



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

SECOND SECTION

CASE OF KALMÁR AND LORENCZ v. HUNGARY

(Application no. 31692/06)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Kalmár and Lorencz 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,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 31692/06) 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 László Kalmár and his mother, Ms Terézia Lorencz (“the applicants”), on 17 May 2006.

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

3. On 14 February 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1960 and 1928 respectively and live in Budapest.

A. The first set of proceedings

5. On 8 November 1996 the applicants brought an action against Mr M., claiming moral damages for the latter’s insulting behaviour. The Dombóvár

District Court initially suspended the proceedings pending the outcome of the criminal case being conducted against the respondent. A first judgment was eventually given on 15 April 1998 but was quashed on appeal on 27 May 1999. Subsequently, the case was assigned to the Szekszárd District Court. This court joined two further cases pending between the same parties to the principal action.

6. The joint proceedings later continued before the Buda Surroundings District Court. This court held numerous hearings between 24 January 2002 and 27 March 2007. Although the applicants did not attend several hearings, it appears that they requested the court to continue with their case in their absence. Ultimately, the District Court found for the applicants on 31 May 2007.

B. The second set of proceedings

7. On 10 June 1999 Mr Kalmár brought an official liability action against the Attorney General's Office. The case was assigned to the Pest County Regional Court. On 17 September 2000 this court adjudicated some of the plaintiff's claims and disjoined others, the examination of which was suspended pending the outcome of another case. In the latter connection, the proceedings were resumed on 19 December 2001. However, no hearing took place until 4 October 2006. Further hearings took place on 14 March 2007 and 14 April 2008. According to the information in the case file, this case is still pending.

C. The third set of proceedings

8. In 2001 Mr Kalmár was found guilty of making false accusations. On 30 July 2003 he requested a retrial. According to the information in the case file, that request is still pending.

D. The fourth set of proceedings

9. On 5 August 2004 Ms J. filed a criminal report against Mr Kalmár, accusing him of libel. A hearing took place on 20 March 2006, at which Mr Kalmár complained that he had not been properly informed of the charges against him. His motion for bias against the police authority dealing with the case was dismissed, and his ensuing complaint, filed on 3 December 2004, does not appear to have been answered.

10. On 17 May 2006 Mr Kalmár challenged the Budapest XX/XXI/XXIII District Court for bias. His motion was rejected on 2 June 2006. According to the information in the case file, these proceedings are still pending.

THE LAW

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

11. The applicants complained that the length of the civil proceedings, described under points “A” and “B” above, had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention. In addition, Mr Kalmár complained in general terms about the inefficient conduct of the authorities in the criminal proceedings under point “D”, and submitted in particular that his complaint lodged on 3 December 2004 against the dismissal of his motion for bias had never been dealt with. For the Court, the essence of these submissions is a complaint concerning the protracted nature of the criminal proceedings.

Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

12. The Government contested that argument.

13. The period to be taken into consideration in proceedings “A” began on 8 November 1996 and ended on 31 May 2007. It thus lasted over ten and a half years for one level of jurisdiction.

14. The periods to be taken into consideration in proceedings “B” and “D” began on 10 June 1999 and 5 August 2004 respectively and, according to the information in the case file provided by the parties, have not yet ended at the date of the adoption of the present judgment. They have thus lasted nine years and three months and four years and one month respectively, for one level of jurisdiction.

A. Admissibility

15. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

16. The Court reiterates that the reasonableness of the length of criminal 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67,

ECHR 1999-II). In addition, in civil cases, the Court may take into account what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

17. 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.

18. 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 both the civil and criminal 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

19. Mr Kalmár also complained about the protracted nature of proceedings under point “C”. However, the Court observes that Article 6 is not applicable to proceedings with a view to the reopening of terminated criminal cases. This complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

20. Mr Kalmár further complained under Article 6 § 3 of the Convention that in proceedings under point “D” there had been an absence of proper information about the charges against him. However, the Court observes that those proceedings are still pending and, therefore, any complaint about their unfairness is premature. This complaint must therefore be declared inadmissible, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicants claimed 2,000 euros (EUR) jointly in respect of pecuniary damage. In addition, in respect of non-pecuniary damage, Mr Kalmár claimed EUR 30,000 and Ms Lorencz EUR 16,000.

23. The Government contested these claims.

24. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicants must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards Mr Kalmár EUR 12,000 and Ms Lorencz EUR 6,000 under that head.

B. Costs and expenses

25. The applicants also claimed EUR 200 jointly for the costs and expenses incurred before the Court.

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

27. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum claimed in full.

C. Default interest

28. 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 concerning the excessive length of proceedings under points "A", "B" and "D" 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 within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the

respondent State is to pay the following sums, to be converted into Hungarian forints at the rate applicable at the date of settlement:

- (i) EUR 12,000 (twelve thousand euros) to Mr Kalmár, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 6,000 (six thousand euros) to Ms Lorencz, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (iii) EUR 200 (two hundred euros) to the applicants, jointly, in respect of costs and expenses, plus any tax that may be chargeable to them;
- (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President