



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

SECOND SECTION

**CASE OF IMRE v. HUNGARY**

*(Application no. 53129/99)*

JUDGMENT

STRASBOURG

2 December 2003

**FINAL**

*02/03/2004*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Imre v. Hungary,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNDSSON,

Mr L. LOUCAIDES,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 March and 13 November 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 53129/99) 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 an Hungarian national, Mr Zsolt Imre (“the applicant”), on 10 August 1999.

2. The Hungarian Government (“the Government”) were represented by their Agent, Mr L. Hölzl, Deputy State-Secretary, Ministry of Justice.

3. The applicant alleged, in particular, that his pre-trial detention lasted an unreasonably long time.

4. The application was allocated 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. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

6. By a decision of 4 March 2003, the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1968 and lives in Budapest.

#### A. The investigations

9. On 12 June 1997 the applicant, a recidivist offender, was arrested after having been caught red-handed selling amphetamines in a bar. During his interrogation on the same day the applicant refused to testify and destroyed evidence by swallowing a piece of paper found in his possession at the time of his arrest.

In the ensuing proceedings the applicant was assisted by a defence counsel of his choice.

10. On 14 June 1997 the Pest Central District Court ordered the applicant's detention on remand on charges of drug-trafficking. On the applicant's appeal, this decision was upheld by the Budapest Regional Court on 20 June 1997 on the ground of the danger of collusion.

On 30 June 1997, during his second interrogation, the applicant again refused to testify.

11. On 8 July 1997 the Buda Central District Court, as confirmed by the Budapest Regional Court on 14 August 1997, prolonged the applicant's detention on remand on the ground of the danger of collusion.

12. On 29 August 1997 the applicant made his first statement. The scope of the investigation was subsequently extended in order to uncover the chain of supply of drugs to the applicant.

13. On 3 September 1997 the Budapest Regional Court further prolonged the applicant's detention on remand on the grounds of the danger of collusion and the risk that the applicant would abscond. This decision was upheld on 26 September 1997 by an appeal chamber of the Regional Court.

14. On 26 September and 13 October 1997 two persons, also suspected of having been involved in the offence, were arrested and detained on remand.

On 13 October and 11 November 1997 the applicant was again interrogated.

15. On 8 January 1998 the Budapest Regional Court prolonged the applicant's detention on remand on the grounds that there was a risk of collusion and that he would abscond. This decision was upheld on 3 February 1998.

16. On 9 February 1998 the Attorney General's Office requested legal assistance from the Federal Ministry of Justice of Germany in order to

obtain evidence from a witness who had been convicted of drugs offences in Germany and who was serving a prison sentence in Bayreuth. The information requested was made available by the German authorities in July 1998.

17. On 23 March 1998 the applicant was again interrogated.

18. On 9 June and 12 October 1998 the Supreme Court prolonged the applicant's detention on remand on the grounds of risk of collusion and the danger that he would abscond.

19. On 20 October 1998 the proceedings against a co-defendant were disjoined from the applicant's case since it appeared that further evidence needed to be obtained from abroad in the former's case.

20. On 27 October 1998 the investigations in the applicant's case were closed. The case file contained some 3,000 pages of documents.

21. On 23 December 1998 the applicant was heard by the public prosecutor who ordered the resumption of the investigation with a view to clarifying several matters raised by the applicant.

22. On 6 January 1999 the applicant was again interrogated by the police.

23. On 12 January 1999 the Budapest VI/VII District Public Prosecutor's Office preferred a bill of indictment against the applicant and two other defendants. The applicant was charged with the offence of abuse of narcotics.

## **B. The first-instance court proceedings**

24. On 18 January 1999 the Pest Central District Court confirmed the applicant's detention on remand.

25. On 7 April and 13 May 1999 the District Court held hearings. On the latter date it again prolonged the applicant's detention on remand.

26. The next hearing was held on 23 June 1999 at which the District Court again prolonged the applicant's detention.

27. On 19 July 1999 the District Court confirmed, in the course of a periodic review, the applicant's detention on remand on the grounds that there was a risk that he would abscond and re-offend. The applicant's appeal was turned down by the Budapest Regional Court on 25 August 1999.

28. Another hearing, resulting in a decision to prolong the detention, took place on 16 September 1999. The reasons invoked by the District Court were identical to those underlying the decision of 19 July 1999.

29. A hearing scheduled for 2 December 1999 was adjourned due to the illness of one of the lay judges.

At a hearing on 13 January 2000, the applicant withdrew his defence counsel's power of attorney, with the result that the hearing had to be adjourned.

30. On 25 January 2000 the Supreme Court confirmed, in the course of a periodic review, the applicant's detention on the grounds that there was a danger that he would abscond and re-offend.

On 3 February 2000 the applicant's new defence counsel submitted his power of attorney to the District Court.

31. The next hearing took place on 2 March 2000 at which the District Court, as confirmed by the Budapest Regional Court on 17 March 2000, decided to maintain the applicant's detention.

32. Further hearings were held on 30 March and 10 April 2000. On the latter date, the applicant was convicted of narcotics abuse and sentenced to nine years' imprisonment. The District Court relied on documentary evidence, the testimony of numerous witnesses, the opinions of medical and drugs experts and the reports and testimony of the members of a specialised anti-drugs plain-clothes police squad. The District Court considered that the cumulative nature of the offence constituted an aggravating factor. The duration of the applicant's pre-trial detention was credited against his sentence.

