



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

SECOND SECTION

**CASE OF KLEMENT v. HUNGARY**

*(Application no. 31701/02)*

JUDGMENT

STRASBOURG

27 July 2006

**FINAL**

***22/08/2006***

*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 Klement 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,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 6 July 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 31701/02) 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 three Hungarian nationals, Mr Tibor Klement jr. (“the first applicant”), his father Mr Tibor Klement sr. (“the second applicant”) and his brother Mr Attila Klement (“the third applicant”) (altogether “the applicants”), on 6 August 2002.

2. The Hungarian Government (“the Government”) were represented by Mr L. Hölztl, Agent, Ministry of Justice and Law Enforcement.

3. On 5 October 2005 the Court decided to communicate the complaint concerning the length of the proceedings in respect of the second and third applicant. 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 applicants were born in 1955, 1934 and 1968 respectively, and live in Miskolc, Hungary.

5. In 1993 criminal proceedings were instituted against the applicants and other suspects. In the context of a series of complicated economic offences, they were charged with several counts of aggravated fraud, tax fraud, forgery of documents, bribery, fraudulent bankruptcy and accounting crimes. In the ensuing proceedings the applicants were assisted by defence counsel of their choice.

6. On 25 November 1996 the first applicant's bank accounts were frozen in order to secure the eventual confiscation of any criminal profit he might have made. Simultaneously, the applicants' homes were searched. On 10 June 1997 the Borsod-Abaúj-Zemplén County Regional Court changed the decision of 25 November 1996 and extended the freezing measure to include all of the first applicant's assets.

7. On 23 June 1995 the Miskolc District Public Prosecutor's Office preferred a bill of indictment. The charges concerned altogether eight defendants.

8. After having held 30 hearings between 17 June 1997 and 7 July 1998, on 8 July 1998 the Miskolc District Court convicted the applicants of several counts of fraud, tax fraud, fraudulent bankruptcy, forgery of documents as well as accounting crimes, while acquitting them of other charges. The first applicant was sentenced to seven years' imprisonment and to the confiscation of his frozen property in the value of 300 million Hungarian forints; the second and the third applicants were sentenced to three and a half years' and three years' imprisonment respectively. In the reasoning of its 76-page judgment, the District Court relied on evidence given by numerous witnesses, several opinions prepared by expert accountants, tax advisers and engineers, and documentary evidence.

9. In October 1998 the applicants submitted their initial and, on 14 May 1999, their detailed appeal. Meanwhile, on 6 January 1999 the Heves County Regional Court was appointed to hear the case, for reasons of incompatibility, instead of the competent Borsod-Abaúj-Zemplén County Regional Court.

10. After having held a hearing on 22 June 1999, on 20 September 2000 the Heves County Regional Court re-characterised part of the offences committed by the applicants, acquitted them of some charges, and reduced the first applicant's prison term to five years and six months, and the second applicant's term to three years. For the remainder, it upheld the first-instance judgment.

11. On 29 December 2000 the second and third applicants filed a petition for review. On 6 March 2002 the Supreme Court acquitted them of the charge of tax fraud and upheld the remainder of the second-instance judgment in their respect.

12. The first applicant's repeated requests for a retrial were finally refused on 21 May 2002.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (IN RESPECT OF THE LENGTH OF THE PROCEEDINGS CONCERNING THE SECOND AND THIRD APPLICANTS)

13. The second and third applicants complained that the length of the proceedings had been 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 fair ... hearing within a reasonable time by [a] ... tribunal...”

14. The Government contested that argument.

15. The period to be taken into consideration began in 1993 and ended on 6 March 2002. It thus lasted some nine years for three levels 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 applicants 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 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 in respect of the second and third applicants and failed to meet the “reasonable time” requirement.

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

## II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 7 OF THE CONVENTION (IN RESPECT OF THE LENGTH AND UNFAIRNESS OF THE PROCEEDINGS INVOLVING THE FIRST APPLICANT)

20. The first applicant complained that the proceedings conducted against him had lasted an unreasonably long time and had been unfair, in breach of Article 6 § 1. In the latter respect, he also relied on Article 7 of the Convention.

21. The Court observes that the case in its part concerning the first applicant ended with the Regional Court's judgment of 20 September 2000. However, the application was lodged only on 6 August 2002, i.e. more than six months later. The first applicant's unsuccessful requests for retrial did not qualify as an effective remedy and, therefore, did not influence the running of the six-month time-limit, laid down in Article 35 § 1 of the Convention.

22. It follows that this part of the application has been lodged out of time and must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

## III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 7 OF THE CONVENTION (IN RESPECT OF THE UNFAIRNESS OF THE PROCEEDINGS CONCERNING THE SECOND AND THIRD APPLICANT)

23. The second and third applicant also complained that they had been wrongly convicted in unfair proceedings, in breach of Articles 6 § 1 and 7, without substantiating their grievances.

24. In so far as the second and third applicant's complaint concerns the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, 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. 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).

25. 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 or arbitrary. Moreover, the applicants' submissions do not disclose any appearance of a violation of their rights under Article 7 of the Convention.

26. 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.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. Lastly, the first applicant complained under Article 1 of Protocol No. 1 of the freezing of his assets, and all the three applicants complained under Article 8 of the Convention of the searches of their homes in 1996.

28. The Court observes that the freezing and confiscation of the first applicant's assets became final with the Regional Court's judgment of 20 September 2000. Moreover, the house searches complained of took place on an unspecified date in 1996. However, the application was only lodged on 6 August 2002, i.e. more than six months later.

29. It follows that this part of the application likewise failed to comply with the six-month rule prescribed by Article 35 § 1, and must be rejected pursuant to Article 35 § 4 of the Convention.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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**

31. The second and third applicant each claimed 60,000 euros (EUR) in respect of pecuniary and EUR 25,000 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. On the one hand, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the second and third applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards them each EUR 5,000 under that head.

##### **B. Costs and expenses**

34. The applicants claimed altogether EUR 76,420 for the costs and expenses incurred before the domestic courts. For the expenses incurred

before the Court, the second and third applicant each claimed 457,500 Hungarian forints.<sup>1</sup>

35. The Government contested these claims.

36. According to the Court's case-law, an applicant is entitled to reimbursement of 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 second and third applicants, who were not represented by a lawyer, the sum of EUR 500 each under this head.

### C. Default interest

37. 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 conducted in respect of the second and third applicants 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 second and third applicants, each, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 500 (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 applicants' claim for just satisfaction.

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<sup>1</sup> EUR 1,745

Done in English, and notified in writing on 27 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President