



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

SECOND SECTION

CASE OF MAGLÓDI v. HUNGARY

(Application no. 30103/02)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

09/02/2005

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 Maglódi 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 K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

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

Having deliberated in private on 25 November 2003 and 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 30103/02) 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 Csaba Maglódi (“the applicant”), on 29 July 2002.

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 was excessively long, in breach of Article 5 § 3 of the Convention.

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. By a decision of 25 November 2003, the Court declared the application partly admissible.

6. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1970 and lives in Budapest. At present, he is detained at Budapest Prison.

A. Preliminary investigations

8. On 10 June 1999 the applicant was arrested and interrogated on a charge of murder. He was charged with having murdered a man in 1997. The man's corpse had been found in the garden of a co-accused. The victim's identity was not yet known. On the next day the Budapest Regional Public Prosecutor's Office dismissed the applicant's complaint in respect of his arrest. In the ensuing proceedings he was assisted by a defence counsel of his choice.

9. On 10 and 24 June, 9 September, 3 November 1999 and 2 May 2000 the applicant was interrogated, but he refused to answer the questions put to him. His co-accused was interrogated on 21 and 23 June, 8 September 1999 and 3 May 2000. Witnesses were heard on 10 and 23 June, 10 and 16 July, 2, 3, 6 and 9 August, 10 and 29 September, 3 November 1999, 17 February, 1 and 13 March 2000 and 10 July 2001.

10. Meanwhile, on 12 June 1999 the Pest Central District Court, as confirmed by the Budapest Regional Court on 18 June 1999, ordered the applicant's detention on remand until 12 July 1999. The District Court considered that – given the seriousness of the charges against him – there was a risk of the applicant's collusion and absconding.

11. On 14 June 1999 a forensic pathologist was appointed. He submitted his final opinion on 19 October 1999.

12. On 8 July 1999 the Buda Central District Court, as confirmed by the Regional Court on 26 July 1999, prolonged the applicant's detention until 12 September 1999 for the same reasons given by the Pest Central District Court.

13. On 7 September and 2 December 1999 the Regional Court, as confirmed by an appeal panel of the same court on 23 September and 22 December 1999, prolonged, for the same reasons, the applicant's detention until 12 December 1999 and 12 April 2000, respectively.

14. On 10 April, 4 July and 6 October 2000 the Supreme Court prolonged the applicant's detention until 12 July, 12 October 2000 and 20 January 2001, respectively. It referred to the danger of the applicant's absconding, noting that a DNA-analysis was being carried out with a view to confirming the victim's identity. An expert in haemogenetics, who had

been appointed to this end on 16 August 1999, submitted his final opinion on 17 October 2001.

15. On 6 November 2000 the Regional Court, as confirmed by an appeal panel of the same court on 15 December 2000, dismissed the applicant's request for release.

16. On 17 January 2001 the Supreme Court prolonged the applicant's detention until 20 April 2001 and dismissed his request for release. It invoked the danger that the applicant would abscond if released.

17. On 6 March 2001 the Regional Court dismissed the applicant's request for release.

18. On 19 April 2001 the Supreme Court prolonged the applicant's detention until 20 July 2001 on the ground that he might abscond.

19. On 2 May 2001 the investigation was closed and the case-file was made available to the defendants. On 22 May 2001 the Public Prosecutor's Office reopened the investigation with a view to completion of the case against the defendants. These proceedings ended on 20 June 2001.

20. Meanwhile, on 5 June 2001 the Regional Court, as confirmed by an appeal panel of the same court on 27 June 2001, dismissed the applicant's request for release.

21. On 13 July 2001 the Public Prosecutor's Office preferred a bill of indictment, accusing the applicant and two others of murder. The indictment listed several witnesses and two forensic medical experts.

B. First instance court proceedings

22. On 17 July 2001 and 29 April 2002 the Regional Court, as confirmed by the Supreme Court on 16 August 2001 and 11 June 2002 respectively, upheld the applicant's detention on remand until the delivery of the first-instance judgment. The courts invoked the danger of the applicant's absconding.

23. On 8 July 2002 the applicant filed a request for release in which he referred to domestic jurisprudence and the Court's case-law concerning pre-trial detention. He argued, *inter alia*, that his absconding was unlikely in view of his close ties with his sick mother and paralysed father, his siblings and his 11-year old son, and of the fact that he had been living with his common-law wife for five years and that they had carried out a major renovation of their flat.

24. On 23 July 2002 the presiding judge refused, under section 95 § 4 of the Code of Criminal Procedure, to take a formal decision on the applicant's renewed request for release on the ground that it referred to no new circumstances. On 10 and 15 October 2002 the Regional Court held hearings. On 25 October 2002 a forensic psychiatrist was appointed to examine the defendants. He submitted his opinion on 17 January 2003.

25. On 8 January 2003 the Regional Court held a hearing and refused to release the applicant. On 3 February 2003 the Supreme Court dismissed his appeal, relying on the danger of absconding.

