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

SECOND SECTION

CASE OF TÓTH v. HUNGARY

(Application no. 60297/00)

JUDGMENT

STRASBOURG

30 March 2004

FINAL

07/07/2004

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 Tóth 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 L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 60297/00) 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 Tóth ("the applicant"), on 24 September 1999.

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

3. On 10 December 2002 the Court decided to communicate the complaint concerning the length of the proceedings 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 1951 and lives in Budapest.

5. The applicant was employed by the Ministry of Interior as a stoker. His employment was terminated on 20 October 1997 due to his constructive dismissal, following the employer's alleged breach of contract.

A. Labour law proceedings for payment of additional wages and other benefits

6. On 18 May 1995 the applicant brought an action before the Budapest Labour Court seeking the payment of additional wages and other benefits.

On 24 August 1995 the defendant requested the court to dismiss the applicant's claims.

7. At the hearing of 25 August 1995 the court heard the parties and requested the applicant to specify his claims. The applicant complied with the request on 8 September 1995.

8. On 1 July 1996 the Labour Court appointed an expert auditor. On 6 October 1996 the applicant's lawyer requested that the expert's opinion be submitted speedily.

9. On 22 January 1997 the defendant informed the court that the applicant had not appeared to collect the money earmarked for him.

10. On 17 November 1997 the Labour Court set a 10-day time-limit for the expert to submit his opinion. On 19 January 1998 the court withdrew the expert's appointment since he had failed to respect the time-limit.

11. On 5 May 1998 the court invited the defendant to submit documents, which it did on 24 July 1998.

12. After the applicant had extended his action, the Labour Court, at a hearing on 30 October 1998, separated the new claims from the proceedings and registered them under another case number. The applicant has not submitted any documents concerning the state of the latter proceedings.

13. In a judgment of 6 November 1998, the Labour Court dismissed the applicant's action. The applicant appealed and on 28 December 1998 brought a motion for bias against the judges of the Budapest Labour Court.

14. On 31 March 1999 the Budapest Regional Court, sitting as a second instance court, quashed the first-instance judgment and remitted the case to the Labour Court. It held that, as the expert had failed to submit his opinion, the first-instance court had relied only on the applicant's calculations.

15. On 9 December 1999 the applicant brought another motion for bias against the judges of the Budapest Regional Court. Subsequently, on 25 January 2000 the applicant's motions were transferred to the Supreme Court for examination.

16. On 5 April 2000 the Supreme Court appointed the Pest County Labour Court to hear the case in view of the fact that all the judges of the Budapest Labour Court had declared bias.

17. On 16 June 2000 the Regional Court appointed a legal aid lawyer for the applicant.

18. On 20 July 2000 the applicant lodged further submissions with the court. On 11 August 2000 the applicant's lawyer submitted a preparatory document.

19. At the hearing on 13 October 2000 the Regional Court heard the applicant and ordered the defendant to submit further documents.

20. On 5 January 2001 the Regional Court heard the parties and informed them that a second defendant had joined the proceedings.

21. The applicant's motion for bias against the judges of the Regional Court was rejected by the Supreme Court on 27 February 2001.

22. At the hearing on 26 November 2001 the applicant submitted a renewed motion for bias against the judges of the Regional Court. On 16 January 2002 the Supreme Court appointed the Tatabánya Labour Court to deal with the case.

23. On 12 March 2002 the Labour Court heard the parties. On 5 April 2002 the court suspended the proceedings and requested the Budapest 5th District Municipality to give consideration to placing the applicant under guardianship.

24. On the applicant's appeal against the order to suspend the proceedings, the Komárom-Esztergom County Regional Court upheld the suspension of the case for 60 days.

25. On 19 July 2002 the Municipality informed the Labour Court that the applicant was being examined with a view to placing him under guardianship.

26. On 20 February 2003 the Labour Court requested information on the state of the guardianship proceedings.

27. The proceedings are apparently still pending.

B. Labour law proceedings on the applicant's constructive dismissal and severance pay

28. On 20 October 1997 the applicant brought another action against his employer. He requested the Budapest Labour Court to declare that he had terminated his contract of employment lawfully, whereas his employer had failed to comply with certain essential elements thereof. He also claimed severance pay. The applicant informed his employer of his resignation only on 20 November 1997.

