



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

SECOND SECTION

CASE OF CSÁKY v. HUNGARY

(Application no. 32768/03)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

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 Csáky 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 I. CABRAL BARRETO,

Mr R. TÜRMEŇ,

Mr M. UGREKHELIDZE,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 32768/03) 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 Zsigmond Gyula Csáky ("the applicant"), on 21 July 2003.

2. The applicant was represented by his father, Mr I. Csáky. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Hőltzl, Deputy State-Secretary, Ministry of Justice.

3. On 7 June 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the allegedly excessive length of the applicant's pre-trial detention 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 1977 and lives in Budapest.

5. On 26 February 2002 criminal proceedings were instituted against the applicant, a college student, on a charge of extortion, which had allegedly been committed the day before. On 27 February 2002 he was arrested.

6. On 28 February 2002 the Budapest Police Department heard the applicant, explaining that criminal proceedings were being conducted against him and three other defendants on suspicion of having participated in the sequestration and beating of a certain Mr K., and of having forced

him to sign a false statement of debt, conduct punishable under sections 175 and 323 of the Criminal Code.

7. Between 27 February 2002 and 21 March 2003, the defendants were interrogated on several occasions; moreover, several confrontations took place between the defendants themselves and between them and the victim. In particular, the applicant was interrogated on five occasions during this period. Also in the same period, the police heard 17 witnesses and the victim on altogether 14 occasions. Furthermore, experts in toxicology, haemogenetics and dactyloscopy were appointed, along with a forensic medical expert and an expert on physical evidence. The police were collecting evidence from banks, telephone companies, the land registry and the register of passenger cars.

8. Meanwhile, on 2 March 2002 the Pest Central District Court ordered the applicant's pre-trial detention, referring to the danger of his absconding, in particular in view of the fact that he had not been living at his registered address for more than two years. Additional reference was made to the risk of collusion. On 11 March 2002 the Budapest Regional Court dismissed his appeal.

9. The applicant was assisted by defence counsel of his choice and was initially held at the Gyorskocsi Police Detention Facility. His detention was prolonged on 26 March and 24 May 2002 on the ground of a risk of absconding and collusion. These decisions were confirmed on 30 April and 12 June 2002, respectively. The courts held that the seriousness of the charges against the applicant alone sufficed to establish the risk of absconding.

10. On 9 August 2002 the Regional Court dismissed the applicant's request for release. On 10 September 2002 that court's appellate bench rejected his appeal. His further complaint of 15 September 2002 was to no avail.

11. On 27 September 2002 the applicant's detention was again prolonged, essentially on the ground of a risk of absconding. The court noted that the risk of collusion was diminishing, since the applicant had confessed to his crime.

12. Meanwhile, from July 2002 onwards, the applicant's behaviour in detention became more and more erratic; in particular, on one occasion he attacked a fellow inmate. In July and October 2002 as well as July, August and September 2003 the applicant was repeatedly committed, for shorter periods, to the Asylum for the Criminally Insane ("IMEI") with a view to having his mental status observed by expert psychiatrists. Eventually, it was concluded that he suffered from a psychosis.

13. On 18 December 2002 and 17 January 2003, the renewed requests for release of the applicant, who from October 2002 onwards was detained at Budapest Penitentiary, were dismissed.

14. On 27 February and 26 June 2003 the Supreme Court prolonged the applicant's detention on the basis of the risk of his absconding.

15. Given his increasingly disturbed state of mind, on 14 April 2003 the applicant's case was disjoined from that against his accomplices.

16. On 24 July 2003 the Budapest Regional Court ordered the applicant's release on bail. On 11 August 2003 the Budapest Court of Appeal overruled this decision, making reference to the danger of the applicant's absconding, given the seriousness of the charges against him.

17. On 24 September 2003 the investigation against the applicant was closed. The case-file, communicated to the applicant on 20 October 2003, consisted of some 1,500 pages.

18. From 17 October 2003 onwards, the pre-trial detention of the applicant, by then diagnosed with chronic paranoid schizophrenia, was effected in the IMEI for the treatment of his condition. In response to complaints filed by the applicant's father, the Penitentiary Supervisory Department of the Attorney General's Office specified that the applicant had been committed to the IMEI on medical grounds, since he had shown psychotic symptoms at the Budapest Penitentiary; that, after examinations, the IMEI were of the opinion that his further treatment was necessary; and that forensic experts had repeatedly examined him. On 9 December 2003 the Budapest Court of Appeal confirmed the applicant's committal to the IMEI.

