



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

SECOND SECTION

CASE OF YANG CHUN JIN *ALIAS* YANG XIAOLIN v. HUNGARY

(Application no. 58073/00)

JUDGMENT
(Striking out)

STRASBOURG

8 March 2001

In the case of Yang Chun Jin *alias* Yang Xiaolin v. Hungary,

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

Mr C.L. ROZAKIS, *President*,

Mr A.B. BAKA,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr A. KOVLER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 15 February 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 58073/00) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an national of China and Sierra Leone, Mr Yang Chun Jin *alias* Yang Xiaolin (“the applicant”), on 7 June 2000.

2. The applicant was represented by Ms L. Farkas, a lawyer practising in Budapest, who acted on behalf of the Hungarian Helsinki Committee. The Hungarian Government (“the Government”) were represented by their Agent, Mr L. Hölzl, Deputy State-Secretary, of the Ministry of Justice.

3. The applicant alleged that, if extradited to China, he might face an unfair trial, be detained under harsh conditions, subjected to torture or sentenced to death. He invoked Articles 3 and 6 of the Convention and Article 1 of Protocol No. 6.

4. The application was assigned to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The Court decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to extradite the applicant pending the Court’s decision.

6. By a decision of 11 January 2001, the Court declared the application admissible.

7. On 18 January 2001 the Government submitted that they had decided to refrain from extraditing the applicant to China. The Government

requested the Court to strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention. Moreover, on 31 January 2001 they informed the Court that the applicant had left Hungary for Sierra Leone.

8. On 1 February 2001 the applicant informed the Court that he did not object to the case being struck out of the Court's list of cases.

THE FACTS

9. On 20 December 1999 the Budapest Regional Court ordered the applicant's temporary detention with a view to his extradition to China. The decision was based on an extradition request, dated 17 December 1999, by the Interpol Beijing Office.

10. The Regional Court stated in its reasoning that the applicant, having entered the country illegally in 1995, had been convicted in Hungary of the offences of kidnapping and of forgery of official documents and had been sentenced to four years' imprisonment to be followed by expulsion. On 18 December 1999 he had served his prison sentence. The same day the Budapest Public Prosecutor's Office had proposed detaining him temporarily with a view to extradition, relying on information submitted by the Budapest Chinese Embassy on 15 December 1999. The Embassy had specified that criminal proceedings on a charge of the offence of "hooliganism", punishable with imprisonment of up to seven years (Article 160 of the Chinese Criminal Code), had been in progress against the applicant, in the context of which his extradition had been requested.

11. The Regional Court held that the facts of the case could be characterised as armed robbery under Article 321(1) of the Hungarian Criminal Code and that there was therefore no legal obstacle to the applicant's extradition. The Regional Court also pointed out that Sections 15 and 16(1) of the Hungarian Law on International Legal Assistance required that the scope of subsequent criminal proceedings against the applicant in China should be restricted to the facts for which his extradition was actually requested.

12. A legal opinion issued by the Sanming Dagong Law Firm to the applicant's father on 6 January 2000 stated that the applicant's offence could be characterised as "wilful bodily harm committed with special cruelty and causing disabling injuries", an offence potentially punishable with death under Chinese law unless mitigating factors were established. The opinion quoted the conviction of two other persons who had been tried in the same case and sentenced to death by the Sanming Town People's Court, whose decision was upheld on appeal by the Fujian Provincial High People's Court and the Supreme People's Court.

13. In its formal extradition request of 12 January 2000, the Chinese Ministry of Justice explained that the applicant was wanted by the Chinese authorities for having stabbed and shot a Mr L.Y. in Fuqing town, China, in May 1994. The victim had suffered serious injuries, and the applicant had been fleeing from the Chinese prosecution service since 15 September 1994 when the local police department was to proceed with his arrest. According to Article 134 of the Chinese Criminal Code 1979, such an offence was punishable with imprisonment of three to seven years. The document specified that the applicant would not be prosecuted for offences other than those for which his extradition had been requested.

14. On 18 February 2000 the Budapest Regional Court ordered the applicant's detention with a view to his extradition.

15. On 16 May 2000 a three-judge bench of the Regional Court, acting as second instance, dismissed the applicant's appeal against the decision of 18 February 2000.

16. On 19 October 2000 the Chinese Ministry of Justice gave the following formal undertaking to the Hungarian Government:

“The death penalty will not be imposed on or, if ... imposed, will not be carried out against [the applicant] after his extradition to China.”

17. On 13 December 2000, upon further enquiries by the Ministry of Justice, the Chinese Ministry of Justice formally promised that:

“[the applicant, who is] suspected of the offence of wilful injury, will not be tried summarily. In addition, his case will be heard publicly according to law, and he will be entitled to instruct a lawyer. The People's Court may appoint a duty lawyer to defend him if, because of financial difficulties or other reasons, he does not instruct a lawyer. His lawyer will have sufficient time to consult the materials in the case-file and meet [the applicant in person]. During the court hearing, [the applicant] will be entitled to defend himself [personally] and his lawyer will [also] defend him.”

18. On 18 January 2001 the Minister of Justice decided to refuse the applicant's extradition to China.

19. On 26 January 2001 the applicant left Hungary for Sierra Leone.

THE LAW

20. The Court notes that the Hungarian Minister of Justice has decided to refuse the applicant's extradition to China and that the applicant has left Hungary for Sierra Leone. The Government have requested that the case be struck out of the Court's list of cases and the applicant has accepted that request.

21. Article 37 § 1 of the Convention, in so far as relevant, provides:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:

(b) the matter has been resolved;...”

22. In the circumstances, the Court finds that the applicant is no longer under the threat of being extradited to China from Hungary. The Court is therefore satisfied that the matter has been resolved. Moreover, respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine* of the Convention).

23. Accordingly, the case should be struck out of the list in accordance with Article 37 § 1 (b) of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 8 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President