CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF KALMÁR v. HUNGARY

(Application no. 32783/03)

JUDGMENT

STRASBOURG

3 October 2006

FINAL

03/01/2007

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 Kalmár 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. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 32783/03) 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 László Kalmár ("the applicant"), on 16 August 2003.

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

3. On 15 September 2005 the Court decided to give notice of the application to the Government. 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 1960 and lives in Budapest.

A. Civil proceedings

5. On 23 January 1996 the applicant brought an action in the Budapest Regional Court against the Budapest VII District Municipality, requesting it to find that his personality rights had been infringed by certain employees of the Municipality who had made allegedly untrue statements about him in the press.

6. On 26 January 1996 the Regional Court transferred the case to the Pest Central District Court. On 10 October 1996 the applicant extended his

action and, on 20 November 1996, he identified further respondents. On 10 January 1997 the District Court requested another court to make available to it the case file of a related case. After the latter had been terminated, the file was sent to the District Court on 22 September 1998.

7. The District Court held hearings on 26 April 1999, 2 February, 14 June and 29 November 2000 and 24 June 2002.

8. On 30 June 2003 the court invited the applicant to recapitulate his action.

9. The hearings scheduled for 2 September and 7 December 2004 were adjourned. Meanwhile, on 6 October 2004 the Budapest Regional Court dismissed the applicant's motion for bias, filed on 8 October 2003.

10. Further hearings were held on 22 March, 27 June and 3 November 2005. The proceedings are still pending at first instance.

B. Criminal proceedings

11. On 25 January 1994 a preliminary investigation was opened against the applicant. He was charged with causing unlawful damage (*rongálás*). He was also prosecuted for making a false accusation (*hamis vád*) and attempted subornation to perjury (*hamis tanúzásra felhívás kísérlete*). On 20 July 1994 and 19 September 1995, respectively, bills of indictment were preferred. In another case of false accusation, a bill of indictment was preferred on 21 December 1995. The applicant was entitled to copies of the bills of indictment under section 146(6) of the (Old) Code of Criminal Procedure.

12. The Pest Central District Court held hearings on 16 October 1995, 4 January and 20 March 1996. By decisions of 28 February and 21 June 1996, it joined all three cases.

13. Following a procedural dispute essentially concerning bias on the part of certain judges involved in the case, which started on 19 November 1997, the Supreme Court eventually assigned the case to the Buda Surroundings District Court on 1 March 1999.

14. On 28 July 1999 a further bill of indictment was preferred against the applicant in yet another case concerning 11 counts of false accusation. On 27 January 2000 these proceedings were joined to the existing ones.

15. The District Court held hearings on 20 April, 28 August and 17 November 2000, at which apparently only procedural steps were taken. After a hearing on 25 January 2001, at which five witnesses were interrogated, on 31 January 2001 the court acquitted the applicant of all charges save that of subornation to perjury, in respect of which it issued a reprimand. Although one witness, Mr M., whose testimony might have been relevant to this offence, could not be found and three further witnesses summoned had not appeared, the court was satisfied that the applicant's guilt was proven beyond reasonable doubt by Mr M.'s testimony given

during the investigation and by the letters in which the applicant had made the incriminated statement.

16. On appeal by the prosecution, on 27 November 2001 the Pest County Regional Court partly amended the first-instance judgment and convicted the applicant of one count of false accusation (an offence punishable by imprisonment of up to three years) and one count of subornation to perjury. As a cumulative sanction, it sentenced him to a fine of 30,000 Hungarian forints[1]. In the reasoning, it was specified that:

> "[...A]s another mitigating factor, the second-instance court also appreciated the very significant lapse of time [since the commission of the offences] ..."

17. In reply to the applicant's petition for review, on 12 June 2003 the Supreme Court reviewed the case and upheld the second instance judgment. In a detailed, lengthy analysis of the merits, it concluded that the applicant's conviction had been justified.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE CIVIL PROCEEDINGS

18. The applicant complained that the length of the civil 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 or of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

19. The Government contested that argument.

20. The period to be taken into consideration began on 23 January 1996 and has not yet ended. It has thus lasted over ten years and seven months for one level of jurisdiction.

A. Admissibility

21. 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.

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[1] Approximately EUR 110

B. Merits

22. 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).

23. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Frydlender*, cited above).

24. 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 jurisprudence on the subject, the Court considers that the length of the proceedings in the instant case 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

25. The applicant also complained that the criminal proceedings against him had lasted an unreasonably long time.

26. The Government argued that the applicant could not claim to be a victim of a violation of his Convention rights in this respect, since the Regional Court had expressly acknowledged that the proceedings had been unusually long and, consequently, had provided redress by substantially reducing the applicant's sentence. In any event, the authorities had displayed the requisite diligence in handling the case, complicated on account of the quadruple joinder. The applicant contested these views.

27. The Court notes that the Regional Court took account of the considerable lapse of time from the commission of the offences for which the applicant was convicted, and that this was one of the reasons for applying a lighter, cumulative sentence than the statutory minimum sanction for one of the offences alone. Against this background, the Court finds that the applicant obtained adequate redress for the alleged violation of his right under Article 6 § 1 of the Convention to the determination within a reasonable time of the criminal charges against him. Accordingly, he can no longer claim to be a victim, for the purposes of Article 34, of a violation of Article 6 § 1 in this respect. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention (see *Morby v. Luxembourg* (dec.), no. 27156/02, ECHR 2003-XI; *Lie and Bernsten* (dec.), no. 25130/94; *Tamás Kovács v. Hungary*, no. 67660/01, § 26, 28 September 2004).

28. The applicant also complained about the decisions given. In particular, he submitted that his conviction had been unfounded, because the courts had only heard a fraction of the relevant testimony, that he had learnt about the charge of subornation to perjury only at the hearing of 20 April 2000, and that this charge had been upheld by the courts without hearing any witnesses. He relied on Article 6 §§ 1 and 3. The latter paragraph provides as relevant:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence; ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

29. As regards the fairness of the criminal proceedings, in so far as the applicant's complaints may be understood to concern 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. 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).

30. In the present case, there is nothing in the case file indicating that the courts lacked impartiality or that the proceedings were otherwise unfair. In particular, the Court notes that the charge of subornation to perjury was contained in the bill of indictment filed on 19 September 1995, a copy of which the applicant had been entitled to. The applicant has not substantiated his claim that he was only informed of it in April 2000. Moreover, once convicted, the applicant had the possibility to challenge his conviction on this charge before the Regional and Supreme Courts, which both made a full review of the case. Furthermore, the Court reiterates that Article 6 cannot be interpreted as giving a defendant the right to have an infinite number of witnesses called. In the circumstances, it is satisfied that the fact that the courts heard some five witnesses and convicted the applicant of subornation to perjury, relying on clear documentary evidence, did not render the proceedings unfair as a whole. These complaints are therefore also to be

rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government contested the claim.

34. The Court considers that the applicant must have sustained some non-pecuniary damage and that it should award the full sum claimed.

B. Costs and expenses

35. The applicant also claimed EUR 100 for the costs and expenses incurred before the Court.

36. The Government did not express an opinion on the matter.

37. The Court considers that the sum claimed should be awarded in full.

C. Default interest

38. 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 civil 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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 100 (one 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* unanimously the remainder of the applicant's claim for just satisfaction.

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

S. DOLLÉ
Registrar

J.-P. COSTA
President