



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

SECOND SECTION

CASE OF FEJES v. HUNGARY

(Application no. 7873/03)

JUDGMENT

STRASBOURG

11 April 2006

FINAL

13/09/2006

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 Fejes 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. TÜRMEŒ,

Mr V. BUTKEVYCH,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLĚ, *Section Registrar*,

Having deliberated in private on 21 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 7873/03) 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 István Fejes (“the applicant”), on 20 December 2002.

2. The applicant was represented by Mr I. Ferencz, a lawyer practising in Veszprém. The Hungarian Government (“the Government”) were represented by their Agent, Mr L. Höltzl, Deputy State-Secretary, Ministry of Justice.

3. On 29 June 2005 the Court decided to communicate the application. 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

4. The applicant was born in 1959 and lives in Veszprém.

5. On 7 November 1994 criminal proceedings were instituted against the applicant, the president of a savings bank, and other defendants. On 22 March 1995 the Veszprém County Police Department heard the applicant as a suspect and explained to him that an investigation was being conducted against him since he was accused of having committed fraud when granting credit to a limited company, a conduct punishable under section 297/A of the Criminal Code.

6. In February 1997 the investigation was closed.

7. On 16 October 2000 the Veszprém Public Prosecutor's Office preferred a bill of indictment against the applicant charging him with aggravated fraud committed as an accomplice, a conduct punishable under section 318 §§ 1 and 6(a) of the Criminal Code.

8. At the hearing of 24 January 2002 a defendant and some representatives failed to appear. The Veszprém District Court heard the applicant, who stated that he did not want to propose any evidence. The case was adjourned.

9. Hearings took place on 28 May, 15 October 2002 and 3 March 2003. On 28 May 2002 the District Court rejected the applicant's motion for bias.

10. On 11 September 2003 the District Court acquitted the applicant.

11. On 7 June 2004 the Veszprém County Regional Court quashed the first-instance judgment concerning the applicant and remitted this part of the case to the District Court.

12. On 8 October 2004 the Budapest Court of Appeal rejected the applicant's motion for bias, filed against all the judges in Veszprém County.

13. In the resumed proceedings, the District Court held hearings on 24 March and 12 April 2005. On that date it acquitted the applicant in the absence of any evidence proving him guilty.

14. Both the applicant and the prosecutor appealed. However, on 25 May 2005 the prosecution withdrew its appeal.

15. On 26 September 2005 the Regional Court upheld the applicant's acquittal. In line with the applicant's appeal, it found that the incriminated conduct did not constitute a criminal offence.

THE LAW

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

16. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

17. The Government contested that argument in general, but admitted that there was an unreasonable delay between the closure of the investigation in February 1997 and the submission of the bill of indictment in October 2000.

18. The period to be taken into consideration began on 7 November 1994 and ended on 26 September 2005. It thus lasted more than ten years and ten months for two levels of jurisdiction.

A. Admissibility

19. 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

20. 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).

21. 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).

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or convincing 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 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

23. The applicant also complained that the proceedings were not fair, in particular in that the Police Department during the investigation and the Public Prosecutor’s Office in the bill of indictment made reference to different offences in regard to his incriminated conduct, and that his motions for bias were dismissed. He relied on Article 6 § 3 (a).

24. The Court observes that on 26 September 2005 the Regional Court finally acquitted the applicant in the absence of a crime. In these circumstances, he cannot claim to be a victim of a violation of the right to a fair hearing. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 124,840 euros (EUR) in respect of pecuniary damage, making reference essentially to lost income. Moreover, he claimed EUR 100,000 in respect of non-pecuniary damage.

27. The Government contested these claims.

28. 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 sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8,000 under that head.

B. Costs and expenses

29. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and the Court.

30. The Government contested the claim.

31. 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, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

32. 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 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, 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 amounts 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 11 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President