29. On 12 March 1998 the applicant specified his claims.

30. A hearing scheduled for 1 April 1998 was adjourned due to the illness of the presiding judge.

31. On 25 June and 14 July 1998 the applicant modified his claims.

32. At a hearing on 15 July 1998 the Budapest Labour Court heard the applicant and ordered that the documents he had submitted be sent to the defendant which had been unable to attend the hearing. In his submissions of 16 July 1998 the applicant requested that the minutes of this hearing be corrected.

33. In a judgment of 4 November 1998 the Labour Court dismissed the applicant's action.

34. In the appeal proceedings, on 28 April 1999 the Budapest Regional Court held a hearing. The applicant submitted further documents.

35. At the hearing on 11 June 1999, on the applicant's request, the Budapest Regional Court appointed a legal aid lawyer for him. Following the latter's withdrawal, another legal aid lawyer was appointed to deal with the case.

36. On 3 September 1999 the applicant requested the court to appoint another lawyer for him as he was not satisfied with the work of the present one.

37. The judges of the division selected to hear the case declared bias and withdrew from the case. Subsequently, on 7 October 1999 the president of the Regional Court selected another division. This division later declared bias also, having regard to the applicant's behaviour in another case pending before it. On 26 October 1999 the case was transferred to a third division.

38. On 13 November 1999 the Budapest Regional Court dismissed the applicant's request for a change of lawyer.

39. On 24 January 2000 the Regional Court quashed the first-instance judgment and remitted the case to the District Court.

40. On 5 April 2000 the Supreme Court appointed the Pest County Labour Court to hear the case, given that all the judges of the Budapest Labour Court had declared bias.

41. On 16 June 2000 the Regional Court appointed another legal aid lawyer for the applicant.

42. On 20 July 2000 the applicant lodged further submissions with the court. On 11 August 2000 the applicant's lawyer submitted a preparatory document.

43. At the hearing on 13 October 2000 the Regional Court heard the applicant and ordered the defendant to submit further documents.

44. On 5 January 2001 the Regional Court heard the parties and informed them that a second defendant had joined the proceedings.

45. The applicant's motion for bias against all the judges of the Regional Court was rejected by the Supreme Court on 27 February 2001.

46. At the hearing on 26 November 2001 the applicant submitted a renewed motion for bias against the Regional Court. On 16 January 2002 the Supreme Court appointed the Tatabánya Labour Court to deal with the case.

47. On 12 March 2002 the Labour Court heard the parties. On 5 April 2002 the court suspended the proceedings and requested the Budapest 5th District Municipality to consider the applicant's placement under guardianship.

48. On the applicant's appeal against the order to suspend the proceedings, the Komárom-Esztergom County Regional Court upheld the suspension of the case for 60 days.

49. On 19 July 2002 the Municipality informed the Labour Court that the applicant was being examined with a view to placing him under guardianship.

50. On 20 February 2003 the Labour Court requested information on the state of the guardianship proceedings.

51. The proceedings are still pending.

THE LAW

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

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

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

53. The Government contested that argument.

54. The periods to be taken into consideration began on 18 May 1995 and on 20 October 1997, respectively, and have not yet ended. They have thus lasted over eight years and nine months, and six years and four months, respectively. Both sets of proceedings involved two court instances.

A. Admissibility

55. The Court notes that the complaints concerning the length of the proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

56. The Government argued that the cases were rather complex as several experts had to be appointed. Moreover, the applicant himself had contributed to the protraction of the proceedings by extending his actions and submitting motions for bias on numerous occasions.

57. The applicant contested this.

58. 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).

59. The Court considers that the cases were not particularly difficult to determine as regards either the facts or the law to be applied.

60. As to the conduct of the judicial authorities, the Court observes that, in the first proceedings, the Labour Court – although it took some procedural measures – did not hold any hearings between 25 August 1995 and 30 October 1998. This period of inactivity cannot be explained solely

by the court's unsuccessful efforts to obtain an expert opinion. As no persuasive reasons have been given for this inactivity, it must be considered attributable to the State.

Although hearings were thereafter scheduled within regular intervals in both sets of proceedings, the Court considers that the domestic courts have not utilised the time available to them to speed up the proceedings with a view to bringing the cases to an end as soon as possible. It is to be noted in this connection that, following their remittal by the Regional Court, the cases are still pending at first instance.

61. As regards the applicant's conduct, the Court observes that his repeated motions for bias would appear to have contributed to the protraction of the proceedings. However, the Court is reluctant to attribute any decisive importance to the few months' delays which might have been caused by these motions. In particular, these delays cannot be considered significant in comparison to the overall length of the proceedings.

