



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

SECOND SECTION

CASE OF FÖLDES AND FÖLDESNÉ HAJLIK v. HUNGARY

(Application no. 41463/02)

JUDGMENT

STRASBOURG

31 October 2006

FINAL

26/03/2007

In the case of Földes and Földesné Hajlik v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Jean-Paul Costa, *President*,

András Baka,

Ireneu Cabral Barreto,

Antonella Mularoni,

Elisabet Fura-Sandström,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 10 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 41463/02) 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 two Hungarian nationals, Mr Károly András Földes and Mrs Anna Földesné Hajlik (“the applicants”), on 1 November 2002.

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

3. On 13 September 2005 and 28 March 2006 respectively the Court decided to communicate the complaints concerning the length of the proceedings and the restriction placed on the first applicant’s freedom to leave the territory of the respondent State. 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 1957 and 1958 respectively and live in Miskolc.

5. On 10 December 1992 a company, E. Ltd., laid charges of fraudulent bankruptcy and other offences against the applicants, then a married couple. Subsequently, the Borsod County Police Department instituted criminal proceedings against the first applicant. On 17 November 1993 he was questioned as a suspect.

6. On 27 December 1993 the Borsod County Police Department prohibited the alienation of the applicants’ real property and their cars. On

22 February 1994 the Miskolc Public Prosecutor's Office upheld this measure, observing that it was justified because it pursued the aim of guaranteeing the satisfaction of claims brought by the potential civil parties.

7. Meanwhile, on 6 January 1994 the proceedings were extended to include the second applicant as a defendant.

8. On 17 January 1994 the Passport Office of the Ministry of the Interior withdrew the first applicant's passport until the termination of the criminal proceedings, under sections 2 and 13 of the Foreign Travel Act (Law no. 28 of 1989), in order to secure his availability for trial. That decision was confirmed by the Minister of the Interior on 25 March 1994.

9. On 26 October 1994 the Miskolc Public Prosecutor's Office preferred a bill of indictment against the applicants, charging them with fraudulent bankruptcy and other offences.

10. Meanwhile, the first applicant requested the Budapest Regional Court to review the administrative decision ordering the withdrawal of his passport. On 9 May 1995 the Regional Court upheld that decision, which in its view had been delivered in accordance with the law.

11. After sixteen hearings between 7 May 1996 and 4 February 2002, on 11 February 2002 the Miskolc District Court convicted the applicants and sentenced them to one year and eight months' imprisonment and one year and six months' imprisonment respectively, these sentences being suspended for three years. The court relied on the testimonies of witnesses, extensive documentary evidence and the opinion of three experts. In its reasoning, it appreciated, as a mitigating factor, the "very long time" which had elapsed since the commission of the offences, finding that this delay could not be imputed to the applicants.

12. On appeal, on 11 June 2002, the Borsod-Abaúj-Zemplén County Regional Court quashed the District Court's judgment on account of a serious procedural shortcoming and remitted the case to the first-instance court.

13. In reply to a request by the applicants to have the case file photocopied, on 17 June 2002 the Regional Court invited them to specify which particular elements they wished to have copied. The court pointed out that the photocopying of the whole case file, which contained several thousand pages (and was in any event available for personal consultation in its entirety), was impossible and also unnecessary, given that many documents were of little relevance.

14. In the resumed proceedings, eighteen hearings were held between 21 October 2002 and 19 May 2005.

15. On 23 May 2005 the District Court convicted the applicants of the offences of breaching accountancy rules (punishable by up to two years' imprisonment under Article 289 of the Criminal Code) and of fraudulent

bankruptcy (punishable by up to five years' imprisonment under Article 290 of the Criminal Code), and fined them each 270,000 Hungarian forints¹.

16. On 23 June 2005 the Borsod-Abaúj-Zemplén County Regional Court dismissed an appeal by the applicants. It ordered that the measures attaching the applicants' assets be discontinued.

17. On 5 January 2006 the Supreme Court's review bench quashed the second-instance judgment and remitted the case to the Regional Court.

18. In the resumed second-instance proceedings, on 8 June 2006 the Regional Court upheld in essence the applicants' convictions and fines. It dismissed the civil party's claims and lifted the prohibition on the alienation of the applicants' assets. In its reasoning, it reiterated:

“[I]n the process of imposing ‘legal detriments’ [*joghátrány*], the courts fully recognised the extraordinarily protracted nature of the proceedings as an important mitigating factor, and appreciated this circumstance when determining the punishments.”

19. In reply to a complaint in the applicants' appeal concerning the non-attendance of the experts at the court hearings, the court observed that their opinions had been added to the case file, since they had been extensively presented at the hearing on 10 February 2005. Despite an invitation by the court to do so, the applicants did not comment in writing on those opinions in the ensuing proceedings. Given that the opinions had at all times been available to the defence, copies had been dispatched to the parties, and the opinions had been explained at a hearing, the court was satisfied that the principle of “direct and oral proceedings” had not been infringed. In any event, it was convinced that, given the complexity of the case and the extensiveness of the opinions (amounting to several volumes), any meritorious criticism thereof would only have been possible in writing and the experts – whose views were otherwise essentially convergent – could likewise have reacted to such criticism in writing.

The judgment became final on the same day.

THE LAW

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

20. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement in Article 6 § 1 of the Convention, which reads as follows:

1. Approximately 1,000 euros.

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 17 November 1993 in respect of the first applicant, and on 6 January 1994 in respect of the second applicant, and ended on 8 June 2006. It thus lasted some twelve and a half years for three levels of jurisdiction.

23. The Government argued that the applicants could not claim to be victims of violations of the Convention in this connection, since the domestic courts had expressly acknowledged that the proceedings had been unusually long and had provided redress by imposing very light sentences.