26. On 4 and 20 March 2003 the Regional Court held hearings and refused to release the applicant.

27. Further hearings took place on 16 April, 12 May, 3 and 11 June 2003. On the latter date the Regional Court delivered a judgment. In its 34-page judgment the Regional Court convicted the applicant of murder and imposed a life sentence.

C. Further developments

28. On 7 August 2003 the applicant appealed. On 27 October 2003 he completed his appeal.

29. On 5 May 2004 the Budapest Court of Appeal held a hearing.

The court quashed the first-instance judgment, remitted the case to the Regional Court and prolonged the applicant's pre-trial detention. The applicant has been detained ever since.

II. RELEVANT DOMESTIC LAW

30. Section 95 of the Code of Criminal Procedure, as in force in the relevant period, reads as follows:

(1) Detention on remand, when ordered prior to the indictment, may last until the decision of the court in the preliminary proceedings before trial, up to a maximum of one month. Detention on remand can be prolonged by the District Court on one occasion, for two months at the most. After three months, detention on remand can be prolonged by a single judge of the Regional Court, on up to two occasions, but may not continue beyond one year after the remand order. Thereafter, the duration of detention on remand can only be extended by the Supreme Court.

(2) Detention on remand, when ordered or upheld by the first-instance court after the indictment, may last until the first-instance judgment is pronounced...

(3) When the length of the detention on remand ordered or upheld after the indictment

a) exceeds six months and the first-instance court has not delivered a judgment, the first-instance court,

b) exceeds one year, the Supreme Court

shall review the reasonableness of the detention on remand.

(4) The court ... may dispense with delivering a [formal] decision if ... a repeated request for release from pre-trial detention refers to no new circumstances.

THE LAW

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

31. The applicant submitted that the length of his pre-trial detention was excessive, in breach of Article 5 § 3 of the Convention, which in its relevant part, provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of [Article 5] 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

32. The Court observes that the Pest Central District Court ordered the applicant's pre-trial detention on 12 June 1999. He has been in detention ever since. On 11 June 2003 the Budapest Regional Court, sitting as a first-instance court, convicted the applicant. His conviction was quashed on 5 May 2004 and the case was remitted to the first instance court.

In respect of the period between 11 June 2003 and 5 May 2004, 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, for the Court, the period to be taken into consideration has lasted, at least, from 12 June 1999 until 11 June 2003 and from 5 May 2004 onwards, i.e. for altogether four years and five months to date.

B. Reasonableness of the length of detention

33. The applicant stressed that three years and four months elapsed between his arrest and the first trial hearing. Following the conduct of the autopsy of the victim on 16 July 1999, the results of the DNA-analysis were only submitted on 17 October 2001, after a delay of two years and three months. Moreover, there were no particular circumstances which could explain the further delay of more than one year and three months between the conclusion of the investigation on 20 June 2001 and the first trial hearing on 10 October 2002.

34. The Government maintained that the applicant's detention on remand was reviewed by the domestic courts on several occasions and found justified because of the danger of, initially, his collusion and absconding. The case was rather complicated since it concerned a serious crime that had been committed almost two years before its discovery. The evidence could only be gathered with great difficulty as the victim's corpse was already in an advanced stage of decomposition when found and no pure tissue samples could be obtained from it for the purposes of a DNA-analysis. This impeded the experts' work. The Government nevertheless conceded that delays occurred in obtaining the expert opinions and between the filing of the indictment and the first trial hearing.

35. 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).

36. 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).

37. 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.*).

38. The Court observes that, in the period from 12 June 1999 to 10 April 2000, the principal reason for the applicant's detention on remand was the danger of collusion. Given that the applicant was charged with murder and the victim had yet to be identified, 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 crime in question, justified the applicant's detention to ensure the proper conduct of the proceedings.

39. From 10 April 2000 onwards, the courts prolonging and confirming the applicant's detention relied exclusively on the danger of absconding. The persistence of that risk was not however supported by any specific evidence. Although the applicant argued that his family and personal circumstances made the risk of his absconding very unlikely, the courts reiterated that the seriousness of the crime, with which he was charged, alone warranted his detention, without pointing to any particular reason which could reasonably lead the authorities to assume that the applicant would abscond and thus explain the need for his continued detention. In these circumstances, only very compelling reasons would persuade the Court of the necessity to have prolonged the applicant's detention, the duration of which had reached four 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. It is also to be noted that, subsequent to the quashing of the first-instance conviction, the applicant's pre-trial detention continued and that he is still detained on remand.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. Under the head of pecuniary damage, the applicant claimed 22,500 Hungarian forints (HUF) for each month of his detention, the monthly amount corresponding to the statutory minimum salary in Hungary in 1999. As non-pecuniary damage, the applicant claimed HUF 11,764 for each day of his detention.

The Government found the applicant's claims excessive.

43. 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.

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

B. Costs and expenses

45. The applicant made no claim under this head.

C. Default interest

46. 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, 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President