



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

SECOND SECTION

CASE OF PANYIK v. HUNGARY

(Application no. 12748/06)

JUDGMENT

STRASBOURG

12 July 2011

FINAL

12/10/2011

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

In the case of Panyik v. Hungary,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 21 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 12748/06) 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 Tibor Panyik (“the applicant”), on 20 March 2006.

2. The applicant, who had been granted legal aid, was represented by Ms G. Lanczner, a lawyer practising in Tatabánya. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. On 9 March 2010 the Court decided to communicate the applicant’s complaint concerning the impartiality of the Regional Court to the respondent Government. It declared the remainder of the applicant’s complaints inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Tata.

5. At the request of his former employer, on 7 November 2002 the Tata District Court issued a payment order in the amount of approximately 42,000 Hungarian forints (HUF) against the applicant, a lawyer. Following his objection to the order, the case continued as civil litigation.

6. On 17 December 2002 it was transferred to the Komárom District Court, as the judges of the geographically competent Tata District Court felt biased on account of the applicant's legal practice being attached to their court.

7. The Komárom District Court found for the plaintiff on 19 April 2005. The applicant appealed.

8. In the proceedings before the Komárom-Esztergom County Regional Court, a panel of three judges, including judges Dr D. and Dr K., withdrew themselves from the case on 4 July 2005. According to their reasoning:

“In view of the fact that the respondent acts as a lawyer in the county, [and] we are in a work relationship, we find it justified for the sake of the impartial adjudication of the legal dispute that another county court proceeds in the case.”

The case was transferred to another panel of the same court.

9. On 11 October 2005 the applicant challenged this second panel for bias, and subsequently extended his request to the whole court. He observed that the panel president, Dr V., had already declared himself biased in two other cases against him due to their daily work relationship. In one of these proceedings, Dr D. had declared herself biased as well.

10. On 26 January 2006 the Győr Court of Appeal dismissed the applicant's motion for bias. It pointed out that the judges of the panel had declared themselves impartial, along with two other judges of the court. Moreover, it argued that:

“... Bias may, however, only be based on such facts [and] circumstances from which it follows objectively [and] logically that an impartial judgment is not ensured. The reason adduced by the respondent against the declarations of the five judges stating their impartiality is not suitable to establish bias.”

11. The applicant subsequently lodged another complaint for bias against the presiding judge, Dr V. Despite the antecedents, Dr V. again maintained that he was impartial. Therefore, the Regional Court found that there was no obstacle to deliver judgment, but nevertheless ordered the transfer of the complaint to the appeal court. However, it was ultimately dealt with by another panel of the Regional Court (see paragraph 13 below).

12. On 14 March 2006 a three-member panel of the Regional Court, with Dr V. acting as presiding judge, upheld the first-instance judgment. This decision was served on the applicant on 23 May 2006.

13. On 21 April 2006 another panel of the Regional Court, presided by Dr D. and including Dr K., dismissed the applicant's second motion for bias filed against Dr V. It argued that

“If the reason for disqualification according to section 13(1) e) of the Code of Civil Procedure is reported by a party and the judge does not consider himself partial in the case, then what needs to be ascertained is whether the actual existence of the reasons [and] facts reported to prove bias indeed justify the disqualification of the judge. ... [I]t is not of legal relevance that the judge previously, in a different type of case, agreed to his/her disqualification. As evidenced by the dispositions of the act, a judge

is to be considered as biased if the objective adjudication of the given case may not be expected from him/her for some reason. The fact that the respondent already lodged motions of bias against the court or against certain judges of the court in several previous cases does not necessarily entail that the judges concerned become biased towards the party. In connection with the present case the respondent did not adduce any concrete ground or reason that the impartial adjudication of the present case could not be expected from the panel president. Considering moreover that the respondent did not lodge a motion for bias against the two [other] members of the panel, the Regional Court rejected the motion for disqualification (section 18 (1) of the Code of Civil Procedure).”

II. RELEVANT DOMESTIC LAW

14. The rules governing disqualification of judges can be found in Act no. III of 1952 on the Code of Civil Procedure, which, in its relevant part, provides as follows:

Section 13

“(1) Cannot participate as judge in the administration of the case and is disqualified thereof:

a) the party, the person authorised or obliged jointly with the party, those who fully or in part claim the subject of the action for themselves, or whose rights or obligations might be affected by the result of the action,

...

e) who cannot be expected to ascertain the case objectively due to other reasons”

15. Chapter XIV of the Code of Civil Procedure contains the dispositions relative to petition for review before the Supreme Court. According to section 271(2), petition for review is precluded in a property law case if the disputed value does not exceed HUF 1,000,000.

THE LAW

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

16. The applicant complained that the tribunal which heard his civil case was not impartial. He 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 an ... impartial tribunal...”

17. The Government contested that argument.

A. Admissibility

18. The Government submitted that the application should be rejected for non-exhaustion of domestic remedies, since the applicant had not availed himself of the possibility to lodge a petition for review with the Supreme Court, which would have been able to fully examine the merits of his case, including the issue of impartiality. They relied on the Court's case law according to which the States must have an opportunity to redress the alleged damage by domestic means within the framework of their own legal systems.

19. The applicant contested this argument, considering that a complaint concerning the refusal to exclude a judge may only be lodged through an appeal, whereas petition for review may not be submitted in such auxiliary questions. He further argued that in any event, review by the Supreme Court would not have been an effective remedy in his case.

