



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

1959 · 50 · 2009

SECOND SECTION

CASE OF BÁRKÁNYI v. HUNGARY

(Application no. 37214/05)

JUDGMENT

STRASBOURG

30 June 2009

FINAL

30/09/2009

This judgment may be subject to editorial revision.

In the case of Bárkányi 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 Sally Dollé, *Section Registrar*,

Having deliberated in private on 9 June 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37214/05) 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 Pál Bárkányi (“the applicant”), on 6 October 2005.

2. The applicant was represented by Mr T. Szabó, a lawyer practising in Szeged. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that his deprivation of liberty had been excessively long, in breach of Article 5 § 3 of the Convention.

4. On 29 April 2008 the application was declared inadmissible. Subsequently, it turned out from a fax by the applicant’s lawyer dated 24 June 2008 that relevant documents had been misfiled and thus not been taken into account when the decision was drafted. Therefore, the application was restored to the case list. On 3 September 2008 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Szeged.

A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 30 June 2005 the applicant and an accomplice were arrested on a charge of theft of a car and two motorcycles. In the ensuing proceedings he was assisted by defence counsel of his choice.

8. On 1 July 2005 the Szeged District Court ordered the applicant's pre-trial detention until 1 August 2005. The District Court considered that – given that the applicant had previous convictions and that another accomplice had absconded – there was a risk that he would endanger the investigation.

9. The applicant appealed and requested his release. He argued that the stolen goods had been found and the third accomplice had been arrested, so that the reasons given by the first-instance court had ceased to exist. He also pointed out that his agricultural activity – which was his main source of income – was seriously hindered by his detention. Lastly, he stated that his mother was seriously ill and he had to take care of her.

10. On 7 July 2005 the Csongrád County Regional Court upheld the first-instance decision. It considered that, given the seriousness of the charges against him and that his presence in the investigation could not be secured otherwise, the applicant's pre-trial detention was necessary.

11. The applicant was in the meantime charged with other minor offences. On 29 July 2005 the District Court prolonged his pre-trial detention until 1 October 2005. It considered that, in view of his record, there was a serious risk that he would abscond, reoffend or endanger the investigation, in particular by destroying evidence. It also established that the applicant's request for release, which was based on identical reasons to those set out in his appeal, was insufficiently founded to justify ending his detention. The applicant appealed, asking to be released or to be placed under house arrest in lieu of detention.

12. On 1 September 2005 the Regional Court upheld the first-instance decision but deleted from the list of reasons the risk of destruction of evidence.

13. On 28 September 2005 the District Court again prolonged the applicant's pre-trial detention until 1 January 2006 for the same reasons it had given previously. The applicant appealed and drew attention to the fact,

inter alia, that the investigation was practically closed, as all the necessary investigative acts had already been carried out. He also stated that the seriousness of the charges against him could not serve as the sole basis for his detention. On 12 October 2005 the Regional Court upheld the first-instance decision.

14. On 28 December 2005 the District Court prolonged the applicant's detention until the delivery of the first-instance judgment on the merits. It considered that the seriousness of the charges against him meant that there was a serious risk that he would abscond or jeopardise the procedure by conspiring with his missing accomplice. The applicant appealed and repeated his previous arguments.

15. On 6 February 2006 the Regional Court upheld the first-instance decision but changed the ground for detention to the risk of the applicant's reoffending. It also established that the investigation had ended, so that the applicant could no longer jeopardise it.

16. On 21 August 2006 the District Court prolonged the applicant's detention until the delivery of the first-instance judgment on the merits on the same grounds as before.

17. On 5 September 2006 the District Court terminated the applicant's detention and ordered his house arrest. It considered that he was no longer in a position to endanger the goals of the proceedings and, based on the information in its possession, there was no risk that he would abscond.

18. On 25 September 2007 the Szeged District Court found the applicant guilty of trafficking in stolen goods (*orgazdaság*) and sentenced him to one year's suspended imprisonment.

