CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF NÉMETH v. HUNGARY

(Application no. 60037/00)

JUDGMENT

STRASBOURG

13 January 2004

FINAL

13/04/2004

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 Németh 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 C. BÎRSAN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 60037/00) 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 László Németh ("the applicant"), on 5 June 2000.

2. The applicant was represented by Mr I. Barbalics, a lawyer practising in Nagyatád. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. On 18 June 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1937 and lives in Baj, Hungary.

5. On 2 October 1992 the Komárom-Esztergom County Regional Police Department informed the applicant, the managing director of a limited liability company ("the company"), that a criminal investigation had been opened against him on charges of fraud.

6. On 6 October 1992 the Police Department requested the Tax Authority's Komárom-Esztergom County Department to carry out a tax inspection of the company. Subsequently, on 13 October 1992 the criminal

investigation against the applicant was suspended pending the outcome of the tax inspection.

7. On 4 January 1993 the Tax Authority informed the Police Department of its findings. Consequently, on 8 January 1993 the Police Department ordered that the criminal investigation against the applicant be continued.

8. During the period until 14 December 1993, the Police Department questioned several witnesses on altogether fifteen occasions and interrogated the applicant on 24 August and 16 December 1993. On the latter date he refused to give testimony.

9. On 17 December 1993 the Police Department appointed an expert graphologist.

10. On 23 December 1993 the Police Department informed the applicant's lawyer and the Tata District Public Prosecutor's Office of the results of the investigation. On 27 December 1993 the Police Department terminated the investigations and transferred the file to the Public Prosecutor's Office.

11. On 7 February 1994 the Public Prosecutor's Office preferred a bill of indictment.

12. The applicant's request of 26 April 1995 to have the investigation re-opened was rejected by the Tata District Court.

13. The first trial hearing took place on 12 April 1996. On this occasion the District Court heard several witnesses. The applicant refused to testify and stated that he did not commit the crime with which he was charged.

14. On 15 April 1996 the District Court enquired of a witness who had failed to appear at the hearing of 12 April due to illness as to the expected date of his recovery.

15. On the applicant's motion for bias of 10 June 1996, the presiding judge withdrew from the case.

16. On 30 October 1996 the President of the District Court appointed another judge. On 16 December 1996 the President of the District Court together with two other judges declared bias.

17. On 29 April 1997 the Komárom-Esztergom County Regional Court appointed the Tatabánya District Court to deal with the case.

18. On 27 April 1999 the Tatabánya District Court held a hearing and acquitted the applicant.

19. On the appeal of the Prosecutor's Office, on 11 and 25 January and 22 February 2000 the Regional Court held hearings.

20. On 14 March 2000 the Regional Court upheld the first-instance judgment, which thereby became final.

THE LAW

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

21. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

22. The Government contested that argument.

23. The criminal proceedings against the applicant commenced on 2 October 1992 when the applicant was informed that a criminal investigation had been opened against him. The Court observes that the period to be taken into consideration began only on 5 November 1992, the date on which Hungary's recognition of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of the proceedings at the time.

The period in question ended on 14 March 2000, when the applicant's acquittal was upheld by the Regional Court. It thus lasted seven years, four months and nine days.

A. Admissibility

24. The Court notes that the application 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

25. The Government argued that the case was complex and that experts and tax inspectors had to be involved in the proceedings, which contributed to their protraction. As to the conduct of the applicant, they claimed that he had caused some delay by refusing to give evidence. Concerning the conduct of the judicial authorities, the Government maintained that, apart from two periods of inactivity between February 1994 and April 1996 and between April 1997 and April 1999, the domestic courts had acted without any undue delay.

26. The applicant contested these arguments. He claimed that the time needed by the experts and tax inspectors to carry out their tasks was

insignificant when compared to the overall length of the proceedings. He stressed that the domestic authorities did not act with due diligence.

27. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. The Court considers that the case was not particularly difficult to determine either on the facts or on the law to be applied.

29. As to the conduct of the applicant, the Court observes that he refused to give evidence on 16 December 1993 and 12 April 1996. While it is true that any delay which may have been caused by this conduct cannot be imputed to the State (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 36, § 82), the Court is hesitant to attribute any decisive importance to the applicant's refusals to give testimony, having regard to the overall length of the proceedings. It must also have regard to the fact that the applicant cannot be blamed for exercising his right to silence and that the prosecution bore the burden of proving the case against him. In these circumstances, no particular period of inactivity can be imputed to the applicant.

30. As regards the conduct of the judicial authorities, the Court observes that the case against the applicant did not progress between 7 February 1994 and 12 April 1996 and between 29 April 1997 and 27 April 1999. These periods of inactivity, altogether amounting to four years and two months, have not been explained and are attributable to the State.

31. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 102,200,407 Hungarian forints (HUF) in respect of pecuniary and non-pecuniary damage.

34. The Government considered the applicant's claims excessive.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. However, it awards the applicant 6,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant made no claim under this head.

C. Default interest

37. 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 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 according to Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred 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, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 13 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President