



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

SECOND SECTION

CASE OF HÁBENCZIUS v. HUNGARY

(Application no. 44473/06)

JUDGMENT

STRASBOURG

21 October 2014

FINAL

21/01/2015

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



In the case of Hábenczius v. Hungary,

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

Guido Raimondi, *President*,

Işıl Karakaş,

András Sajó,

Nebojša Vučinić,

Egidijus Kūris,

Robert Spano,

Jon Fridrik Kjølbro, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 16 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 44473/06) 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, Ms Marianne Hábenczius (“the applicant”), on 18 October 2006.

2. The applicant was represented by Mr M. Róth, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that the criminal proceedings conducted against her had been unfair and excessive in length. She further complained that the seizure of her laptop had been unjustified and protracted, eventually resulting in the loss of its value.

4. On 5 February 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Budapest.

6. At the material time, the applicant lived in the United States. On 14 January 2001 she arrived in Hungary on a visit. She had a laptop with her which she had bought on 9 January 2001 in the United States for

1,624 US dollars (approximately 1,500 euros (EUR) at that time). She did not declare it to the airport customs authority, since in her opinion it constituted a ‘travel item’, exempted from customs duty, within the meaning of section 110 of Act no. C of 1995 and section 185(3) of the implementing Decree of the Act.

7. Although she specified to the authorities that she was living abroad and had no intention of importing the laptop into Hungary but intended to take it back to the United States on departure, the customs authority nevertheless seized the laptop and filed a criminal report, charging the applicant with smuggling.

8. A bill of indictment was preferred by the Budapest X/XVII District Public Prosecutor’s Office on 28 April 2001. In the bill of indictment, the prosecutor proposed that the seizure of the laptop be discontinued according to section 102(1) of Act no. I of 1973 on the Code of Criminal Procedure and that the applicant be ordered to pay the value of the item instead of its confiscation.

9. On 9 May 2001 the Pest Central District Court, without holding a hearing, found the applicant guilty as charged, imposed a fine of 23,000 Hungarian forints (HUF; approximately EUR 90) and ordered the release of the laptop on the payment of another HUF 100,000 (approximately EUR 390) as ‘value equivalent to confiscation’ (*elkobzás alá eső érték*).

10. On 23 June 2001 the applicant requested a hearing, seeking her acquittal.

11. No hearing took place subsequently, and the laptop remained under seizure.

12. On 24 April 2006 the District Court found that the case was statute-barred and discontinued the proceedings. It ordered the release of the laptop. This decision became final on 2 June 2006.

13. On 28 June 2006 the customs authority invited the applicant to recover the laptop.

14. The applicant submitted that during these proceedings she had moved back to Hungary. On her repatriation, she could have imported her belongings, including the laptop, free of customs. However, its release was in these circumstances nevertheless subject to the payment of customs duty. Since the laptop had meanwhile become technically outdated and thus worthless, she decided to have it returned to the United States rather than recover it.

II. RELEVANT DOMESTIC LAW

15. Act no. IV of 1978 on the Criminal Code provided as follows:

Section 312
Smuggling and trafficking in goods subject to customs duty

“(1) Anyone who

a) withholds dutiable goods from customs inspection or makes an untrue declaration to the authorities in respect of circumstances relevant for the establishment or collection of the customs duty or the customs bond (smuggling),

...

commits an offence and shall be punishable with imprisonment of up to one year, labour in the public interest, or a fine.”

Section 77

“(1) Any object ...

d) for which the criminal act was committed ...
shall be confiscated.

...

(2) Where confiscation would place an unfair burden on the perpetrator disproportionate to the gravity of the offence, in lieu of confiscation the perpetrator shall be obliged to pay an amount of money corresponding to the value of the object, the advantage, or the material means, unless the non-application of confiscation is excluded under an international obligation.”

16. Act no. I of 1973 on the Code of Criminal Procedure, as in force at the material time, provided as follows:

Section 101

“(1) The authority will seize an item which ...

b) is subject to confiscation ...

(2) The authority shall place the seized item in deposit. Where the item is not suitable for being deposited or for any other important reason arrangements shall be made for the preservation of the item in another manner. ...”

Section 102

“(1) Seizure shall be discontinued as soon as it is no longer needed in the interests of the proceedings. ...”

