



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

SECOND SECTION

CASE OF BORSÓDY AND OTHERS v. HUNGARY

(Application no. 16054/06)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Borsódy and Others 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,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 16054/06) 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 three Hungarian nationals, Sándor Borsódy, Tibor Tóth and Károly Fodor (“the applicants”), on 9 April 2006.

2. The applicants were represented by Mr Z. Petrőczy, a lawyer practising in Kecskemét. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 4 February 2008 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1951, 1961 and 1956 respectively and live in Kiskunhalas.

5. On 1 February 1995 the applicants were charged with soliciting prostitution (*üzletszerű kéjelgés elősegítése*). The prosecution authorities asserted that the applicants, acting as a criminal gang, had been involved in running a brothel with minors working there as prostitutes.

6. Having held seven hearings, the Kiskunhalas District Court found the applicants guilty as charged on 21 November 1997. They appealed. On 18 June 1998 the Bács-Kiskun County Regional Court quashed the first-instance judgment and remitted the case to the District Court.

7. In the resumed proceedings, the District Court held three hearings and acquitted the applicants on 12 April 2005. The prosecution appealed.

8. On 20 October 2005 the Regional Court upheld the applicants' acquittal on the ground of lack of evidence. It noted that during the proceedings relevant evidence, in particular an audio tape recorded by a journalist investigating the matter, had been lost and that some key witnesses for the prosecution had withdrawn their testimonies before a Romanian notary public. However, it did not investigate the circumstances of these events.

THE LAW

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

9. The applicants 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..."

10. The Government contested that argument.

11. The period to be taken into consideration began in February 1995 and ended in October 2005. It thus lasted ten years and eight months for two levels of jurisdiction, including a remittal.

A. Admissibility

12. The Court notes that the application 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

13. 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 complexity of the case, 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)

14. 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).

15. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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

18. Each of the applicants claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

19. The Government contested these claims.

20. The Court observes that the applicants’ acquittal appears to have been connected to the loss of key evidence and the intervening withdrawal of important testimonies. These events, for their part, may have been regarded as linked to the protraction of the proceedings. The Court therefore considers that the applicants have benefited from the length of the proceedings. Consequently, it is satisfied that the finding of a violation alone constitutes sufficient just satisfaction for any non-pecuniary damage they may have suffered otherwise.

B. Costs and expenses

21. The applicants did not make any claim under this head.

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 the finding of a violation constitutes sufficient just satisfaction for any moral damage which the applicants may have suffered;
4. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President