The applicants contested these views.

24. The Court observes that both the District Court and the Regional Court held that the duration of the proceedings had been extraordinarily long, and declared that this was a strong mitigating factor. As a cumulative sentence for the two offences, which were punishable by between two and five years' imprisonment, only fines of a moderate amount were imposed on the applicants. Against this background, the Court finds that the applicants obtained adequate redress for the alleged violation of their right, under Article 6 § 1 of the Convention, to the determination within a reasonable time of the criminal charges against them. Accordingly, in this connection, they can no longer claim to be victims, for the purposes of Article 34, of a violation of Article 6 § 1. 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 Berntsen v. Norway* (dec.), no. 25130/94, 16 December 1999; and *Tamás Kovács v. Hungary*, no. 67660/01, § 26, 28 September 2004).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

25. The applicants further complained that the length of the proceedings had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1, in that their assets had been attached by the authorities for over twelve years. Article 1 of Protocol No. 1 provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

26. The Court observes that the measure prohibiting the alienation of the applicants' assets served to guarantee the satisfaction of any claims brought by potential civil parties. It considers that such a restriction can in principle be considered "necessary to control the use of property in accordance with the general interest", within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A). It is true that in this particular case the application of this measure lasted a long time. However, even assuming that the applicants have exhausted domestic remedies in this respect, the Court is satisfied that the national courts, in imposing only moderate fines on the applicants expressly because of the excessively protracted nature of the case, although the offences in question were punishable by prison sentences of considerable length, also afforded them adequate redress for any detriment they may have suffered as a result of the lengthy immobilisation of their assets.

This complaint is therefore likewise manifestly ill-founded within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (FAIR HEARING)

27. The applicants also complained that the national courts had not examined all the witnesses proposed by them and had not accepted some of their arguments proposing the taking of further evidence. Moreover, they submitted that the experts involved in the case had never been available for examination at the hearings, and that the authorities had been reluctant to provide them with photocopies of the documents in the case file. They relied on Article 6 §§ 3 (b), (c) and (d) of the Convention, the relevant parts of which provide:

"Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(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;

..."

28. In so far as the applicants' complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, under 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 (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court stresses that the guarantees contained in Article 6 §§ 1 and 3 of the Convention cannot be interpreted as granting a defendant the right to have an infinite number of witnesses called.

29. In the present case, the Court is satisfied that there is nothing in the case file disclosing any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary. The mere fact that the applicants would have been required to submit in writing their comments, questions or criticism relating to the expert opinions, or that photocopies of the case file were available only on condition that the defendants make a selection of the required documents, does not render the proceedings unfair as such, inasmuch as the opinions were presented in detail in court and the case file was fully accessible to the defence.

It follows that this complaint is similarly manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 § 2 OF PROTOCOL No. 4 TO THE CONVENTION

30. Lastly, the first applicant complained that the national authorities had withdrawn his passport pending the trial. As a consequence, from 6 January 1994 onwards, he had been unable to leave the country (at least until 1 May 2004, the date of Hungary's accession to the European Union, which enabled its citizens to travel to certain European Union member States with their national identity card only). In his view, the total travel ban lasting over a decade constituted a disproportionate measure in breach of Article 2 § 2 of Protocol No. 4 to the Convention. The relevant parts of Article 2 of Protocol No. 4 provide:

“2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests

of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The Government did not address this issue.

A. Admissibility

31. 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

32. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person a right to liberty of movement, including the right to leave any country for another country to which he or she may be admitted. Any measure restricting that right must be lawful, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision and strike a fair balance between the public interest and the individual’s rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V).

33. The Court is satisfied that the interference with the applicant’s right under Article 2 of Protocol No. 4 – whose existence and lawfulness was not in dispute between the parties – pursued the legitimate aim of securing the first applicant’s availability for trial, and hence the maintenance of public order.

34. As regards proportionality, the first applicant emphasised that, after the Regional Court’s final decision in the matter on 9 May 1995, the national courts had never considered the issue again and the travel restriction had been in place ever since.

35. The Court notes that the first applicant’s passport was withdrawn on 17 January 1994, that this decision was upheld on 9 May 1995, and that no further decision was taken on the matter thereafter. Consequently, the prohibition against the first applicant’s leaving the country remained unchanged for over ten years, until 1 May 2004, when the possibility of travelling within the European Union with a national identity card became available. The Court reiterates that, even where a restriction on the individual’s freedom of movement was initially warranted, maintaining it automatically over a lengthy period of time may become a disproportionate measure, violating the individual’s rights (see *Riener v. Bulgaria*, no. 46343/99, § 121, 23 May 2006; *Luordo v. Italy*, no. 32190/96, ECHR 2003-IX; and, *mutatis mutandis*, *İletmiş v. Turkey*, no. 29871/96, ECHR 2005-XII).

36. In the Court's view, the authorities are not entitled to maintain over lengthy periods restrictions on the individual's freedom of movement without a periodic reassessment of their justification (see *Riener*, cited above, § 124). However, such reassessment has never taken place in the first applicant's case, which means that the travel ban was in reality an automatic, blanket measure of indefinite duration. The Court considers that this ran counter to the authorities' duty under Article 2 of Protocol No. 4 to take appropriate care to ensure that any interference with the right to leave one's country remains justified and proportionate throughout its duration, in the individual circumstances of the case.

It follows that there has been a violation of the first applicant's right to leave his country, as guaranteed by Article 2 § 2 of Protocol No. 4 to the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The first applicant claimed 3 million euros (EUR) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the first applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

41. No claim was made under this head.

C. Default interest

42. 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 travel ban imposed on the first applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 2 § 2 of Protocol No. 4 to the Convention in respect of the first applicant;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, 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 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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Jean-Paul Costa
President