B. Relevant domestic law

Act no. 9 of 1998 on the Code of Criminal Procedure, as in force at the relevant time

Section 129

"...(2) The pre-trial detention of the accused may take place in the course of proceedings concerning a crime punishable with deprivation of liberty and if

a) the accused escaped, tried to escape or absconded from the court, the prosecution or investigation authority, or if during the proceedings other criminal proceedings were instituted against him for a crime punishable with deprivation of liberty,

b) given the risk of escape or absconding, or because of other grounds, it can be reasonably assumed that his presence for the investigation could not be secured otherwise,

c) it can be reasonably assumed that, if allowed to be at large, he would – in particular by influencing or intimidating witnesses, or by destroying, falsifying or hiding documentary and material evidence –, frustrate, render it more difficult or endanger the taking of evidence,

d) it can be reasonably assumed that, if allowed to be at large, he would finish the attempted or prepared crime or commit another crime punishable with deprivation of liberty.”

Section 131

“(1) Detention on remand, when ordered prior to the indictment, may last until the decision of the court in the preliminary proceedings before trial, up to a maximum of one month. Detention on remand can be prolonged by the investigation judge, for three month periods on each occasion up to a maximum of one year. Thereafter, detention on remand can be prolonged by a single judge of the Regional Court, ... on each occasion for two months.

(4) Detention on remand, when ordered or upheld after the preferment of the indictment, may last until the delivery of the first-instance judgment,”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

19. The applicant complained under Article 5 § 3 of the Convention about the length of his deprivation of liberty.

Article 5 § 3 reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

20. The Government contested that argument.

A. Admissibility

21. 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

22. The applicant stressed that his deprivation of liberty had lasted an unreasonably long time.

23. The Government maintained that the applicant's detention had not exceeded the period that had been necessary in the circumstances for the authorities to unravel responsibility for the offence he was charged with. When prolonging his detention, the domestic courts had relied on relevant and sufficient grounds and taken into account all the aspects of the case and not just the seriousness of the charges against the applicant.

24. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 152 *et seq.*, ECHR 2000-IV).

25. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Muller v. France*, 17 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II).

26. The persistence of a reasonable suspicion that the detainee has committed an offence is a condition *sine qua non* for the lawfulness of continued custody, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied

that the national authorities displayed “special diligence” in the conduct of the proceedings (see *Muller, loc. cit.*).

27. The Court observes that the applicant was deprived of his liberty from 1 July 2005 until 25 September 2007, i.e. for almost two years and three months. This period involved fourteen months of pre-trial detention and thirteen months of house arrest which also falls within the scope of Article 5 (see, *inter alia*, *Pekov v. Bulgaria*, no. 50358/99, § 60). It notes that, initially, the principal reason for the applicant’s detention on remand was the danger of his absconding and, to a lesser extent, that of collusion and reoffending. It is satisfied that, during this phase of the investigation, the suspicion that the applicant had committed the crimes in question justified his detention with a view to securing his attendance at court.

28. However, once the investigation was closed on, at the latest, 6 February 2006, the risk of collusion was no longer arguable, but the applicant’s deprivation of liberty nevertheless lasted another nineteen months. The remaining reason for the continued measure was the risk of his absconding and reoffending. In the Court’s view, the domestic courts should have assessed these risks in the light of all the aspects of the case and considered imposing a less strict measure. Instead, they limited themselves to reiterating mechanically that, given the seriousness of the charges against him, there was a risk that the applicant would abscond or reoffend. The Court finds this implausible in the circumstances, especially in view of the District Court’s decision of 5 September 2006 terminating the applicant’s pre-trial detention and ordering his house arrest. Having regard to its overall duration, the Court is not persuaded that the applicant’s deprivation of liberty, in particular after 6 February 2006, was justified.

29. There has, therefore, been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed altogether 1,200,000 Hungarian forints (approximately 4,000 euros (EUR)) as just satisfaction.

32. The Government considered the applicant’s claim excessive.

33. The Court considers that the applicant must have suffered some non-pecuniary damage. Accordingly, on the basis of equity, it awards the applicant EUR 2,000.

B. Costs and expenses

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

C. Default interest

35. 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 5 § 3 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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Hungarian forints at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 30 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President