20. The Court points out that in the present case the disputed value was HUF 42,000 plus default interest and court fees. As a consequence, petition for review with the Supreme Court was in any case not a possibility as it was excluded by section 271(2) of the Code of Civil Procedure (see paragraph 15 above), the statutory threshold being one million Hungarian forints. It follows that the application cannot be rejected for non-exhaustion of domestic remedies. Moreover, it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

21. The applicant argued that while the competent court of his residence had voluntarily excluded itself based on their work relationship, along with the first panel of the Regional Court, the second panel of the Regional Court had refused to consent to the exclusion even though its judge had acknowledged his bias in the past. The applicant further emphasised that the panel who had decided about his motion for bias against the second panel had declared itself biased earlier.

22. The Government pointed out the difference between the two grounds of disqualification laid down in the Code of Civil Procedure. On the one hand, point a) of section 13(1) describes a situation which entails an obligation to exclude the judge from the case, leaving no margin of appreciation for the court ("absolute ground of exclusion"). On the other

hand, point e) of the same section gives the courts a possibility to decide on a case-by-case basis in light of the circumstances of the particular case whether the judge is capable of administering the case objectively (“relative ground of exclusion”).

23. As regards the reasons for disqualification mentioned by the applicant, the Government emphasised that these cases had not been identical. On the first two occasions the judges themselves had declared that they were biased and consented to their exclusion; therefore, no deeper analysis or reasoning was required to ascertain the cause of bias. In the third occasion, however, the judge had not accepted that they had been biased and the applicant had not adduced any further concrete reasons which would clearly substantiate that the judge had nonetheless lacked objectivity.

24. The Government were therefore of the opinion that the proceedings in question and the decision concerning the bias had not been contrary to the requirements set forth under Article 6 § 1 of the Convention.

2. The Court’s assessment

a. General principles

25. The Court reiterates at the outset that it is of fundamental importance in a democratic society that the courts inspire confidence in the public. To that end Article 6 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways. The Court has thus distinguished between a subjective approach, that is endeavouring to ascertain the personal conviction or interest of a given judge in a particular case, and an objective approach, that is determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect (see *Piersack v. Belgium*, 1 October 1982, § 30, Series A no. 53; and *Grievies v. the United Kingdom* [GC], no. 57067/00, § 69, ECHR 2003-XII (extracts)).

26. In applying the subjective test, the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Hauschildt v. Denmark*, 24 May 1989, § 47, Series A no. 154). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will or has arranged to have a case assigned to himself for personal reasons (see *De Cubber v. Belgium*, 26 October 1984, § 25, Series A no. 86). The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 58, Series A no. 43).

27. Although in some cases it may be difficult to procure evidence with which to rebut the presumption, it must be remembered that the requirement

of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, 10 June 1996, § 32, *Reports of Judgments and Decisions* 1996-III). In other words, the Court has recognised the difficulty of establishing a breach of Article 6 on account of subjective partiality and for this reason has in the vast majority of cases raising impartiality issues focused on the objective test. However, there is no watertight division between the two notions since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test).

28. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance (see *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII; and *Morel v. France*, no. 34130/96, § 42, ECHR 2000-VI). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 58, *Reports* 1996-III; and *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

b. Application of the above principles to the present case

29. Turning to the particular case, the Court observes that the applicant complains about the alleged impartiality of the Regional Court, as the panel judge deciding his action on appeal had, in a previous case of his, declared himself biased, and two out of three judges deciding about his motion for impartiality against this judge had earlier withdrawn themselves from the case on account of their personal prejudice. The Court's task is therefore to assess whether the particular circumstances of the case raise objectively justified doubts as to the neutrality of the Regional Court.

30. Concerning the Government's argument that the applicant did not adduce any evidence to substantiate bias of the panel judge Dr V., the Court observes that indeed his personal prejudice had not been proven, as, apart from his earlier declaration of being biased in another case, there had been no particular signs or acts showing prejudice on his side. The Court therefore acknowledges that the personal impartiality of Dr V. should be presumed. However, this corresponds only to the subjective test established by the Court.

31. It remains to be ascertained whether the appearance of impartiality was observed under the objective test. The Court draws attention to the fact that the reason for which Dr V. withdrew voluntarily from a previous case

involving the applicant was their daily work relationship (see paragraph 9). This situation had not changed since then and the applicant was at the material time still working as a lawyer in that region. While the Court does not consider that the existence of a work relationship between a judge and a lawyer practising in the court concerned necessarily entails a lack of impartiality on the part of the former, the decisive factor in the present case is the fact that Dr V. had previously withdrawn on that very ground, which still pertained when he later participated in the decision to dismiss the applicant's appeal. Therefore, the Court finds that no sufficient guarantees were provided to exclude legitimate doubt as to his impartiality towards the applicant. For the Court, this is so despite the fact that the neutrality of the remaining two judges in the panel has not been called into question, because the doubt as to bias on the side of the president of the panel casts doubt on the impartiality of the whole panel.

32. The applicant's fear of the Regional Court's lack of impartiality was even more aggravated by the fact that two out of three judges deciding on his second motion for bias against Dr V. had previously declared themselves biased (see paragraphs 8 and 9 above).

33. The Court therefore observes that, on the facts of the case, the impartiality of the Regional Court was capable of appearing open to doubt. The applicant's fears in this respect can thus be considered to have been objectively justified and the Regional Court accordingly failed to meet the required Convention standard under the objective test.

34. The Court thus concludes that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed HUF 1,000,000 (approximately 3,800 euros (EUR)) in respect of non-pecuniary damage.

37. The Government contested this claim.

38. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him the full sum claimed.

B. Costs and expenses

39. The applicant has not submitted a separate costs claim.

C. Default interest

40. 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 6 § 1 of the Convention;
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, EUR 3,800 (three thousand eight hundred 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.

Done in English, and notified in writing on 12 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President