



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

SECOND SECTION

CASE OF BESSENYEI v. HUNGARY

(Application no. 37509/06)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Bessenyei v. Hungary,

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

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

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

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 37509/06) 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 a Hungarian national, Mr Károly Bessenyei (“the applicant”), on 30 May 2006.

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

3. On 11 March 2008 the President of the Second Section decided to give notice of the application to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1956 and lives in Kál, Hungary.

5. On an unspecified date in early 2001 criminal proceedings were initiated against the applicant. On completion of the investigation, a bill of indictment was preferred on 5 June 2001. The applicant and his accomplice were charged with forgery of official documents.

6. After having held five hearings and obtained the opinion of an expert, on 28 May 2003 the Hatvan District Court gave judgment.

7. On appeal, on 27 February 2004 the Heves County Regional Court quashed this judgment and remitted the case to the first-instance court.

8. In the resumed proceedings, the case was joined to another trial on 6 October 2004.

9. Following four hearings, on 29 September 2005 the applicant was acquitted. After the prosecution had withdrawn its appeal, this judgment gained binding force on 7 December 2005. The applicant was notified of this on 17 January 2006.

10. Between 25 June 2001 and 1 July 2003 the applicant was prevented from travelling abroad, under section 16(1a) of Act no. 12 of 1998, because criminal proceedings involving serious charges were pending against him. This prohibition ceased to exist because of a change in the legislation.

THE LAW

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

11. The applicant complained that the length of the 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...”

12. The Government contested that argument.

13. The period to be taken into consideration began on an unspecified date in early 2001 and ended on 17 January 2006. It thus lasted approximately five years for two levels of jurisdiction.

A. Admissibility

14. 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

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

16. 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).

17. 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, especially in view of the fact that the applicant was eventually acquitted. 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 2 § 2 OF PROTOCOL No. 4 TO THE CONVENTION

18. The applicant also complained that the national authorities had prevented him from travelling abroad pending the trial – in his opinion, a disproportionate measure in breach of Article 2 § 2 of Protocol No. 4 to the Convention.

Article 2 of Protocol No. 4 provides in so far as relevant:

“2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

19. The Government contested that view, arguing that the travel ban had only lasted from 25 June 2001 until 1 July 2003, after which date the applicant could have exercised his right to leave the country.

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 Article 2 of Protocol No. 4 guarantees to any person the right to freedom of movement, including the right to leave any country for another country to which he or she may be admitted. Any measure restricting that right must be lawful, pursue one of the legitimate

aims referred to in the third paragraph of the above-mentioned Convention provision and strike a fair balance between the public interest and the individual's rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V).

22. The Court is satisfied that the interference with the applicant's rights under Article 2 of Protocol No. 4 – whose existence and lawfulness was not in dispute between the parties – pursued the legitimate aim of securing his availability for trial, and hence the maintenance of public order.

23. However, it must be observed that the prohibition in question remained unchanged for over two years and was terminated due to a legislative amendment. The Court reiterates that, even where a restriction on the individual's freedom of movement was initially warranted, maintaining it automatically over a lengthy period of time may become a disproportionate measure, violating the individual's rights (see *Riener v. Bulgaria*, no. 46343/99, § 121, 23 May 2006; *Luordo v. Italy*, no. 32190/96, ECHR 2003-IX; *Földes and Földesné Hajlik v. Hungary*, no. 41463/02, §§ 30-36, ECHR 2006-...; and, *mutatis mutandis*, *İletmiş v. Turkey*, no. 29871/96, ECHR 2005-XII). In the Court's view, the authorities are not entitled to maintain over lengthy periods restrictions on an individual's freedom of movement without a periodic reassessment of their justification (see *Riener*, cited above, § 124). However, such a reassessment never took place in the applicant's case, which means that the travel ban was in reality an automatic, blanket measure of indefinite duration, which ended only by virtue of an intervening change in the legislation.

24. The Court considers that this ran counter to the authorities' duty under Article 2 of Protocol No. 4 to take appropriate care to ensure that any interference with the right to leave one's country remains justified and proportionate throughout its duration, in the individual circumstances of the case.

25. It follows that there has been a violation of the applicant's right to leave his country, as guaranteed by Article 2 § 2 of Protocol No. 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 7 million Hungarian forints¹ in respect of non-pecuniary damage.

28. The Government contested the claim.

29. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head.

B. Costs and expenses

30. The applicant made no costs claim.

C. Default interest

31. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 2 § 2 of Protocol No. 4 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 4,000 (four thousand 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;

¹ 29,400 euros (EUR)

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President