



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

SECOND SECTION

CASE OF KOVAČ v. HUNGARY

(Application no. 37492/02)

JUDGMENT

STRASBOURG

18 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 Kovač 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. TÜRMEŖ,

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 28 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 37492/02) 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 Croatian national, Mr Kalman Kovač (“the applicant”), on 10 September 2002.

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

3. On 10 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 1938 and lives in Cunski, Mali Losinj, Croatia.

5. On 7 April 1992 the applicant was arrested in Hungary on the suspicion of having murdered his wife, a German national. On 10 April 1992 the Hungarian Pest Central District Court ordered his detention on remand until his extradition to Germany. On 20 July 1993 the Hungarian National Police Department extradited the applicant and prohibited his return until 20 July 1998. Subsequently, he was held in pre-trial detention in Germany until 19 December 1994.

6. On 17 February 1995 the German Hildesheim Criminal Court acquitted the applicant. The judgment was pronounced in his presence and became final on the same day.

7. On 27 October 1995 the applicant's lawyer brought an action in the Pest Central District Court seeking from the Hungarian State compensation (*kártalanítás*) under section 385/A of the Code of Criminal Procedure.

8. On 12 June 1996 the District Court transferred the case to the competent Budapest Regional Court. On 18 December 1996 the Regional Court ordered the applicant to complete his action, which he did on 8 September 1997.

9. Hearings took place on 11 September 1997, 22 January, 2 June and 8 December 1998, 4 May 1999 and 1 February 2000.

10. On 6 March 2000 the applicant extended his action and claimed damages (*kártérítés*) from the Hungarian State, relying on various provisions of the Civil Code.

11. On 28 April 2000 the Regional Court discontinued the proceedings, holding that the action had been submitted outside the statutory time-limit, as calculated from the final decision given in the criminal case.

12. On 5 June 2000 the applicant appealed. He submits that the respondent's submissions in reply, filed on 22 June 2000, were made available to him only in autumn 2001, when his lawyer consulted the case file for the purposes of the review proceedings.

13. On 26 March 2001 the Supreme Court, sitting as a second-instance court, dismissed the applicant's appeal.

14. On 8 April 2002 the Supreme Court's review bench quashed these decisions in their part concerning the claim for damages; this claim was remitted to the first instance court. Moreover, it upheld the discontinuation of the proceedings for compensation. The court observed that the time-limit for introducing this claim had been 17 August 1995 (i.e. six months after the applicant's acquittal on 17 February 1995); however, the action had only been filed on 27 October 1995. It noted that the applicant – who referred to having been banned from Hungary and prohibited from accessing the Hungarian courts by the war in Croatia, as well as to his stay in a Croatian hospital from 14 August 1995 – should have requested procedural reinstatement (*igazolási kérelem*) within six months from the removal of these obstacles on 7 August 1995 (the date on which he had retained his Hungarian lawyer). However, the court found that he did so belatedly, only on 22 January 1998. The Supreme Court's decision was served on the applicant's lawyer on 25 June 2002.

15. In the resumed proceedings for damages, on 12 July 2002 the Regional Court joined to this case another action which the applicant had filed against the Budapest Police Department on 4 October 2000, claiming damages for the alleged breach of the presumption of innocence in the criminal proceedings.

16. On 21 March 2003 the court requested the competent German authorities to make available to it copies of documents relating to the applicant's case, which they did on 20 November 2003. After the translation of the documents had been effected, a hearing took place on 20 May 2004.

17. On 12 October 2004 the court dismissed the entirety of the applicant's action as time-barred. It observed that the criminal proceedings in Hungary had ended on 20 July 1993 and the applicant's pre-trial detention in Germany on 19 December 1994. Consequently, the statutory five-year time-limit on the introduction of claims for damages had started on 20 December 1994 at the latest and ended on 20 December 1999. The applicant's claims for damages, filed in March and October 2000, were therefore statute-barred. On 7 December 2004 the applicant appealed.

