



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

SECOND SECTION

CASE OF BODON v. HUNGARY

(Application no. 16412/05)

JUDGMENT

STRASBOURG

30 October 2007

FINAL

30/01/2008

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 Bodon 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 G. BONELLO,

Mr I. CABRAL BARRETO,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 16412/05) 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 Ferenc Bodon (“the applicant”), on 3 May 2005.

2. The applicant was represented by Mr I. Barbalics, a lawyer practising in Nagyatád. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 16 April 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 1955 and lives in Budapest.

5. On 13 June 1996 the applicant was arrested on charges of smuggling. He was detained until 10 June 1997.

6. On 26 May 1998 the applicant and his 11 accomplices were charged by the Budapest XVIII/XIX District Public Prosecutor's Office with having participated in a gang of smugglers involved in illegally importing

merchandise (mainly perfumes and sweets) worth over 100 million Hungarian forints, from Austria to Hungary.

7. On 17 December 1998 the Customs Authority seized a large amount of merchandise, mainly spirits and cosmetics, held by the applicant.

8. After having held several hearings and obtained the opinions of experts, on 18 June 2004 the Budapest XVIII/XIX District Court held a public hearing, which the applicant's lawyer attended, and discontinued the criminal proceedings against the applicant and his accomplices, observing that their conduct was no longer punishable subsequent to Hungary's accession to the European Union. The court ordered that the seized goods should be returned to the applicant. He states, however, that the Customs Authority had meanwhile sold the merchandise. The decision was served on the applicant's lawyer on 8 November 2004.

9. On 1 April 2005 the applicant filed an action against the State for compensation on account of his pre-trial detention. On 7 June 2005 the Budapest Regional Court dismissed the action, in a procedural decision, observing that it had been introduced outside the six-month statutory time-limit which had run from the pronouncement of the final decision on 18 June 2004.

10. On 24 November 2005 the Budapest Court of Appeal quashed this decision, holding that the applicant's claims had to be examined on their merits.

11. In the resumed proceedings, on 1 March 2006 the Regional Court dismissed the applicant's claims as being statute-barred.

12. On 26 September 2006 the Court of Appeal upheld this decision. Examining the applicant's claims from the perspective of the Codes of Criminal and Civil Procedure and Articles 5 § 5 and 13 of the Convention, the Court of Appeal was satisfied that the final decision had been pronounced on 18 June 2004 and that the applicant's claims were consequently statute-barred.

13. On 26 April 2007 the Supreme Court dismissed the applicant's petition for review.

THE LAW

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

14. The applicant complained that the length of the criminal 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 ... hearing within a reasonable time by [a] ... tribunal...”

15. The Government contested that argument.

16. The period to be taken into consideration began on 13 June 1996 and ended on 8 November 2004, when the final decision of 18 June 2004 was served on the applicant. It thus lasted over eight years and four months for one level of jurisdiction.

A. Admissibility

17. 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

18. 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, and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

19. 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 *Pélissier and Sassi*, cited above).

20. 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 circumstances. Having regard to its case-law on the subject, the Court considers 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant also complained under Article 5 of the Convention about his pre-trial detention. Moreover, relying on Articles 13 and 17 of the Convention and Article 1 of Protocol No. 1, he complained that the order to return the seized goods to him had only been made at the end of lengthy proceedings – and in vain, since the Customs Authority had meanwhile sold them.

22. However, as regards the applicant's pre-trial detention, the Court notes that it ended on 10 June 1997, more than six months before the application was lodged with the Court. Accordingly, this part of the case must be rejected as being out of time. Insofar as the Article 5 complaint is also related to the applicant's claim for compensation, the Court observes that the applicant failed to exhaust domestic remedies in due and proper form (paragraphs 9-11 above). This part of the application must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

23. As to the complaint under Article 1 of Protocol No. 1, in the Court's view, the seizure of the applicant's merchandise had been necessary to control the use of property to secure the possible payment of penalties, within the meaning of the second paragraph of Article 1 of Protocol No. 1. In the absence of any evidence that this measure had been arbitrary, the Court finds that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

24. To the extent that this complaint may concern the impossibility to recover the merchandise in kind, the Court considers that the applicant should have sued the Customs Authority for the value of the goods which had been in its custody but were sold, apparently due to their perishable nature, or for any financial loss he may have suffered because of this. He has therefore failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

25. Lastly, since the applicant had at his disposal a possible civil action to recover the value of the lost goods, although he did not use it, his Article 13 complaint is also manifestly ill-founded.

26. It follows that this part of the case must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, plus EUR 100 in respect of each day of his detention.

29. The Government contested these claims.

30. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8,000.

B. Costs and expenses

31. The applicant claimed EUR 5,068 in respect of the costs and expenses incurred in the domestic proceedings for compensation, and EUR 2,500 in respect of those incurred before the Court.

32. The Government contested these claims.

33. 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. Moreover, it notes that request relating to the proceedings before the Court has not been substantiated by any relevant documents and must therefore, likewise, be rejected.

C. Default interest

34. 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 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 8,000 (eight 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

F. TULKENS
President