



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

SECOND SECTION

CASE OF KASTNER v. HUNGARY

(Application no. 61568/00)

JUDGMENT

STRASBOURG

29 June 2004

FINAL

29/09/2004

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 Kastner 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 Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 8 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 61568/00) 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 Rezső Kastner (“the applicant”), on 21 June 2000.

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

3. On 26 November 2002 the Court decided to communicate the complaint concerning the length of 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 1963 and lives in Budapest.

5. On 18 August 1995 the applicant, a stoker, brought an action before the Budapest Labour Court against his employer, the Budapest Police Department, claiming payment of outstanding salary for the extra hours he had worked. On 22 September 1995 he provided particulars of his claims.

6. On 6 October 1995 the Labour Court held a hearing and ordered the defendant to submit its pleadings. The defendant complied with this order on 26 October 1995. The applicant specified further his claims on 20 October 1995 and 11 June 1996.

7. On 1 July 1996 the Labour Court appointed an expert auditor and ordered her to present an opinion within 90 days.

8. On 28 August, 16 October and 17 December 1996, 16 January, 7 February and 12 May 1997 the applicant submitted further details of his claims.

9. On 23 June and 28 October 1997 the applicant complained to the President of the Labour Court that the auditor had not yet submitted her opinion. In January 1998 the Labour Court revoked the auditor's appointment.

10. On 15 January 1998 the applicant quit his job.

11. On 27 April 1998 the applicant complained to the President of the National Judicial Council about the Labour Court's inactivity. On 6 August 1998 the President of the Budapest Regional Court's Labour Law Section informed the applicant that the protraction of the proceedings was due to the multiple and often unclear particulars of his own claims, the lack of co-operation on the defendant's side and the length of time taken by the auditor to finalise an opinion.

12. On 5 May 1998 the Labour Court ordered the defendant to submit supplementary information within 30 days. The defendant complied on 24 June 1998.

13. On 22 June and 13 July 1998 the applicant again provided particulars of his claims.

14. On 2 September 1998 the sum of 353,396 Hungarian forints (HUF) was transferred by the defendant to the applicant's bank account.

15. On 4 September and 18 December 1998 the Labour Court held hearings. On the latter occasion the Labour Court ordered the parties to discuss the possibility of settling the case. The parties did so on 16 February 1999.

16. On 19 February 1999 a new judge was appointed to the bench to deal with the case.

17. On 26 April 1999 the Labour Court appointed another auditor and ordered him to submit his opinion within four months.

18. On 9 September 1999 the applicant requested the revocation of the new auditor's appointment on the ground that he had failed to submit his opinion within the prescribed period. The auditor submitted his opinion on 13 October 1999.

19. On 1 and 16 November 1999 the applicant again provided particulars of his claims.

20. On 9 February 2000 the Labour Court heard the expert's opinion. As both parties rejected the opinion, on 28 February 2000 the Labour Court appointed a third expert, the Budapest Auditors' Institute. On the same day, the Labour Court reminded the parties of their obligation to conduct their case in a *bona fide* manner.

21. On 18 May and 20 June 2000 the applicant again submitted further particulars of his claims. Simultaneously, he challenged the presiding judge

for bias and requested that the case be transferred to the Pest County Labour Court. His request was dismissed on 14 July 2000.

22. On 28 July 2000 the Auditors' Institute submitted its opinion.

23. In an order dated 8 August 2000 the Labour Court fixed the fee payable to the Auditors' Institute. On 1 September 2000 the applicant appealed against this order. The Labour Court, erroneously, transferred the case file to the Budapest Regional Court.

24. On 6 September 2000 the applicant rejected the expert's opinion. On 13 September 2000 he submitted further details of his claims.

25. On 23 January 2001 a new judge was again appointed to the bench to hear the case.

26. On 30 March 2001 the applicant provided further particulars of his claims. On the same day the Labour Court held a hearing, delivered a partial decision and ordered the defendant to pay HUF 110,309 plus accrued interest to the applicant. On 9 June 2001 this decision became final.

27. Concerning the remainder of the action, the Labour Court held a hearing on 15 June 2001. On the same day the applicant submitted further details of his claims.

28. On 18 June 2001 the Labour Court ordered the Auditors' Institute's opinion to be completed.

29. On 25 and 28 June 2001 the applicant again specified his claims.

30. On 3 October 2001 the applicant requested the revocation of the appointment of the Auditors' Institute and challenged the Budapest Labour Court for bias. His motions were dismissed on 6 November 2001.