19. On 28 October and 3 December 2003, the applicant's detention was again prolonged by the Regional Court on the ground of a risk of absconding, given the seriousness of the charges against him. These decisions were upheld on 24 November 2003 and 2 February 2004 by the Court of Appeal.

20. On 1 December 2003 a bill of indictment was preferred. The applicant was charged with complicity in kidnapping and severe bodily assault, offences punishable under sections 170 and 175/A of the Criminal Code, as modified by Act no. 2 of 2003.

21. On 11 February 2004 another expert psychiatrist was appointed. On 4 March 2004 the expert informed the Regional Court that the applicant's prolonged observation was warranted.

22. On 24 May 2004 the Budapest Regional Court dismissed the applicant's renewed request for release on bail. On 8 July 2004 the Court of Appeal dismissed his appeal.

23. On 15 July 2004 the IMEI presented its observations on the applicant's mental state. On 14 September 2004 the forensic psychiatrist submitted his opinion.

24. The applicant was eventually released from the IMEI on 19 October 2004. His pre-trial detention having been lifted, the applicant was ordered not to leave town.

25. The Regional Court ordered further psychiatric examinations of the applicant. Since he did not appear at an examination scheduled in December 2004, it had to be rescheduled for 1 March 2005.

26. Relying on the findings of the forensic psychiatrists, on 14 June 2005 the Regional Court suspended the proceedings in view of the fact that the applicant was not mentally capable of standing trial.

THE LAW

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

27. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand.

Article 5 § 3 reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

28. The Government contested that argument.

A. Admissibility

29. 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

30. The applicant stressed that his detention lasted an unreasonably long time and the strain thus suffered resulted in his psychiatric condition.

31. The Government maintained that the applicant’s detention did not exceed the period that was necessary in the circumstances for the authorities to unravel the offence he was charged with. When prolonging his detention, the domestic courts relied on relevant and sufficient grounds.

32. 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).

33. 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).

34. The persistence of a reasonable suspicion that the detainee has committed an offence is a condition *sine qua non* for the lawfulness of continued custody, 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.*).

35. The Court observes that the applicant was detained from 27 February 2002 until 19 October 2004, i.e. for over two years and seven months. It notes that, initially, the principal reason for the applicant’s detention on remand was the danger of absconding and, to a lesser extent, that of collusion. It is satisfied that, during this phase of the investigations, the suspicion that the applicant had committed the serious crime in question justified his detention with a view to securing his availability for justice.

36. However, once the investigation was closed on 24 September 2003, the risk of collusion was no longer arguable. The remaining reason for the applicant’s continued detention, namely the risk of absconding, must be examined in view of his committal on 17 October 2003 to the IMEI, where he was diagnosed with chronic paranoid schizophrenia. His observation and treatment in this institution lasted more than a year. In the Court’s view, the domestic courts should have assessed the risk of the applicant’s absconding in the light of his serious psychiatric condition and should have considered his placement in a civilian institution, all the more so since, before his committal to the IMEI, he had already been detained for more than one and a half years. Instead, the courts limited themselves to reiterating that, given the seriousness of the charges against him, there was a risk that the applicant would abscond. The Court finds this implausible in the circumstances. Having regard to its overall duration, the Court is not persuaded that the

applicant's pre-trial detention, in particular after 17 October 2003, was justified.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed altogether 8,182 euros (EUR) as just satisfaction, which corresponds to the financial loss which he allegedly suffered during his detention.

40. The Government submitted that the finding of a violation of the Convention would in itself constitute sufficient just satisfaction.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicant must have suffered non-pecuniary damage. Accordingly, on the basis of equity, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed EUR 3,971 for the costs and expenses incurred before the domestic courts. This amount corresponds to the fee paid to his lawyer on 3 July 2002.

43. The Government did not comment on this point.

44. 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 were reasonable as to quantum. In the present case, the Court is not convinced that the legal fee sought was incurred as a consequence of the violation found and therefore rejects this claim.

C. Default interest

45. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President