62. Having regard to the overall length involved and in particular to the lack of any hearings for three years and two months in the first proceedings, for which the domestic courts were responsible, and given that employment disputes generally require particular diligence on the part of the domestic courts (see the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the *Caleffi v. Italy* judgment of 24 May 1991, Series A no. 206-B), the Court concludes that the applicant's cases were not terminated within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 1, 4, 5, 6, 13 AND 14 OF THE CONVENTION

Admissibility

63. The applicant also complained, without further explanations, that the decisions given by the domestic courts in the above proceedings were wrong. He invoked Articles 1, 4, 5, 6, 13 and 14 of the Convention.

The Court observes that both sets of proceedings are still pending. These complaints, in so far as are directed at the on-going proceedings, are therefore premature. In so far as they may concern other matters, the applicant has not exhausted domestic remedies.

It follows that the domestic remedies have not been exhausted in respect of this part of the application, as required by Article 35 § 1, which must be therefore rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 36,833,066 Hungarian forints (HUF) in respect of pecuniary damage. He claimed HUF 2,000,000 in respect of non-pecuniary damage for the length of the proceedings.

66. The Government found the applicant's claims excessive.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed HUF 1,132,664 for the costs and expenses incurred before the domestic courts and in the Convention proceedings.

69. The Government found the applicant's claim excessive.

70. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 covering costs under all heads.

C. Default interest

71. 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

1. *Declares,* unanimously, the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds,* unanimously, that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings concerning the payment of additional wages and other benefits to the applicant;

3. *Holds,* by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings concerning the applicant's constructive dismissal and severance pay;

4. *Holds,* by 6 votes to 1,
   (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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement:
      (i) EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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 30 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Loucaides is annexed to this judgment.

J.-P.C.
S.D.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

I agree that there has been an unreasonable delay in the first set of proceedings in this case having regard in particular to the lack of any hearings for a period of three years and two months, a circumstance which the majority correctly took into account in finding a violation of Article 6 § 1 of the Convention. However, unlike the majority, I do not agree that there has been a violation of the same Article in respect of the second set of proceedings because no satisfactory reason has been given for attributing any unjustified delay to the judicial authorities of the respondent State.

The majority based its finding of a violation in the second set of proceedings on the overall length of the proceedings. In my opinion, this is not a sufficient criterion for finding a violation for undue delay by the respondent Government. In fact, it is contrary to the approach established by the case-law of the Court according to which the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to 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. Although the majority refers to this approach in paragraph 58 of the judgment and duly takes into account the lack of any hearing for a period of three years and two months in the first set of proceedings to justify finding a violation in respect of those proceedings, this approach is overlooked as regards the second set of proceedings.

I had occasion in two previous cases (*Erdős v. Hungary* and *Maczynski v. Poland*, nos. 38937/97 and 43779/98) to point out that the overall length of the proceedings cannot by itself be considered a ground or factor for finding a breach of the obligation under Article 6 of the Convention to hold a hearing "within a reasonable time". In the *Erdős v. Hungary* case I explained that:

> "Such a breach can only be established if there are unreasonable delays in the proceedings attributable to the State. Proceedings may be protracted by the conduct of the applicant or by the complexity and general nature of the case. In such cases, even if the 'overall length' of the proceedings is excessive, no responsibility should be borne by any State organ so long as the latter did not contribute in any way to the prolongation of the duration of the proceedings."

In the *Maczynski v. Poland* case I stressed that:

> "... there is no absolute or objective limit to the length of time that can be taken. The question whether there has been a delay contrary to the requirements of Article 6 § 1 cannot be decided *in abstracto* with reference only to the total length of the proceedings."

To accept the overall length as a sufficient ground for finding a violation of the aforesaid obligation would in fact contradict the criteria established by the case-law. For if a decision finding a violation can be based exclusively on the overall length then there is no point in examining "the

complexity of the case, the conduct of the applicant and of the relevant authorities". In this case the majority took into account the conduct of the authorities in respect of the first set of proceedings but did not go further than looking at the overall length of the proceedings in respect of the second.

I conclude by repeating what the Court stated in *Ciricosta and Viola v. Italy* (judgment of 4 December 1995, Series A no. 337-A, p. 10, § 28), in which the period in issue was more than 15 years for civil proceedings that were still pending at the time of the judgment:

> "The Court reiterates in the first place that only delays attributable to the State may justify a finding of failure to comply with the 'reasonable time' requirement".