



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

SECOND SECTION

CASE OF LAJOS KOVÁCS v. HUNGARY

(Application no. 8174/05)

JUDGMENT

STRASBOURG

17 July 2008

FINAL

01/12/2008

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 Lajos Kovács v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 24 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 8174/05) 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 Lajos Kovács (“the applicant”), on 5 January 2005.

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

3. On 10 March 2008 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Veszprém-Kádárta.

5. In the context of an inquiry, the Bács-Kiskun County Directorate of the Hungarian Tax Authority established that the applicant had failed to pay 2,339,604 Hungarian Forints (approximately 9,167 euros). It ordered him to pay the outstanding tax plus a fine of HUF 1,119,000 (approximately 4,384 euros) and HUF 1,948,000 (approximately 7,771 euros) in accrued interest.

6. The applicant appealed. On 10 August 1998 the National Tax Authority upheld the first-instance administrative decision. It found that the

applicant had received, on a regular basis, sums from a private company for his work but he had failed to pay taxes on this income. The Tax Authority relied on documentary evidence.

7. In September 1998 the applicant sought judicial review of the final administrative decision before the Bács-Kiskun County Regional Court.

8. On 28 November 2002 the Regional Court found, after having held seven hearings, that the Tax Authority had acted in compliance with the law and dismissed the applicant's action. The applicant appealed.

9. The Budapest Court of Appeal, after having held two hearings, upheld the first-instance decision on 22 September 2004. The courts relied on documentary evidence and the testimony of the parties.

THE LAW

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

10. 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 ...any criminal charges against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

11. The Government argued that the contested proceedings could not be regarded as a legal dispute concerning the applicant's civil rights and obligations, since tax disputes fall outside the scope of Article 6 of the Convention. They were of the opinion that the application should be declared incompatible *ratione materiae* with the provisions of the Convention.

12. The applicant did not put forward any argument on this point.

13. The Court recalls that the assessment of tax and the imposition of surcharges fall outside the scope of Article 6 under its civil head (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII). The issue therefore arises in this case whether the proceedings were "criminal" within the autonomous meaning of Article 6 and thus attracted the guarantees of Article 6 under that head.

14. The Court first observes that while there is no doubt as to the importance of tax to the effective functioning of the State, it is not convinced that removing procedural safeguards in the imposition of punitive penalties in the sphere of taxation is necessary to maintain the efficacy of

the fiscal system or indeed can be regarded as consonant with the spirit and purpose of the Convention (see *Jussila v. Finland* [GC], no. 73053/01, §§ 35-36, ECHR 2006-...).

15. Furthermore, the tax surcharges in the present case were not intended as pecuniary compensation for damage but as a punishment to deter re-offending. Without more, the Court considers that this alone establishes the criminal nature of the offence (see *Jussila*, cited above, § 38). Hence, Article 6 applies under its criminal head.

16. It follows that the Government preliminary objection must be dismissed. Furthermore, the Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35§ 3 of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. The Government argued that the length of the proceedings did not exceed a reasonable time.

18. The period to be taken into consideration began on 10 August 1998 and ended on 22 September 2004. It thus lasted six years and one month for two administrative and two court levels of jurisdiction.

19. 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).

20. 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).

21. 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 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. The Court observes that the applicant also complained under Article 6 of the Convention about the outcome and the unfairness of the proceedings. However, the Court considers that these complaints are essentially of a fourth instance nature: there is no indication in the case file

that the domestic authorities or courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary.

23. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 114,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

26. The Government contested these claims.

27. 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 1,200 for non-pecuniary damages.

B. Costs and expenses

28. The applicant did not put forward any claim under this head.

C. Default interest

29. 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 according to Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement;

(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 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President