31. On 25 October 2001 the applicant repeatedly complained to the National Judicial Council of the delay in the proceedings.

32. On 3 December 2001 the Auditors' Institute submitted its supplementary opinion.

33. On 13 February 2002 the National Judicial Council informed the applicant of the findings of its enquiry into the length of the proceedings. In its opinion the protraction of the proceedings was attributable to the fact that the applicant had revised his claims on altogether nineteen occasions.

34. On 14 February 2002 the Labour Court held another hearing at which the applicant again provided further particulars of his claims.

35. On 28 February 2002 the Labour Court held a hearing and delivered its judgment. It ordered the defendant to pay, under various heads, the sums of HUF 58,033, 395,541 and 25,707 plus accrued interest to the applicant, and dismissed the remainder of the applicant's claims. The applicant and the defendant appealed on 11 and 12 April 2002, respectively.

36. On 11 September 2002 the Budapest Regional Court, sitting as a second-instance court, held a hearing. It upheld the first-instance judgment in so far as the applicant's claims were accepted. In so far as the Labour Court dismissed part of the applicant's claims, the Regional Court quashed

the judgment of 28 February 2002 and remitted this part of the action to the Labour Court.

37. In the resumed first-instance proceedings, the Labour Court requested the applicant to provide further and better particulars of the remainder of his claims. He did so on 31 October 2002. These proceedings are still pending at first instance.

38. Meanwhile, on 17 October 2002 the applicant submitted a petition for review of the judgment of 11 September 2002. On 3 March 2004 the Supreme Court rejected the applicant's petition for review.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

39. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement. He invoked Articles 4, 5, 6 § 1 and 14 of the Convention.

Article 6 § 1 of the Convention, reads as relevant:

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

40. The Government submitted that the applicant's case had been heard within a reasonable time.

41. The proceedings began on 18 August 1995 and have not yet ended. They have thus lasted more than eight years and eight months before three court instances.

A. Admissibility

42. The Court notes that the applicant's complaint under Article 6 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.

As regards the other grievances raised by the applicant in connection with the length of the proceedings, namely under Articles 4, 5 and 14 of the Convention, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms relied on. This part of the application is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

43. The Government argued that, apart from the period between July 1996 and January 1998, the proceedings were conducted without any undue delay. As regards the conduct of the applicant, they asserted that he contributed to a great extent to the protraction of the proceedings by submitting further details of his claims on numerous occasions.

44. The applicant contested these arguments.

45. 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).

46. It has not been asserted that the case was particularly complex and the Court sees no reason to hold otherwise.

47. As regards the conduct of the applicant, the Court observes that the applicant has to date specified his claims on altogether twenty occasions. The domestic authorities reminded the applicant on two occasions not to abuse his procedural rights and to abstain from constantly reformulating his claims. In these circumstances, the Court considers that the applicant must be considered to have contributed to a great extent to the protraction of the proceedings.

48. As regards the conduct of the judicial authorities, the Court observes that no hearings were held between 6 October 1995 and 4 September 1998. The resulting delay of two years and eleven months cannot be justified by the Labour Court's unsuccessful attempt to obtain an expert opinion during this period and by its further order requesting the defendant to supply documents. Furthermore, the Court observes that it took the domestic courts five years and five months, from 1 July 1996 until 3 December 2001, to obtain the final version of the expert auditor's opinion, which considerably delayed the delivery of the first-instance decision.

These delays are attributable to the State.

49. Having regard to the overall length of the proceedings, to the period of inactivity attributable to the State and to the fact that the proceedings are still pending, the Court concludes that the applicant's case has not been heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS

50. The applicant also complained about the fairness of the proceedings. He invoked Articles 6 § 1 and 13 of the Convention.

Admissibility

51. The Court observes that part of the applicant's claims is still pending before the first-instance court (see paragraph 37 above). This complaint is therefore premature. In so far as the remainder of his claims has been finally determined by the decision of the Supreme Court of 3 March 2004 (see paragraph 38 above), the Court considers that, having regard to the materials before it, there is no appearance of a breach of the fairness requirements of Article 6 § 1 of the Convention.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed HUF 20,299,018 in respect of pecuniary and non-pecuniary damage.

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

55. 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, and having regard to the delay caused by his conduct, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant did not make any claim under this head.

C. Default interest

57. 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 applicant's complaint under Article 6 § 1 of the Convention, concerning the length of the proceedings, admissible;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of Hungary 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President