Section 353

“(1) The ruling delivered in trial based on documents [*tárgyalás mellőzésével hozott végzés*] shall not be subject to an appeal; the prosecutor, the accused, the defence counsel, the private party and the other interested party may request, within eight days of the service, that a hearing be held. Upon such a motion, the court shall hold a hearing.

...

(3) Depending on the result of the hearing, the court shall either uphold the ruling delivered in trial based on documents or annul it while adopting a new decision. In the

absence of a motion to the detriment of the accused, the court may only impose a harsher punishment if new evidence arises at the hearing and thereby the court establishes a new fact necessitating a more severe classification or the imposition of a significantly harsher punishment. The appeal against the ruling adopted as a result of the hearing shall suspend its execution.”

THE LAW

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

17. The applicant complained that the length of the criminal proceedings conducted against her had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention.

Article 6 § 1 of the Convention reads, in its relevant part, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ...”

A. Admissibility

18. The Government did not contest the applicant’s argument about the protraction of the proceedings, but submitted that the applicant had failed to file a motion urging action on the authorities’ side.

19. As regards the Government’s allusion to the non-exhaustion of domestic remedies, the Court considers that the Government have not demonstrated the existence of any effective remedy available to the applicant in theory and in practice at the relevant time. In this regard, the Court notes that an interlocutory complaint to expedite criminal proceedings (section 262/B of the Act XIX of 1998, see *Barta and Drájkó v. Hungary*, no. 35729/12, § 10, 17 December 2013) was introduced no earlier than 1 April 2006, that is, less than a month before the proceedings in the present case reached their end. Accordingly, the Government’s objection of non-exhaustion of domestic remedies must be dismissed.

20. The period to be taken into consideration began on 14 January 2001 and ended on 2 June 2006. It has thus lasted 5 years, 4 months and 18 days, for one level of jurisdiction.

In view of such lengthy proceedings, this complaint must be declared admissible.

B. Merits

21. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case

and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the conduct of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

22. 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 e.g. *Pélissier and Sassi v. France*, cited above; and *Fejes v. Hungary*, no. 7873/03, 11 April 2006).

23. 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 considers that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

24. The applicant further complained that the seizure of her laptop amounted to an unjustified control of use of her property, in breach of Article 1 of Protocol No. 1, which provides 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.”

The Government contested this view.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. It was not disputed between the parties that there has been an interference with the applicant’s right to the peaceful enjoyment of her

possessions as enshrined in Article 1 of Protocol No. 1. The Court has no reason to hold otherwise. It follows that the provision is applicable in the present case.

27. The Court reiterates that Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among many other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V; *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V; *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 93, 25 October 2012; and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, 16 July 2014).

28. The Court notes that the seizure of the applicant's laptop was a provisional measure intended to ensure that property which appeared to be the fruit of unlawful activities carried out to the detriment of the community could subsequently be confiscated if necessary. The impugned measure, which did not entail a transfer of ownership, thus constituted a control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis* and among others, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A; *Tendam v. Spain*, no. 25720/05, § 47, 13 July 2010; and *JGK Statyba Ltd and Guselnikovas v. Lithuania*, no. 3330/12, §§ 115-117, 5 November 2013).

29. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, cited above, §§ 69-74).

30. Furthermore, the Court notes that any seizure or confiscation inevitably entails damage. It does not follow from Article 1 of Protocol No. 1 that an applicant's acquittal of the criminal charges or the discontinuance of the criminal proceedings must of itself give rise to an entitlement to compensation for any loss alleged to have been suffered as a result of the impounding of his chattels during the period of the investigation. However, the damage necessarily suffered should not exceed what is inevitable (see, *mutatis mutandis*, *Raimondo v. Italy*, cited above, § 33; *Novikov v. Russia*, no. 35989/02, § 46, 18 June 2009; and *Tendam v. Spain*, cited above, § 50).

31. It was not disputed between the parties that the interference was prescribed by law and in the general interest of the community. The Court sees no reason to hold otherwise.

