



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

SECOND SECTION

CASE OF NAGY v. HUNGARY

(Application no. 6437/02)

JUDGMENT

STRASBOURG

20 December 2005

FINAL

20/03/2006

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 Nagy 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 R. TÜRMEŒ,

Mr K. JUNGWIERT,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*.

Having deliberated in private on 29 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 6437/02) 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, Mrs Józsefné Nagy (“the applicant”), on 26 November 2001.

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

3. On 6 July 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings and the applicant’s Article 3 allegation of inappropriate behaviour by tax investigators (paragraph 6 below). Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Kerecsend, Hungary.

5. On 1 March 2001 criminal investigations were instituted against 30 suspects, including the applicant (a businesswoman) on suspicion of several counts of tax fraud, involving the issue of some 250 fictitious invoices.

The applicant's company was concerned in each count of fraud. The material of the ensuing investigation amounted to 2,180 pages.

6. On 10 April 2001 tax investigators searched the applicant's house for documents and arrested her. The applicant alleges that the tax investigators' behaviour was harsh and insensitive in that they hindered her for several minutes from providing her minor son with a spray-inhaler when he suffered an asthma attack during the search. Moreover, she submits that, on her arrest, she was forcibly seated in the authority's car, in which the tax investigators touched her inappropriately and made abusive remarks.

She was kept in police custody for three days.

7. On 18 July 2001 the applicant lodged a complaint about the tax investigators' conduct. On 23 August 2001 the Heves County Investigating Office refused to proceed with the complaint, considering that the investigators had carried out the search and the arrest in accordance with the law. The Office noted that the applicant had complained about the incident only after a delay of more than three months. On 12 October and 15 November 2001 and 4 March 2002, respectively, the Eger District and the Heves County Public Prosecutor's Office and the Attorney General's Office dismissed the applicant's further complaints.

8. On 30 May 2002 the police again searched the applicant's house.

In her submissions to the Court filed on 11 February 2004, the applicant stated that on that occasion she had been ill-treated by the police officers and that the latter had not allowed the emergency medical staff, which had been called to her son on account of another asthma attack, to enter the house.

On 12 March 2003 the Investigating Office discontinued the investigation into the incident. On 18 April 2003 the Eger District Public Prosecutor's Office finally dismissed the applicant's complaint.

9. Meanwhile, on 28 April and 18 October 2001, 17 January 2002 and 28 April 2003, the applicant was interrogated by the Heves County Criminal Directorate of the Tax Authority. Moreover, between April 2001 and May 2003 altogether 31 suspects were interrogated on various occasions. More than 40 witnesses were heard and several house searches and confrontations of witnesses took place. Furthermore, 14 opinions were obtained from expert accountants.

10. On 5 May 2003 the proceedings were discontinued against six suspects.

11. On 12 June 2003 a bill of indictment was preferred. The applicant was charged with 30 counts of tax fraud and 12 counts of document forgery.

12. The first hearings were scheduled by the Eger District Court for 28 and 29 October 2004. The proceedings have been pending at first instance ever since.

THE LAW

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

13. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement of 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...”

14. The Government contested that argument.

15. The period to be taken into consideration began on 1 March 2001 and has not yet ended. It has thus lasted over four years and eight months for one level of jurisdiction.

A. Admissibility

16. The Court notes that this complaint 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

17. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

18. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case, notwithstanding its rather complex nature, the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant complains that the searches of her house on 10 April 2001 and 30 May 2002 and the related incidents, in particular that involving the spray-inhaler, amounted to inhuman treatment in breach of Article 3 of the Convention and/or an infringement of her right to respect for her private life, in breach of Article 8 of the Convention.

21. Article 3 provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 8 reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

22. In respect of the incident of 10 April 2001, the Government argue that the applicant did not exhaust domestic remedies, since she could have brought an action in damages against the respondent authority, under sections 75-76 of the Civil Code. In any event, the incident complained of did not attain the level of severity proscribed by Article 3.

The applicant contests these views.

23. The Court considers that it is not necessary to examine the Government’s argument about exhaustion of domestic remedies, since this complaint is in any event inadmissible for the following reasons.

24. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among many other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1517, § 52).

25. In the present case, the Court is satisfied that the mere fact the applicant was prevented for several minutes from providing her son with an anti-asthma spray-inhaler did not attain that Article 3 threshold. Moreover, this matter does not raise an arguable issue under Article 8 of the Convention.

26. Furthermore, in so far as the Article 8 complaint may be understood to concern the house search itself, the Court considers that this measure, lawfully effected with a view to unravelling a rather complex case of tax

fraud, was necessary in a democratic society for the prevention of crime, in order to secure evidence, and was thus justified under Article 8 § 2.

27. Lastly, the applicant's submissions concerning the tax investigators' allegedly inappropriate behaviour on her arrest are wholly unsubstantiated.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

28. As regards the complaint concerning the events on 30 May 2002, the Court observes that the final domestic decision relating to these matters was given by the District Public Prosecutor's Office on 18 April 2003. However, the applicant introduced this complaint only on 11 February 2004, i.e. outside the six-month time-limit prescribed by Article 35 § 1 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant claimed 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

31. The Government contested the claim.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, deciding on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant made no claim for costs or expenses.

C. Default interest

34. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 in accordance with 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 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 20 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President