



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

SECOND SECTION

CASE OF TÓT v. HUNGARY AND ITALY

(Application no. 44746/04)

JUDGMENT

STRASBOURG

5 February 2008

FINAL

07/07/2008

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 Tót v. Hungary and Italy,

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

Françoise Tulkens, *President*,

András Baka,

Rıza Türmen,

Mindia Ugrekhelidze,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović, *judges*,

Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 44746/04) against the Republic of Hungary and Italy 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 György Tót.

2. On 13 February 2007 the Court decided to give notice of the application to the Hungarian Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

THE FACTS

4. The applicant was born in 1943 and lives in Üröm.

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

6. The applicant is a retired truck driver. Between 1982 and 1989 he worked for an Italian company, but as the employee of Hungarocamion, a Hungarian transportation company. The Italian company paid Hungarocamion a certain monthly sum corresponding to the work performed by the applicant. For his part, the applicant received the salary from Hungarocamion stipulated in his employment contract.

7. Since he allegedly did not receive the whole sum transferred by the Italian company to Hungarocamion, the applicant initiated civil proceedings

against the Italian company. The Italian courts partly found for him on 19 March 1997 and, finally at second-instance, on 10 May 2001.

8. Meanwhile, on 30 April 1993 the applicant brought an action against Hungarocamion before the Budapest Labour Court, alleging that the respondent had not transferred to him all the money which it had received from its Italian partner as his salary.

9. On 2 February, 31 August and 26 October 1994 the Labour Court held hearings.

10. Upon the applicant's request, the Labour Court suspended the proceedings on 10 November 1994 in view of the applicant's Italian court case. The proceedings only resumed on 7 February 2000 at the applicant's request.

11. On 15 February 2000 the Labour Court invited the applicant to submit the certified translation of the documents produced in the Italian proceedings. The applicant complied with this order on 24 May 2000.

12. On 30 May and 10 October 2001, 9 January, 17 April and 11 September 2002, 28 May and 10 September 2003, the Labour Court held hearings.

13. On 24 September 2003 the Labour Court dismissed the applicant's action, finding that the respondent's salary policy had been in compliance with the law in force at the relevant time. The Labour Court relied on documentary evidence and testimony given by witnesses and the parties.

14. On appeal, the Budapest Regional Court upheld the first-instance decision on 6 May 2004.

15. On 4 July 2004 the applicant lodged a petition for review with the Supreme Court, which was dismissed on 13 April 2005.

THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in 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..."

17. The Hungarian Government contested that argument.

18. As regards these proceedings, the period to be taken into consideration began on 30 April 1993 and ended on 13 April 2005. It thus lasted nearly twelve years before three levels of jurisdiction. From this period, the length of the Italian proceedings (from 10 November 1994 until

7 February 2000, nearly six years and three months) should be deducted since the Hungarian authorities were not responsible or able to speed them up. Accordingly, the relevant period is five years and nine months.

A. Admissibility

19. 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

20. 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).

21. 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).

22. Having examined all the material submitted to it, the Court considers that the Hungarian 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 finds that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The Court observes that the applicant complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings. The Court notes that these complaints are essentially of a fourth-instance nature: there is no indication in the case file that the domestic courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary. 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.

25. Insofar as the above complaint may be understood to be directed against Italy, the Court observes that these proceedings ended on 10 May 2001 with the final decision of the second-instance court. However, the application was only lodged on 8 July 2004. It follows that this part of the

application has been introduced outside the six-month time-limit prescribed by Article 35 § 1 and must be rejected, pursuant to Article 35 § 4 of the Convention.

26. It follows that these remaining complaints must be declared inadmissible 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 115,726,753 Hungarian forints (HUF)¹ in respect of pecuniary and non-pecuniary damage.

29. The Hungarian Government contested these claims.

30. 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 2,500 for non-pecuniary damages.

B. Costs and expenses

31. The applicant also claimed EUR 3,170 for the costs and expenses incurred before the domestic courts and the Court.

32. The Hungarian Government did not express an opinion on the matter

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 finds it appropriate to award the global sum of EUR 400 to cover the various costs.

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.

¹ Approximately 458,765 euros (EUR)

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 Hungarian 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage and EUR 400 (four hundred euros) in respect of costs and expenses, to be converted into the national currency of the Hungarian State at the rate applicable at the date of the 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President