32. The applicant argued that the "control of use" of her property was unnecessary and disproportionate. She submitted that the authorities should have known that computers become outdated rapidly; hence the seizure of hers should have been subject to specific considerations and expedited treatment. In her view, it would have been possible, under section 101(2) of Act no. I of 1973, for the authorities not to regard the seized laptop as a security but to leave it in her possession subject to the obligation to keep it until the termination of the proceedings.

33. The Government contested that argument and submitted that the seizure had been immediately discontinued as soon as it was no longer necessary for the proceedings.

34. The Court notes that discontinuation of the seizure was already proposed in the bill of indictment (preferred on 28 April 2001, see paragraph 8 above). Moreover, the lack of necessity of the seizure was also confirmed by the fact that the Pest Central District Court, in its decision of 9 May 2001 – which never became final since the case became statute-barred – did not order confiscation of the laptop but ordered the applicant to pay an amount equalling less than one quarter of the computer's purchase price as 'value equivalent to confiscation'.

35. The Court also notes the rule in section 353(3) of Act no. I of 1973 on the Code of Criminal Procedure, which significantly limits the possibility, in the absence of a motion to the detriment of the accused (as it was the case in the applicant's situation), of imposing a more severe punishment upon the re-examination of a decision adopted without a hearing. Nevertheless, even assuming that the applicant's sentence could have become harsher upon such re-examination (rendering the continued seizure necessary), the authorities had the possibility to make arrangements for the preservation of the laptop until the end of the proceedings, without however keeping it as security.

36. These circumstances are sufficient to enable the Court to conclude that the retention of the applicant's laptop under seizure for five more years,

until 2 June 2006, constituted an individual and excessive burden on the applicant, upsetting the “fair balance” which should be struck between the protection of the right of property and the requirements of the general interest.

There has therefore been a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicant further complained that she had been deprived of her right to a fair and public hearing, and of the opportunity to clear her name from the charges.

38. As to the complaint about the applicant’s failure to clear her name from the charges, the Court recalls that there is no right under Article 6 of the Convention to a particular outcome of criminal proceedings or, therefore, to a formal conviction or acquittal following the laying of criminal charges (see *Kart v. Turkey* [GC], no. 8917/05, § 68, ECHR 2009 (extracts)).

This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

39. As to the complaint about the unfairness of the proceedings and her failure to obtain a public hearing, the Court notes that, as a general rule, a person against whom criminal proceedings were discontinued cannot claim to be a victim of violations of the Convention which, according to her, took place in the course of the proceedings against him (see *Osmanov and Husseinov v. Bulgaria* (dec.), no. 54178/00, 4 September 2003 and *Komyakov v. Russia* (dec.), no. 7100/02, 8 January 2009). Therefore, the applicant cannot claim to be a victim of the alleged violation.

It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 1,500 euros (EUR) (see paragraph 6 above) in respect of pecuniary damage, as well as EUR 6,000 in respect of non-pecuniary damage.

42. The Government found these claims excessive.

43. The Court awards the applicant, on the basis of equity, EUR 4,000 in respect of pecuniary and non-pecuniary damage combined.

B. Costs and expenses

44. The applicant also claimed EUR 1,300 for the costs and expenses incurred before the Court. This sum corresponds to eleven hours of legal work billable by her lawyer at an hourly rate of EUR 100, plus EUR 200 for administrative costs.

45. The Government contested this claim.

46. 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 are 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

47. The Court considers it appropriate that the default interest rate 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,

1. *Declares*, unanimously, the complaints about the length of the proceedings and the seizure admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention (length of the proceedings);
3. *Holds*, by six votes to one, that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*, by six votes to one,
 - (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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage combined;
 - (ii) EUR 1,300 (one thousand three 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;
5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Spano is annexed to this judgment.

G.R.A.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE SPANO

The only Convention issue worth examining in this case pertains to the length of the criminal proceedings against the applicant. I therefore concur with the finding of a violation of Article 6 § 1. However, as the majority's only legally tenable argument for finding a violation of Article 1 of Protocol No. 1 is that the seizure of the applicant's laptop for "five or more years ... constituted an individual and excessive burden" (see paragraph 36 of the judgment), I fail to see how this argument can be considered separate and distinct from that which already forms the basis for finding a violation of Article 6 § 1. Furthermore, the facts in issue do not justify finding a violation of the fundamental right to property protected by an international convention on human rights.