



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

SECOND SECTION

CASE OF AUPEK v. HUNGARY

(Application no. 15482/05)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Aupek 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, Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 15482/05) 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 Gábor Aupek (“the applicant”), on 20 April 2005.

2. The applicant was represented by Mr I. Tóth, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Hóltzl, Agent, Ministry of Justice.

3. On 29 April 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1966 and lives in Ercsi.

5. On 19 August 1998 the applicant, a truck driver, was involved in a multiple road accident. Subsequently he was interrogated as a suspect for having negligently caused the death of six people and the serious injury of five others, three of whom became permanently disabled.

6. After several hearings at which numerous witnesses testified and the opinions of several experts were obtained, on 9 April 2002 the Miskolc District Court acquitted the applicant.

7. On 6 November 2002 the Borsod-Abaúj-Zemplén County Regional Court quashed this judgment as unfounded.

8. In the resumed proceedings, the District Court held four hearings. On 6 May 2004 it found the applicant guilty as charged. It held that, apart from the responsibility of another driver who had died in the multiple collisions, the accident had essentially been caused by the applicant's failure to maintain the brakes of his truck and his grossly negligent driving. The applicant's offence was punishable with two to eight years' imprisonment. The District Court took account of the protraction of the proceedings as an important mitigating factor and sentenced him to three and a half years' imprisonment and a four-year prohibition on driving.

9. On appeal, on 13 October 2004 the Regional Court upheld the applicant's conviction but reduced his sentence to two and a half years' imprisonment and a three-year prohibition on driving.

10. As a consequence of a successful intervening constitutional complaint concerning a procedural rule applied in the applicant's case, on 4 July 2005 the Attorney General's Office introduced a motion for a review by the Supreme Court.

11. On 3 October 2005 the Supreme Court's review bench quashed the Regional Court's judgment and remitted the case to it.

12. In the resumed second-instance proceedings, a motion for bias lodged by the applicant was dismissed the Debrecen Court of Appeal. The hearings scheduled for 28 June and 20 September 2006 had to be postponed for non-attendance by the applicant's representative. After another hearing on 8 November, on 27 November 2006 the Regional Court acquitted the applicant.

13. On 21 June 2007 the Court of Appeal upheld this judgment. This decision was served on 19 September 2007.

THE LAW

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

14. 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..."

15. The Government contested that argument.

16. The period to be taken into consideration began on 19 August 1998 and ended on 19 September 2007. It thus lasted nine years and one month for three levels of jurisdiction.

A. Admissibility

17. In respect of the period prior to 13 October 2004, the Government submitted that the applicant could not claim to be a victim of a violation of his right to a hearing within reasonable time, because his sentence had been substantially mitigated on account of the protraction of the proceedings. In their view, this part of the application is therefore incompatible *ratione personae* with the provisions of the Convention. The applicant contested this argument.

18. The Court considers the mitigation in question to be immaterial, particularly in the light of the applicant's eventual acquittal. It follows that the Government's objection cannot be sustained. The Court moreover finds 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

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, 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)

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 *Pélissier and Sassi*, 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 – although the applicant himself caused a delay of approximately four months in the resumed second-instance proceedings (see paragraph 12 above) – 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

24. The Government contested the claim.

25. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,200 under that head, having regard also to his own contribution to the protraction of the proceedings.

B. Costs and expenses

26. The applicant also claimed EUR 1,500 plus VAT at 20% (a total of EUR 1,800) for the costs and expenses incurred before the Court. This corresponds to 15 hours' of legal work charged by his representative at an hourly rate of EUR 100 plus VAT.

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

28. 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 considers that the sum claimed should be awarded in full.

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 remainder of the application admissible;
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, the following amounts:

(i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,

(ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses,

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 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 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President