as true. The applicant had brought an action alleging that a business share held by it, worth HUF 103 million, had lost its value as a result of an unlawful omission on the part of the Tax Authority. The Court of Appeal could not be said to have violated the applicant's right to a fair hearing since it had had good reasons for ordering the applicant to prove the amount of the purchase price which it could have obtained for the share had it been sold within or outside the enforcement procedure. It was doubtful whether under Hungarian market circumstances a business share purchased for HUF 32 million in 1993 could have been sold at a price three times higher when no meantime investment or equity raise had been put in place. It could be presumed that even if the share had not been attached in the tax procedure, no potential buyer would have been willing to pay over HUF 103 million at a time when the financial situation of the company in which the share had belonged had significantly worsened. Therefore it could not be argued that the loss of the value of the share in question had been a direct consequence of tax enforcement.

23. The applicant argued that to require it to prove the improvable – namely that had there been an auction a solvent buyer would have come forth – amounted to genuine unfairness on the part of the domestic courts.

24. The Court notes that the Court of Appeal held that the burden of proof was on the applicant to show that in an auction the attached share could have been sold, and if so, then at which price. It agrees with the Government in that generally it is not unfair to require a party to civil litigation to prove a fact which that party wishes to rely on. However, in the Court's view, in the instant case the mechanical application of this principle led to the non-respect of “equality of arms”, inherent in the notion of fair

trial within the meaning of Article 6 § 1. In the Court's view, it was precisely the respondent Tax Authority's own unlawful omission to hold an auction (see paragraphs 9 and 17 above) that prevented the applicant from ascertaining and proving the value of the attached share. The Court cannot speculate about the actual market value of the share at issue or the chances of selling it to a solvent buyer in the face of the financial difficulties experienced by the company in which it belonged. It is satisfied with observing that due to an unlawful omission on the part of the respondent authority the applicant was demanded to prove a hypothetical fact. For the Court, the frustration of the applicant's claims in this manner cannot, as a matter of fair trial, be endorsed. It follows that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF THE PROCEEDINGS)

25. The applicant further complained that the proceedings had lasted an unreasonably long time. The Government contested that argument.

26. The Court notes that the litigation started some time in 1999 and ended in April 2005. It therefore lasted approximately six years for three court instances.

27. 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.

28. Having regard to its findings in respect of Article 6 § 1 of the Convention (see paragraph 24 above), the Court considers that it is not necessary to examine this complaint separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed altogether 224,000 euros (EUR) plus accrued interests in respect of non-pecuniary damage sustained because its rights under Article 6 § 1 of the Convention were violated. Moreover, it claimed EUR 385,000 plus accrued interests in respect of pecuniary damage because

its rights under Article 1 of Protocol No. 1 were violated. The latter amount should correspond to the value of the share which became worthless, i.e. HUF 103,080,000.

31. The Government contested these claims.

32. The Court considers it appropriate to award, on an equitable basis, EUR 50,000 to the applicant under all heads.

B. Costs and expenses

33. The applicant made no costs claim.

C. Default interest

34. 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 Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of the proceedings;
4. *Holds* that it is not necessary to examine the applicant's complaint about the length of the proceedings separately;
5. *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 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and 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;

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

Done in English, and notified in writing on 1 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President