18. On 10 March 2005 the Budapest Court of Appeal, in a partial decision, partly upheld and partly quashed the first-instance decision. It instructed the first-instance court to resume the examination of that part of the applicant's claims which concerned an alleged violation by the State of his 'personality rights' (*személyiségi jogsérelem*; non-pecuniary damage claimed in the amount of 67 million Hungarian forints (HUF)) and by the Police Department (non-pecuniary damage claimed in the amount of HUF 134 million).

19. On 17 November 2005 the Supreme Court upheld, in review proceedings, the partial decision.

20. The proceedings were resumed in respect of the claims not yet determined, and are still pending.

THE LAW

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

21. The applicant complained that the length of both proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

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

22. The Government contested that argument.

23. In respect of the proceedings for compensation, the period to be taken into consideration began on 27 October 1995 and ended on 25 June 2002. It thus lasted six years and eight months for three levels of jurisdiction.

24. In respect of the proceedings for damages, the period to be taken into consideration began on 6 March 2000 and has not yet ended. It has thus lasted six years for three levels of jurisdiction.

A. Admissibility

25. 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

26. 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 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).

27. 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 *Frydlender*, cited above).

28. 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 both 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

29. The applicant also complained that the proceedings for compensation were unfair, particularly as the belated communication of the submissions of 22 June 2000 infringed the principle of ‘equality of arms’. Moreover, he submitted that the decisions declaring his claim for compensation time-barred, and part of his claims for damages unfounded, were wrong. He relied on Article 6 § 1 of the Convention, cited above, and paragraph 2 of the same provision which ensures the presumption of innocence.

30. The Court observes that the proceedings for damages are still pending in part. This complaint is therefore premature and must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

31. Moreover, as regards the decisions on the compensation claims and on the claims for damages (to the extent that they have already been finally adjudicated), the Court reiterates that, in so far as the applicant's complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, according to Article 19 of the Convention its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

32. In the present case, the Court considers that there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair, in breach of Article 6 § 1. For the Court, the domestic court decisions determining that the applicant missed a procedural deadline or that some of his claims were statute-barred do not disclose any appearance of arbitrariness in either proceedings. Moreover, concerning the submissions of 22 June 2000, the Court is satisfied that the mere fact that the applicant's lawyer could react to the respondent's appeal brief only at the review stage does not render unfair those proceedings viewed as a whole. Furthermore, it considers that the submissions of the applicant in this connection do not raise any issue under Article 6 § 2.

33. 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.

34. Lastly, the applicant alleged that the Hungarian authorities' conduct, subsequent to his arrest and prior to his extradition to Germany, again amounted to a breach of Article 6 § 2 of the Convention.

35. The Court observes that the criminal proceedings against the applicant ended on 17 February 1995 with his acquittal. However, the application was introduced only on 10 September 2002, i.e. outside the six-month time-limit laid down in Article 35 § 1 of the Convention. It follows that this part of the application must be rejected, pursuant to Article 35 §§ 1 and 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed HUF 770,231,505¹, plus accrued interest calculated for the period from 7 December 2002 onwards, in respect of pecuniary damage. Moreover, he claimed HUF 50 million² in respect of non-pecuniary damage, together with HUF 326,188,317³ plus accrued interest calculated for the period from 7 December 2002 onwards.

38. The Government contested these claims.

39. 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 4,000 euros (EUR) under that head.

B. Costs and expenses

40. The applicant also claimed HUF 168,637⁴, plus accrued interest calculated for the period from 7 December 2002 onwards, for the costs and expenses incurred before the domestic courts and the Court. He claimed an additional 10% of any just satisfaction awarded by the Court plus 25% in value added tax.

41. The Government contested these claims.

42. 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 considers it reasonable to award the global sum of EUR 1,000 under this head.

C. Default interest

43. 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.

¹ EUR 3,044,000

² EUR 197,000

³ EUR 1,289,000

⁴ EUR 666

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 and EUR 1,000 (one thousand 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 18 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President