### **C. The second instance proceedings before the Budapest Regional Court**

33. On appeal, on 6 December 2000 the Budapest Regional Court held a hearing and reduced the applicant's sentence to seven years' imprisonment. The Regional Court was satisfied that the offence committed by the applicant did not qualify as a cumulative offence. By way of mitigating circumstances, the Regional Court took note of the applicant's family situation and the more favourable court practice at the time of the commission of the offence. Concerning the factors to be taken into account when sentencing the applicant and his co-defendants, the Regional Court concluded as follows:

“When sentencing the defendants, the court took into consideration the behaviour displayed on committing the offence, the type and quantity of the drugs involved, the defendants' *prius* as well as the long time that has elapsed since the commission of the offence.”

34. The applicant served his prison sentence in Vác Prison. On 18 January 2003 he was conditionally released.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

35. The applicant complained that his detention on remand had been excessive. He alleged that there had been a violation of Article 5 § 3 of the Convention, the relevant part of which provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

#### A. Period to be taken into consideration

36. The applicant was arrested on 12 June 1997 and was detained on remand on 14 June 1997 until 6 December 2000 when he started serving his prison sentence.

37. However, the Court reiterates that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). Accordingly, the applicant's detention from 10 April 2000, the date of his first-instance conviction, to 6 December 2000, the date on which that conviction became final, cannot be taken into account for the purposes of Article 5 § 3.

38. The Court consequently finds that the period to be taken into consideration lasted from 14 June 1997, the date on which the applicant was detained on remand, to 10 April 2000, namely two years, nine months and twenty-six days.

#### B. Reasonableness of the length of detention

39. The applicant maintained that the very fact that he had been prosecuted along with co-defendants, whose cases had been joined to his for at least part of the procedure, had caused unjustified delays. In reply to the Government's arguments, he emphasised, as to his responsibility for delays in the proceedings, that he had not been obliged to co-operate with the police during the investigations and that he had had the right freely to choose or change his defence counsel. He reiterated that his detention on

remand had lasted almost two years and ten months, a duration irreconcilable with the requirements of Article 5 § 3 of the Convention.

40. The Government maintained that the necessity of the applicant's detention on remand had frequently been examined by the courts and found to be justified on all occasions on the grounds of the danger of collusion during the investigations and the risk that he might abscond or re-offend. The nature of the crime which had led to the applicant's arrest had required complex investigations to be undertaken in order to unravel the drugs network of which the applicant had been a part. Furthermore, other defendants had been involved and evidence had had to be obtained against one co-defendant from a foreign jurisdiction. The Government stressed that no significant delays had been caused by the conduct of the authorities. In particular, the case against one of his co-defendants had been disjoined from the applicant's case in order to avoid any further delay. The applicant had contributed to the prolongation of the investigations and the trial by repeatedly refusing to testify, making controversial statements and withdrawing his lawyer's power of attorney. In sum, they submitted that, in view of the particular circumstances of the case, the length of the applicant's detention on remand had not exceeded a reasonable time.

41. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 152 *et seq.*, ECHR 2000-IV).

42. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388, § 35).

43. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the

judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (*ibid.*).

44. The Court observes that, in the period from 14 June to 3 September 1997, the principal reason for the applicant's detention on remand was the danger of collusion. Given that the applicant was charged with drug-trafficking – in the context of which the chain of supply of drugs to him had to be uncovered – it is satisfied that, during the initial phase of the investigations, collusion was indeed a risk which, in addition to the suspicion that the applicant had committed the criminal offences in question, justified the applicant's detention to ensure the proper conduct of the proceedings.

45. However, the Court considers that, with the passage of time, this ground inevitably became less relevant, in particular in view of the fact that the applicant's two accomplices were arrested on 26 September and 13 October 1997. It is true that from 3 September 1997 until 19 July 1999 the danger of absconding seems to have been invoked together with that of collusion. Nevertheless, the Government, whilst providing some arguments aimed at justifying the length of the criminal proceedings in question, have not submitted any reasons which could reasonably lead the authorities to assume that the applicant would abscond and thus explain the need for his continued detention.

46. During the final phase of the applicant's detention on remand – between 19 July 1999 and 10 April 2000 – the reason of his potential re-offending, along with the risk that he might abscond, was invoked by the authorities. This consideration may be deemed sufficient in view of the fact that the applicant was a recidivist offender.

47. In sum, the Court observes that between 3 September 1997 and 19 July 1999, while the risk of collusion must be taken to have gradually diminished, the courts based their prolongation decisions primarily on the risk that the applicant might abscond. The persistence of that risk was not however supported by any specific evidence. Only very compelling reasons would persuade the Court of the necessity to have prolonged the applicant's detention, the duration of which had exceeded two years by the end of this period. In the absence of such grounds or circumstances, the Court cannot but conclude that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant's being held in detention for the period in question.

48. There has, therefore, been a violation of Article 5 § 3 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. Under the head of pecuniary damage, the applicant claimed a sum of 4,483,000 forints (HUF) for loss of wages, the value of parcels sent to him by relatives during his detention and personal expenditures in detention.

The applicant further asked the Court to award him HUF 12 million for moral suffering and distress resulting from a violation of his Convention rights.

51. The Government considered that the sums in question were excessive.

52. The Court's conclusion on the evidence before it is that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by his being held in custody for the relevant period. Consequently, there is no justification for making any award to him under that head.

53. However, the Court accepts that the applicant can be considered to have suffered non-pecuniary damage on account of the distress and frustration resulting from the protracted length of his detention. Making its assessment on an equitable basis, the Court awards the applicant 3,000 euros (EUR) under this head.

### B. Costs and expenses

54. The applicant sought reimbursement of HUF 1 million for the costs of his legal representation in the domestic proceedings.

55. The Court observes that the applicant has not furnished any proof of whether those costs were actually incurred as claimed.

It follows that no award can be made under this head.

### C. Default interest

56. 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. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President