



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

SECOND SECTION

CASE OF CZMARKÓ v. HUNGARY

(Application no. 26242/04)

JUDGMENT

STRASBOURG

9 October 2007

FINAL

31/03/2008

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 Czmarkó v. Hungary,

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

Mrs F. TULKENS, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŒ,

Mr M. UGREKHELIDZE,

Mr V. ZAGREBELSKY,

Mrs A. MULARONI, *judges*,

and Mrs F. ELENŞ-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 26242/04) 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 Gyula Czmarkó.

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

3. On 30 January 2007 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1939 and lives in Vác.

5. The facts of the case as submitted by the parties, may be summarised as follows.

A. Labour dispute

6. On 17 July 1997 the applicant's employment with the Vác Health Care School was terminated. He challenged the school's decision before the

Budapest Labour Court. On 7 February 2001 the Labour Court dismissed his action. The applicant appealed.

7. On 14 September 2001 the Budapest Regional Court upheld the first-instance decision. The applicant lodged a petition for review with the Supreme Court. On 29 January 2003 the review bench of the Supreme Court finally dismissed his action. The applicant requested its re-opening, but to no avail.

B. Civil proceedings against a Belarus official

8. In December 1999 the applicant, transporting medical equipment in his lorry, was halted at the Belarus border. While he was completing the necessary documents, the contents of his lorry were robbed. Purportedly in order to clarify the events, the Belarus authorities took the applicant into custody for approximately two weeks, after which he was allowed to return to Hungary.

9. On 23 September 2001 the applicant initiated a civil action in the Vác District Court against a Belarus official who had participated in the above events.

10. On 6 February 2003 the District Court informed the applicant that his case had been registered as a claim for compensation. In view of the fact that the case file had meanwhile been lost, it requested him to reproduce certain documents.

11. On 4 April 2003 the applicant again submitted his action.

12. On 20 April 2003 the District Court ordered the applicant to state his financial situation with a view to determining his request for legal aid. On 20 May 2003 the applicant submitted the necessary documents.

13. The case is still pending before the District Court.

C. Civil proceedings against an airline

14. In 1993 the applicant's luggage was lost during his flight to Canada. The applicant unsuccessfully requested the airline to compensate him.

15. On 23 September 2001 the applicant brought an action in compensation against the company. On 6 February 2003 the Vác District Court informed the applicant that that case file had been lost and requested him to reproduce certain documents.

16. The case is apparently still pending before the District Court.

THE LAW

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

17. The applicant complained that the length of the proceedings described at chapters “B” and “C” above (paragraphs 8-16) 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 ... hearing within a reasonable time by [a] ... tribunal...”

18. The Government contested that argument.

19. As regards these proceedings, the period to be taken into consideration began on 23 September 2001. According to the information provided by the parties and the elements available in the case file to date, it has not yet ended. Thus the proceedings have so far lasted six years for one level of jurisdiction.

A. Admissibility

20. 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

21. 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).

22. 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).

23. 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 finds that 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

24. The applicant further complained that the length of the proceedings described in chapter “C” above (paragraphs 14-16) had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

25. The Court notes that this complaint is linked to that under Article 6 § 1 of the Convention which has already been examined above and must therefore, likewise, be declared admissible.

26. However, having regard to its finding under Article 6 § 1 (paragraph 23 above), the Court considers that it is not necessary to examine separately whether there has also been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The Court observes that the applicant complained under Article 6 § 1 of the Convention about the outcome, the unfairness and the length of the proceedings described under chapter “A” above (paragraphs 6-7). The Court observes that the final decision in this case was given by the review bench of the Supreme Court on 29 January 2003. However, the application was only introduced on 1 May 2004, i.e. more than six months later (cf. Article 35 §§ 1 and 4 of the Convention).

28. The Court further observes that the applicant complained under Article 13 in the connection of the proceedings described in chapters “B” and “C”. However, he only complained that the length of the proceedings infringed his right to an effective remedy rather than about the absence of a remedy to speed up the proceedings. Since he did not rely on any substantive Article of the Convention to be examined in conjunction with the Article 13 complaint, this aspect of the case is incompatible *ratione materiae*, with the provisions of the Convention (cf. Article 35 §§ 3 and 4).

29. Moreover, the Court notes that, relying on Articles 5 and 6 of the Convention, the applicant complained that his arrest in Belarus was unlawful. In this connection he also relied on Article 14 of the Convention and Article 2 of Protocol No. 4 to the Convention, without substantiating or developing these complaints. The Court notes that the Republic of Belarus is not a Contracting Party to the Convention; therefore, these complaints are incompatible *ratione personae* with the provisions of the Convention (cf. Article 35 §§ 3 and 4).

30. It follows that these remaining complaints must be declared inadmissible pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

IV. 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 22,082 US dollars¹ in respect of pecuniary and non-pecuniary damage.

33. The Government contested these claims.

34. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, on an equitable basis, it awards the applicant EUR 7,000 for non-pecuniary damages.

B. Costs and expenses

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

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

37. According to the Court's case-law, an applicant is entitled to the 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. The Court notes that the applicant's costs claim has not been substantiated by any relevant documents and must therefore be rejected.

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 complaints under chapters “B” and “C” concerning the excessive length of the proceedings and the complaint under chapter “C”

¹ Approximately 16,172 euros (EUR)

concerning the alleged infringement of property rights 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* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
4. *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 7,000 (seven 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

F. ELENS-PASSOS
Deputy Registrar

F. TULKENS
President